

ICANN Board-GAC Meeting

01 March, 2011

Brussels, Belgium

8:30 am.

>>HEATHER DRYDEN: Okay. Let's begin. Welcome back everyone to day two. We have the proposed agenda on the screen for you to look at, and I will walk you through the basic plan. So this morning we'll begin by going back to the section related to community-based strings that we didn't have an exchange on yesterday. So we will do that first.

And then we'll take some time, the GAC and the board. From a GAC perspective, that's to discuss some of the answers that we've been able to receive overnight regarding the detailed questions we were asked yesterday on rights protection issues. So we will touch base as the GAC and hopefully offer some preliminary views. We are not expecting to have a full consensus GAC view on that today but that is the aim, to try and provide some kind of guidance to our board colleagues on that.

Then that will be followed by the GAC presenting what we can at 10:45. And then we will spend some more time on objection procedures in plenary. So all that's proposed today will take place in this format, at least as we know at this time.

Then lunch break. I just realized we don't have coffee breaks built in here.

So in the afternoon, what is proposed then is that we go back to some of the issues where we're expecting a more detailed exchange will be needed still between the board and the GAC. So that includes more on protection of rights owners, consumer protection and post-delegation disputes. And then we will attempt to wrap up at the end of today based on that exchange.

Is there anything you would like to add, Peter, anything you would like to note?

>>PETER DENGATE THRUSH: Thank you. That looks excellent.

>>HEATHER DRYDEN: Okay. So let us proceed on that basis, beginning with expanding categories of community-based strings, which is 2.2 in the GAC scorecard. I believe the United States will be presenting that. And from the board's side, that's Bruce Tonkin. Okay. Will you be coming to the front, Bruce? Okay.

United States, you may begin.

>>UNITED STATES: Thank you, Heather. Happy to review this again. This is in the scorecard. Our proposal suggests that we -- that the community-based string category be enlarged to specifically acknowledge and to require an applicant to acknowledge that they are proposing a string that would represent or embody a particular group of people or interests based on historical, cultural or social components of identity, which would include such things as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age and/or language or a linguistic group.

In addition, strings that refer to particular sectors, such as those subject to national regulations or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, we would think would also be considered community-based.

And I will say, we've had an e-mail exchange and I want to make sure that I represent and I capture it. Maimouna Diop of Senegal has asked us to include a string that purports to represent a region.

I will have to show my ignorance on the distinction between this category and geographic. I'm not sure if names of regions are captured under geographic or if they are not, that's why we need them to be captured here. Voila. She's nodding so I think I have gotten it straight.

Thank you, Maimouna.

We think that applicants seeking such strings should be required to affirmatively identify them as community-based strings and should demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD and evidence of support or non-objection from the authorities -- and my apologies. We have tinkered with some of this text, and I actually have to go back and find it. So I'm just going to kind of slide over it now and we will provide a written update -- authorities that the applicant is, in fact, the agreed entity for purposes of managing the TLD.

In the event the proposed string might be either too broad to effectively identify a single entity as the relevant person or appropriate manager or if it is sufficiently contentious that an appropriate manager cannot be identified or agreed, we believe the application should be rejected.

The requirement that objectors must demonstrate material detriment to the broader Internet community -- and I put that in quotes -- should be amended to

simply reflect material detriment as the former represents an extremely vague standard that may prove impossible to satisfy.

Individual governments that choose to file objections to any proposed community-based string we feel should not be required to pay fees.

So from our perspective, this proposed approach would remedy the failure in the Draft Applicant Guidebook to incorporate the GAC's previous advice, which was first offered in March 2007, that ICANN's new gTLD process should respect the legitimate interests of governments regarding terms with national, cultural, geographic, religious, et cetera, sensitivities or significance.

It also anticipates the strong possibility that there will be proposed new gTLD strings for which an appropriate manager actually cannot be identified or agreed. And from that perspective, we believe that should cause the application to be rejected as a community-based string.

It corrects an impossibly vague standard of detriment to the broad Internet community with a more practical and realistic standard of material detriment to the community in question.

Finally, this proposal recognizes the rights of governments to protect their perceived national interests through the community objections process without an obligation to pay a fee. Thank you.

>>HEATHER DRYDEN: Thank you very much for that, Suzanne. Bruce, did you have questions?

>>BRUCE TONKIN: I guess partly what I might do is perhaps just set out how we understand the use of "community" is in the guidebook and then how these recommendations relate to that.

There's really two uses of this term in the process. The first term is actually really intended as part of dealing with contention when multiple parties are applying for the same name. And so in that situation, we've defined a framework where a community can put forward an application for a particular name. And that community gets a benefit or an advantage over an individual entity that tries to apply for the same name.

So using sort of the example I was using yesterday, dot Maori, which is a community group within New Zealand. If an individual company in Australia, for example, applied for dot Maori and the Maori community in New Zealand applied for dot Maori, then that Maori community would be given precedent over that single corporate entity. And in order to get that precedent, the community has to show that they have the support of that community, they have to be an eligible institution. So there are a lot of criteria in there to ensure that anybody claiming to be a

community really does have the support of that community. So that's the contention process.

Then there is a completely separate process, which is an objection process. So the objection process -- so it could be -- if there is no contention, and there is only one party applying for a particular name -- so if only one party applies for dot Maori and they meet all the other criteria, then they would get dot Maori. So the community-based evaluation only occurs when there is contention between two parties that claim to be supported by a community, and then the evaluation of who better represents that community is done at that point. So it is a comparative evaluation.

The second use of the term "community," which is really a completely independent part of the process, is the community objection process. And when we were reading these recommendations, we were reading them more in the context of an objection process. And the first part of an objection process is determining who has standing to raise that objection.

And so what I interpret your Section 1, for example, is sort of giving examples of groups that might have standing to raise an objection for a particular string. So that would feed, from our perspective, into the criteria for standing. In other words, who -- what categories of groups would have standing to raise a community objection? And it certainly has been envisaged but it is certainly not explicit in the guidebook that it wouldn't necessarily just be a community such as the Maori community. But what if it was the banking community, somebody applies for dot bank, they get dot bank or they would get dot bank considering other criteria. And then the banking as a community or industry sector thinks that the party that's applied for dot bank doesn't have the support or is inappropriate for running dot bank and so that banking association would raise an objection.

So a lot of what we see here in your one, two, three points would be what we would see feeding into the standing criteria; in other words, who has standing to raise an objection. Is it just a community group such as the Maoris? Or is it an industry sector group? So I think that's kind of at least our perspective. So I'm just giving you our perspective but then interested to hear feedback back from that.

And then the second element of that, after you have worked out who has standing -- And, as I said, this information from the GAC could feed into who has standing. The second thing is: What does the party raising the objection have to demonstrate? And what you have stated in 6.2.4 -- sorry, 2.2.4 is the requirement that objectors must demonstrate material detriment to the broader Internet community.

And then you have amended it to reflect simply material detriment. I think it is clearly an area that needs some more thought. We would certainly be interested in a little bit more thought on what you mean by just "material detriment."

In the policy what we've stated is that -- which is Recommendation 20, which is an ICANN policy, we have said that an applicant will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. That's our policy.

And so the thing is: How do we best meet that policy with respect to the objection procedure? I guess that's really just introduction as to how we interpret this, but we would be interested in your feedback.

We are interpreting this as, basically, saying which group has standing to raise an objection? And then we see your Point 4 is about the criteria you would use to determine whether that objection is sustained and maybe there needs to be more work on that criteria.

Certainly, if you could tell us a little bit more on what you think the criteria should be, that would be helpful.

>>HEATHER DRYDEN: Thank you, Bruce.

Suzanne?

>>UNITED STATES: I will take a first crack at it, and I welcome comments and input from my colleagues, obviously.

I think we have seen this in actually a slightly different way. This is a more affirmative approach so that the applicant -- like using the example you offered, Bruce, with an Australian commercial entity seeking dot Maori, unless there was an objection, they would get it.

Now, the New Zealand government regrettably isn't here. But I would imagine that the New Zealand government would disagree with you and would believe that nobody should get dot Maori other than the appropriate representative of the indigenous Maori community. So in the event nobody in the indigenous Maori community seeks an application for dot Maori, there will not be a dot Maori. Or your applicant in Australia, if that applicant gets the approval or non-objection from the government of New Zealand or the relevant entity representing the Maori indigenous population, then maybe it could go through. So we are actually turning this around the other way because there are many, many governments out there that don't believe some of these strings should ever be approved.

So they believe that it either should be their right to support and advance a particular string because they know who the relevant entity is and they have endorsed that entity, or they certainly do not believe a commercial applicant should just willy-nilly get whatever name they want if that name happens to have any kind of connection back to the country or to a particular sector.

I can tell you -- I'm just going to say this casually, informally. But I will put money on it, that the U.S. Department of Treasury would give me instructions as to our view on a proposed application for dot bank. And my guess is there are quite a few colleagues around the room whose ministries of finance would do the same.

So in the event of disagreement as to who the appropriate applicant should be, our theory is there should be no dot bank until such time as agreement could be reached.

I hope that helps. It also puts a little bit more of the burden of proof on the applicant. Thank you.

>>HEATHER DRYDEN: Thank you, United States. I have a request from the European Commission. Should we take that, Bruce? Yes, okay, please, go ahead, European Commission.

>>EUROPEAN COMMISSION: Thank you. And good morning, everyone. Just to express my support for the views expressed by my colleague from the U.S. and to add another perspective, that essentially the GAC is saying that if we have a string that purports to represent a community, it should demonstrate it has support from that community and preferably from the relevant authority. If it doesn't -- if it isn't able to demonstrate that support, they shouldn't get the string.

In that case, you don't need to worry about an objection procedure. That solves the objection procedure problem in that case.

In the second case where they can demonstrate support from the relevant community and the relevant authority, then also the possibilities for people to raise objections, I would imagine, would be minimal. So in both cases actually the GAC proposal would minimize the problems that ICANN might have to face actually with objections. So it solves the objection problem in many ways. I think that's also an argument I would make. Thank you.

>>HEATHER DRYDEN: Thank you for that.

Bruce, did you want to comment?

>>BRUCE TONKIN: I think -- yeah, I understand the GAC position is essentially instead of having an objection process, you have a process where you -- effectively a government entity or equivalent is going to give preapproval for a string similar to the country name approach is probably how to characterize that. So if you want to register a country name or a capital city name, let's say, you could if you had the permission of the government to do so.

I think where it gets a little more complicated is that there are a lot of words that have different meanings. And I don't know of other meanings for the word "Maori," but I will use another word "Apache."

Apache is a pretty common, essentially, Open Source software that's used in Web design. So there is a big, if you like, community in a way but there's also commercial organizations that run and develop software using the Apache Web tool. But it also happens to be a name of an Indian tribe in the U.S.

And so I think we would sort of envisage that if a commercial entity wanted something like dot Apache they would apply for it and they would state the reason for dot Apache is to operate it for software purposes.

There is a community objection approach. So if the Apache Indians felt that would be detrimental to themselves or the government of the U.S. thought it was detrimental to a group of people within their country, then they would raise an objection.

If the Apache Indian tribe wanted to apply for dot Apache, they would apply as a community and all the things that you talked about would be considered to see whether they meet that standard as a community and they would get it in preference to the use of the word Apache for software.

So I think we were trying to envisage this from the GNSO particularly saying words have lots of different meanings. And I know quite a few words, for example, in Europe particularly, where the word -- the name of a company is also the name of the town where that company started. There are some very big companies that meet that criteria. And so the thought was, well, if the company was using its brand and well-established, they should be able to apply for that company name.

But if, again, the community that was in the city wanted to apply for that name and they put in a community application, that would take precedent. But if the community didn't apply and the community didn't complain, then the business would get that name. So that's kind of where we're thinking, that names are not unique. Often names are used for lots of different purposes.

>>PETER DENGATE THRUSH: Can I just -- the problem with turning it around, as you've done, from the way Bruce -- the way we've suggested that if there is someone who can come forward with an interest and use it as a basis for complaint, turning it around, it is a bit similar to us in the same way that in the absence of any legal basis in relation to geographic names, to get the predictability and certainty we have to have for applicants so they know what's available and what they can do, we go to publish lists. This tries to set up a taxonomy with no proper basis, no well-defined basis.

And the fact is that there isn't a proprietary right to a word like "bank" that we can identify and that you can go and say that puts us into this category.

I'm perfectly entitled to set up something and call myself The Left Bank Shoe Shop. And there is lots of uses of a word like "bank" that have got nothing to do with the interest you mentioned, from the banking interest.

To try to make it a reserved category to start with when there is so little definition and predictability around it is simply too difficult. It will take out of availability for registrants enormous numbers of words for which are perfectly valid and perfectly useful and non-objectionable ones might arise.

Rather than having that impossible difficulty of no taxonomy, no list you can go to to see what these words are, we turn it around and say, If you have got a claim, bring it forward and use it as a basis. And we think the way to tackle this is to make sure that's easy for applicants and easy for people to meet those objection standards, not to try to create a whole set of, as I say, undefined things that are off limits from the very beginning. That's the difference in philosophy, I think.

The other question I have asked before, what is the principle by which you say governments shouldn't pay fees for objections for this? The issue here is simply that this is just a party with an interest and just as governments pay fees when they travel or when government officials go to dinner or when governments take issues with the GAC or the WIPO, I don't understand what the principle here is. I would be interested to hear what it is.

We've got a principle, I think, we are developing that if the GAC as a body acting inside ICANN is doing something representing GAC interests, which is what we've created a GAC for, that's different.

I just don't understand why an individual government pressing an individual interest should be treated differently on this basis from any other individual applicant with an individual interest. So I would be really interested in what the principle of fee exemption that applies to individual governments as opposed to, say, the GAC actually is.

>>HEATHER DRYDEN: I believe the European Commission would like to speak.

>>EUROPEAN COMMISSION: Yes, thank you. This is a question that's come up several times, I see, between the board and the GAC. And I've often expressed a view which, I think, is shared by my GAC colleagues that to start, I think there is an issue over the bylaws actually. The bylaws say the GAC can provide advice to the board and that would include any advice on public policy issues that we want.

That provides an avenue actually for individual governments through the GAC actually to confirm that they have views, if their GAC colleagues want to include that

in the advice to the board. And the bylaws do not provide for the GAC to be charged for providing advice. And I think that needs to be borne in mind.

I think there is also the more general point actually --

>>PETER DENGATE THRUSH: The question was the other way around. I agree with you completely. But it is coming through the GAC, there is no question about fees because that's what we've asked for.

>>EUROPEAN COMMISSION: If you would let me finish, Peter.

>>PETER DENGATE THRUSH: Oh, sorry. There is the individual government --

>>EUROPEAN COMMISSION: Apologies. I haven't quite finished. That was just some background actually for those who haven't listened to this discussion before. I know many of you have.

The other point I'd make is it's -- I have to say I have problems about the objection fee for any stakeholder. I mean, I find the idea that I know ICANN isn't a public authority but it is a public interest organization. It is a non-profit public interest organization.

The idea that we as public authorities would make a proposal for licensing, for example, of any public policy and then charge people who wanted to write to us telling us they're unhappy about our proposal and explaining why a proposal might become treated public interest, it would be an anathema really for us. It inconceivable we would do that.

We have raised the issue for the GAC because that's our community. I'm surprised other communities haven't raised objections, but that's their business.

What I would say is that GAC -- attending GAC meetings and participating in this process is hugely expensive for governments. For 12 years we've been coming, I think, in good faith and constructively participate in these meetings. The idea that we then get charged if we want to tell the board that all of us or some of us or one of us has a problem with something you're doing, I think is pretty scandalous actually.

And I -- it shows a lack of appreciation of other factors as well, how difficult it is for us back home to justify this. We'd have to have new budget lines in many cases. We would have to go through budgetary processes. We would have to go through authority.

It is very difficult practically to explain to ministers or, in my case, commissioners or members of Parliament why are we spending so much time to attend meetings of a private sector company and then they are going to charge us if we actually want to

tell them we are unhappy about something. It is not specifically about the new gTLD process.

I find the idea of us being charged to raise objections or express concerns about something you're doing totally inappropriate for a public interest organization like this.

We do, after all, I know it is a view not always shared but it is a view here, we represent the millions -- billions of Internet users who do not attend ICANN meetings and who do not participate in ICANN processes and most of whom do not know that ICANN exists.

However, if you stop them on the street and you explain to them that their tax money is paying for people to come here to represent their views, they expect us to represent their views. That's why we're here.

To be charged actually to provide advice in any circumstances, including this, I think, is inappropriate. Thank you.

>>HEATHER DRYDEN: Thank you, U.K. I have next --

>>PETER DENGATE THRUSH: Can I just ask a follow-up. Your starting point is all objections should be free and you're taking the particular position for your community that at least government -- we are going to ask for it in relation to those. But you think the whole objection process should be free to objectors because ICANN operates in the public interest?

>>EUROPEAN COMMISSION: I said that's the personal view. That's not the view of my organization. It's not the view of the GAC, actually. During our discussions we focused on the objection fees to the GAC. That's our views. I'm personally a bit surprised that other people haven't objected to the proposal that they should be charged. And partly that's because it seems to me that the mechanism -- the net effect of the mechanism will be to deter people from raising legitimate objections that they have. Because you're setting barriers, cost barriers, particularly for objectors in developing countries where, even if they have legitimate objections, which you may well want to hear -- you may relate to something that you haven't thought of that -- you're actually putting a fiscal barrier in the way of receiving that advice. And I find that strange as a public interest organization, you wouldn't want to hear all the views of the stakeholders whether in support or whether they're expressing concern or whatever. It seems very bizarre to me, actually, that this mechanism has been introduced at all. I understand that ICANN has a fiduciary duty to cover its costs. But we had a round in 2004. We had a round in 2000, actually. There was no objection fee procedure there. I understand ICANN covered its costs. So I don't understand what the rationale is for introducing it in this procedure.

But that's not a GAC position. It's not the position of the European Commission. I'm sharing my personal views with that you on that issue. Thank you.

>>HEATHER DRYDEN: Thank you for that. I have the United Kingdom and then Bruce.

>>UNITED KINGDOM: Yes, thank you very much, madam chair. Good morning.

Just a couple of very brief comments. First of all, on the process itself. I mean, one can understand the difficulties in both processes, actually, whether you have an objection process or a prior process. I think why the GAC position is opportune and is appropriate is that one wants to get away from objections, if one can, to these. You know, we're embarking on a fundamental change here. And I know that, you know, we've had generic top-level domains before. But this is something which is going to test us all. And it's something which is in the public eye. And, if we can have a system where we don't have to have so many objections, then I think, politically, it's going to be so much the better. Therefore, it does seem appropriate that if someone puts forward a string or community-based string, that there is some sort of assessment that there is some sort of test to see whether they do represent the broader constituency. Because, as I think, you know, was explained -- and I can quite see it -- you might only get one application. Because, you know, boy, people just haven't got around to it sort of thing. But just because you've got one application doesn't mean to say it's got that community support. So that's the first thing.

On the fees, I think I can understand the board's position. But I also agree with what the European Commission were saying here. And I think, you know, we're in one of those situations where we don't really know what's going to happen. And I do appreciate the board position, because I'm sure -- I mean, you've got a duty for your -- you know, you've got a duty to make sure that you don't incur costs. And I can fully appreciate that what you do not want to happen is to have lots and lots of nefarious objections, you know, which you have to spend a lot of time going through and which are just, you know, prejudiced on prejudice. Does that make sense? But you know what I mean, you know.

But I -- I'm just wondering, in the first instance, because, as the European Commission say, it really does cause problems for governments to, you know, raise - - not raise the money. But just to be able to go through the mechanism of, you know, writing a check for governments is always difficult.

So I wonder, you know, whether in the first phase, you know, it could be tested that we don't have, you know, objection fees. And then clearly, you know, if there is a problem, then, you know, you look at it or, you know, at least you have some mechanism which reflects on that. And I think just finally -- and I'll shut up -- that the developing country issue is important here as well. You know, we have to be

inclusive. And we have to make sure that, you know, we take on board all those that have a point to raise whether they can afford to pay for that or not. Thank you.

>>HEATHER DRYDEN: Thank you very much. I have Bruce and then Bertrand and then Greece.

>>BRUCE TONKIN: Thank you, Heather. Again, just want to make a couple points for clarification more than anything.

The first point is that the application review process actually includes a public comment forum as it did for the round of 2000 and the round of 2004. And there's no charge for governments or any entity to submit comments that would be considered by the evaluators. So part of the process is actually a free advice forum, to use Bill Dee's terminology there. Advice is free, absolutely. And the evaluators, as part of the applicant guidebook, need to take into account the advice received as part of their evaluation. So you can give advice on any topic that's in the public document, which would be the applicant's proposal. So public advice is free. So just want to make that clear.

Second thing is that the dispute process is -- in a way was modeling what we had with UDRP, which is we're using an expert body that's actually independent of ICANN that makes a resolution. And then ICANN takes that resolution into account. So these fees were for that external body to actually resolve the dispute, and then that would come back into the process.

But it's loser pays scenario. So in this case, if an individual government raised an objection, they would put up a fee as would the applicant. And the loser of that dispute, basically, pays the fee. And the winner of that dispute gets a full refund. So, if you're assuming that most of the time your objections are sustained, then there is no cost. So just wanted to clarify that.

And then, obviously, I accept your point about the fact that, you know, you do have to come up with that money up front, in effect. And maybe that can be alleviated by having some process where the government pays after the fact or something, if they lose. So you don't have to come up with the money up front. But that was the principle. It's loser pays. And it's an independent dispute provider.

>>HEATHER DRYDEN: Thank you for that, Bruce. I have Bertrand, Greece, and then United States.

>>BERTRAND DE LA CHAPELLE: Thank you, Heather. Actually, I would like to make a more general point, which is that in the whole scorecard, this is probably the most innovative proposal. And it's important to understand that this is something that has -- when I say innovative, it's not a quality judgment. It's the new proposal. It's a different approach, which is different from some of the other topics that we've addressed where we dug deeper in the understanding of something that has been

already explored at length. So we have to be careful to take this subject with caution because it is a major evolution that is being proposed. And it is clearly not something that we're going to agree or disagree in 20 minutes now.

That being said, because this was proposed in the scorecard and the scorecard was released last week, there has been no full board discussion of this specific proposal. So anything that I will say now is on my personal behalf, and it's not something that I say on behalf of the whole board. We will discuss that further.

And, third, I think we should distinguish the question of the fee, which we're now delving into, with the other question, which is whether there are certain strings that should be affirmatively community as opposed to optionally applied for under a community basis, which is a fundamental distinction. And here, reading carefully the document, I think the way it is presented is putting together two things which are slightly different. The first thing is the range of strings that are relating to people -- historical, cultural, social components of identity, nationality, race, religion, belief, culture -- a lot of things, which, as I understand, are directly related to the paragraph in the GAC principles that relate to the sensitivity of strings.

This is one category that is particular. It goes to the religious. It goes to the really human groups in terms of very long tradition, culture and things like that, or at least it tries to address that type of thing. The Maori would be typically in there.

The other element, which is a sort of mixture, as we discussed yesterday, of regulated sectors or sectors that are supposed to be subject to fraud, which, as I said yesterday, could be dot movie, dot film, dot music or a lot of other things, these are not really community. What you're -- I understand -- correct me, if I'm wrong -- what I understand the suggestion is is that for those strings which are common words but that basically designate a sector, an industrial group, a type of activity, a vertical, whatever you qualify, there are stakeholder groups that are connected to this. And those stakeholder groups are diverse, according to the work. The stakeholder groups that are connected to dot music, to music are not the same stakeholder groups that are connected to banks or to sports. But, at the same time, the idea that there is only one stakeholder that would be the natural manager is delicate. We have the example of dot museum, for instance, where the sponsored application was dedicated to just the community of museums. But the registration policy, I believe, is too restrictive, because they wanted to apply and we don't exploit fully the benefit of dot museum. I don't want to get into detail, but I want to discuss those two details because they're slightly different. And the reason that they're slightly different is that the first one is more about -- is more connected to the sensitive strings, and the second one is more about the choice of the right operator or the special requirements regarding operations.

And I would like to remind or to bring back for all of us the fact that in the GAC principles there is a differentiation between three layers. There's things that relate to the string, things that relate to the choice of the operator, and things that relate to

the operations. What I understand -- and I finish here -- is that the second part relating to verticals is mostly something that tries to address a greater requirement for the applicant to have certain characteristics and for its registration policy to have certain precautions. Whether it is a good solution or not, I don't know. And we haven't discussed that in the board again. But I want to clarify it so that we are discussing on the same basis.

>>HEATHER DRYDEN: Thank you, Bertrand. I have Greece, United States, Rita, and Erika. And then I'll be looking to close the list soon. We're approaching our time. Two more. I see Kenya. Okay. All right. So, if we can go ahead. Greece, please.

>> GREECE: Thank you, Heather. To a large extent, Bertrand has covered many of the arguments I would have made. But it helps me to draw my conclusion. And this is, basically, what we said yesterday morning that, in our view, the proposed objection procedure is not appropriate for governments. In this case, it is clear that, where there is an important public interest, the governments would like to ask through the GAC, provide advice. Any government which has for national public interest reasons objections, the proposed string would say so through the GAC. And it would be up to the ICANN board to make a wise decision after having received this input from the GAC. So the issue of objection procedures, payment of fees, would be irrelevant if the objections expressed by national governments in cases of public interest problems would be through the process of the GAC. Thanks.

>>HEATHER DRYDEN: Thank you, very much, Greece. United States.

>>UNITED STATES: Thank you, Heather. I was just going to chime in back on the budget issue and the fact that, certainly in our case, there is no line item for the payment of objection fees to -- for new gTLD applications. So we would be presented with a very dire situation right now, because we have no line item to write a check for those to pay those fees. I'm sure many of my colleagues in the room are in the same situation. It is impossible for any public authority at this moment in time to even begin to anticipate the kinds of strings that might come through this pipeline and whether we would have an objection. So you simply cannot anticipate and plan for and, therefore, request funding for it. So there is a real problem in every public administration in trying to anticipate these costs. So I just wanted to add that point. Thank you.

>>HEATHER DRYDEN: Thank you, U.S. Rita?

>>RITA RODIN JOHNSON: Thanks, Heather. I guess, with all due respect to everyone in this room, I don't think this is the time to be spending talking about personal views. I know that I would love to spend four hours talking about my own, but I don't think that's what we're supposed to be doing here. So I'd ask Peter and Heather that we focus on our task at hand which is the consensus views and getting information.

>>HEATHER DRYDEN: Erika?

>>ERIKA MANN: I think the point raised by governments are well-taken by the ICANN board. And we fully understand your concerns. The only thing which we need to do is to find the right mechanism to translate this into our operational work. and I think there's great willingness from the board actually to do this. I was wondering if just making or taking Rita's point into consideration, I think she's absolutely right. Maybe one point which the U.K. government raised, maybe there's a practical and rational way of doing this and really taking the conflict cases which might pop up in the first round, really taking them aside and waiting until the second batch comes. And then we can evaluate the ones which are non-conflictual and we can evaluate the ones which are conflictual. And we have a greater understanding of the case. But, I mean, this is something we still need to discuss if this would be a solution. I don't think we should discuss it right now. It's just something which I take under comment which was raised by U.K.

>>HEATHER DRYDEN: Thank you, Erika. And thank you on focusing us on the proposal from U.K. I think that's a useful way for us to consider these matters further.

Next I have Kenya, please.

>>KENYA: Thank you, Heather. The issue of payment of objection fees by government to -- seem to be presenting public interest is quite a challenge. And, actually, I will speak on behalf of developing countries. When you look around the room, you can count how many of us are here. This has been a very continuous where it has been a major concern within the ICANN community since when some of us started participating in the GAC about 2011. We have talked about inclusiveness. We have talked about increased participation and outreach and so forth. And I can attest to the developing countries that are today, there are many challenges of most of the developing countries participants to justify the expenditures. Most of them keep asking for support to be able to participate in these meetings. When you start thinking of even a budget line to accommodate things like fees for objection and so forth, that is not going to work. And the challenge here is that this will be going against the principles of rolling out the gTLDs and, by extension, inclusiveness of Internet, which I talked about yesterday. If we really want to carry along developing countries -- because I don't see Internet being Internet, if everybody is not on the net. We need to be careful going forward. And, if this is going to carry the day the idea of governments paying objection fees, then I can tell you that even the few developing country participants who are here are likely not going to be able to come here when they go back and tell their government that the issues which are taking another dimension and now we need to budget for the following, they will take another direction. And I can tell you they will just go to the ITU for the information. Thank you. I'm just being blunt here.

>>HEATHER DRYDEN: Thank you very much, Kenya. Okay. So next I have France and then Brazil.

>>FRANCE: Thank you, Heather. Just to say that we fully agree with Mr. William Dee's position that we think it must be considered to have this proposal. And with respect I think -- this is not my personal opinion. This is France's opinion. But Mr. Dee suggests something. I hope this room is a free room that anyone can bring new ideas and in this case possibilities. Thank you, ma'am.

>>HEATHER DRYDEN: Thank you, France. I think that's an important reminder. Brazil. You're next, please.

>>BRAZIL: Thank you, Heather. I'd like to support all of the reasons raised by my colleagues from the GAC. I also -- I want just to have an exercise here. It seems for me that the board believes that objection fees could avoid free lunch players trying to possibly just bring hurdles to the process. But I would say that this free lunch situation doesn't exist because it takes too much time. It takes too much human sources. It takes too much even funds for you hiring specialists in order to write an objection letter or objection reasons. So the situation of free lunch doesn't exist. I would say that the objection process itself is already difficult to address with. So the idea of objection fees is something that the board could just consider. I think this shouldn't be applied to government. And, on the other hand, objection fees could -- will clearly become a barrier to all countries. We have heard different reasons here. And this is something very concrete and I would say something very easily understood by public opinion worldwide. If nowadays most people doesn't understand what ICANN needs or not. If an issue like that becomes a question, people will try to question -- will for sure question ICANN very much, much more than they do it now. So I believe that ICANN is -- if you go with that way of raising objection fees, you are creating a bigger problem that will -- that will be on ICANN's arms. It seems clear to me that all this issue of having enough requirements for apply for gTLD, this -- this should be the task by the applicant himself since he is interested in this position, since he is the one who has the time who has the -- who core business is creating a new gTLD, he is the only one who can carry the burden and who can easily act as a broker in order to avoid conflict. I don't think that ICANN should bring to its own arms the barrier and the potential of conflict that this situation could cause. Thank you.

>>HEATHER DRYDEN: Thank you very much, Brazil. I have Portugal as the final speaker unless Bruce would like to make any concluding remarks. So Portugal?

>>PORTUGAL: Thank you. I would like to make something explicit just to make sure we're in tune on this point that, actually, was triggered by an intervention. Erika Mann, who actually has been telling us this since yesterday. In the issues that now we are finding more complex, we should be ready not to try to codify all of them in norms and to set up procedures that are triggered by special conditions and proceeding in certain fixed way to answer the difficulties. So, if we try to list all

possible source of difficulties in anticipation and produce the guidelines just in terms of norms, we'll have quite a lot of trouble. But, if we decide that there are norms and there are procedures to deal with the most complicated issues, we have a pathway to proceed. I think is not only for the issue we're talking now but also for the other points where we are still feeling problems. Thank you.

>>HEATHER DRYDEN: Thank you, Portugal. All right. So with that I will close this session. We're running a bit late. So we can reconvene in this room at 11:00 a.m. And in the meantime the board will be meeting on their own in a closed session and the GAC will be also. The board is in room 312, and the GAC in room 300. Okay. Thank you.

(Break)

>>DIANE SCHROEDER: For the observers, there is a coffee break scheduled upstairs at approximately 10:15 if -- while the meetings are taking place upstairs, there should be coffee.

(Break)

>>HEATHER DRYDEN: Okay, everyone. Let's get started. Our next topic was to provide what we're calling an update on rights protection issues. You will recall yesterday that the board provided a series of detailed questions to the GAC for a response. And, in the meantime, the GAC has begun reviewing those questions in order to develop a response. And, on that basis, I will turn over microphone to the U.K. who is leading on this issue to provide you an update on our status. Thank you.

>>UNITED KINGDOM: Thanks very much, Heather. And good morning, everybody who wasn't here earlier. Anyway, yes. Fully appreciate the tabling of questions for clarification and so on. And, indeed, the lines to capitals and to IP policy experts have been buzzing overnight. But we're not, I'm afraid, in a position to provide any coordinated consensus, preliminary responses at this time. As you can, I'm sure, everybody here will appreciate, these are quite complex and intricate issues, both in terms of legal consequences and partner operational issues and so on. So there's quite a lot involved in formulating the responses to the questions. But we will do our best to prepare a written response to those questions as soon as we can and provide that to the ICANN side. With the additional request, actually, if there are further questions, we noted on the paper that for quite a number of the GAC scorecard points there were no questions at that present time from the ICANN side. But, if, indeed, there are further questions, it would be greatly appreciated if we could have sight of those and then deal with those at the same time as formulating the coordinated response to the questions that we do know about now. So that's, basically, the position. We look forward to providing those responses, as I say, as soon as we can. And thanks very much. That's the status, really.

>>MARK CARVELL: Rita?

>>RITA RODIN JOHNSTON: Thank you very much, Mark. We absolutely look forward to that response. And I don't think that we have any additional questions. My one concern is that I understand that various members of the GAC need to go back and consult. But I think some of the issues were fairly straightforward. And the ambiguities, perhaps, were created in the drafting. So, although I draft perfectly comprehensively every time, sometimes writing can be confusing. So I would hope that we could set up a time for a teleconference to resolve these issues in very, very short order. So I look -- I think we need to have a timetable to get this response from you and just set up a time to communicate so there's not more questions in the answers to our questions. Because I'd really like to bring this around as quickly as possible.

>>HEATHER DRYDEN: Thank you, Rita. I wonder whether those that are leading on the issues can look at whether there is a drafting issue and separate those out from ones where we need to do additional work. The time frame is so tight. And, from our perspective, it's really important that we communicate to you with a consensus view. That seems to be the most constructive way to go about that. So we will endeavor to do that as quickly as possible. Recognizing that. As far as a conference call, I think there is interest. And, in particular, because we would be able to get our IPS experts on to that call, which is a bit easier for some delegates here today. The timing of the call and the written response I think we would have to work out, coordinate that between now and San Francisco. So --

>>RITA RODIN JOHNSON: That's fine, again. I think Peter said it well yesterday. This topic, obviously, has -- there's been quite a lengthy process of back and forth here. So we also have to involve various other people. It's not just decisions we can make on the fly, if at all. So, again, I just want to reiterate that I understand your concerns. But we have limitations as well, so we really need to get this moving quickly.

>>PETER DENGATE THRUSH: There was talk over break -- Mark, I'm not sure you were part of that -- about having a call tomorrow. Is that realistic?

>>MARK CARVELL: I understand -- yes, I'm aware of the desire, shared desire to have the conference as soon as possible. But there are problems with colleagues in actually facilitating that tomorrow. So I don't think that's a runner, unfortunately. But let's consult further on what is realistically possible. But at the earliest opportunity is what we'd consider as -- if we go ahead with the teleconference proposal, which I, U.K., think is a good idea. But there are further GAC consultations that need to be taken.

>>HEATHER DRYDEN: Thank you for that, U.K. Germany, did you want to add?

>>GERMANY: Yes, thank you. I think it is very important that we formally give this position and answer from side of the GAC in a written form. But, on the other hand,

I think it is necessary that we try to proceed and have some kind of also exchange to trying to come forward.

Another question I would raise and like to raise to the ICANN board is you have received now our position. And what we now also would like to know is a bit to what extent can you go along with this position? Or do you -- can you consider that this GAC position could be followed because -- I know it is premature to go -- to discuss it. But we just also wanted some kind of response and knowing where are we going to, in a sense. Thank you.

>>RITA RODIN JOHNSON: That's fine. I think we can't answer that question until we understand the answers to our questions.

>>HEATHER DRYDEN: U.K.

>>PETER DENGATE THRUSH: On the other hand, I think there's, obviously, merit in what Rita says. But there are a lot of things we haven't asked any questions about. And, if you look at -- as Katim has reminded me on several occasions, if you look at the description of this meeting on the web page, it is try to work out what areas we can agree and what areas we can indicate we might be able to accept GAC advice on these areas. And the obvious point is we've got a bylaws consultation schedules on areas of disagreement. At the moment there are 12 areas of disagreement on the agenda for a bylaws consultation in San Francisco.

The purpose of this meeting is to try to reduce that to zero, if possible, so we don't have to have a bylaws consultation and we'll just be able to move forward. So, if we can, to the greatest extent possible, we would like, at the end of this meeting, to be able to indicate where we're going on that so we know what it is we have to deal with in San Francisco.

The trouble with that is that's a very difficult question. And these things are linked. And, if we haven't solved one, we feel reluctant to give an indication that we may later on have to resile from once we've had further discussions, et cetera. So sometimes saying nothing is going to be a lot more helpful than saying something too early. Rita?

>>RITA RODIN JOHNSON: Just to give you an example, there's been a request to change the standard of proof from clear and convincing to a preponderance. That was not supported in any of the processes to date. The IRTF STI talked about clear and convincing. There's no rationale, really, that you've given us. So we want to understand why governments think that's necessary. So we can't tell you our reaction until we understand the basis for some of these things that you asked for that we haven't seen before. So, as soon as we get that, and then we can engage in a dialogue, I think that will be helpful.

>>HEATHER DRYDEN: Thank you. I have the U.K.

>>UNITED KINGDOM: Yes. Thanks very much. We're working on that. And that will be covered by the paper. But I guess my German colleague is hitting on the fact -- and, Peter, I think, touched on it as well -- that there are quite a number of elements of the proposals from the GAC where there are no questions. So we're wondering can we interpret that as positive in the sense that, you know, it will be good to know at this stage for us, having formulated these proposals, whether those ones are actually going to be ones that we believe we have agreement on so that we can direct our attention to those where you've raised your questions, if that makes sense. So is there an indication, a signal now that you can give?

>>PETER DENGATE THRUSH: No. I think that will be too facile. Simply the fact that we haven't asked questions doesn't mean that we've reached a view on them. I think --

(Speaker off microphone.)

Let's not try to do that. Let's wait until we finish the process that we're now in. And, hopefully, by tonight and tomorrow we'll be in the position to give the kind of answers that we set this meeting up to give. They may not be at the level of specificity that we need. That's the difficulty. Okay. Is that enough, if you would like? That deals with the update on rights protection, and that is that it's ongoing.

If we can move on, then we come back to the objection procedures and the requirements for governments to pay fees, procedures to review sensitive strings.

And I am going to ask Bruce, if you can just come to the front as you fronted that last time.

It may be that we don't need to spend a lot more time on this. We have covered quite a lot of it again this morning.

>>BRUCE TONKIN: Peter, I have no further questions but other board members may.

>>PETER DENGATE THRUSH: Or GAC?

>>HEATHER DRYDEN: If we deal with objection procedures first, are there any additional comments that GAC members may think are useful for the board at this point on objection procedures? I don't see any requests for the floor.

We had quite a good discussion in our closed meeting on this topic. And it's very clear certainly among the GAC membership, that this is a critical issue for governments. And I don't just mean GAC members. And the scorecard, which is intended to be detailed and concrete and tried to provide the guidance that we

thought would be most useful for this exchange, perhaps doesn't convey those kinds of elements.

So as I have the microphone, I would like to impress upon you that this is really a critical issue.

No requests for the floor, okay.

>>PETER DENGATE THRUSH: Bertrand?

>>HEATHER DRYDEN: Bertrand.

>>BERTRAND DE LA CHAPELLE: The reason why I take the floor here is to fulfill or help fulfill the notion that this discussion is about dialogue. As I said earlier today -- or this morning, there is a certain difficulty for the board to comment extensively on some of the proposals that are slightly new in the document because we didn't have time to discuss it as a board in general.

However, my understanding or feeling is that the discussion about the early warning concept, whatever that is, sort of early phase where the strings are being evaluated is actually not in contradiction at all with the current applicant guidebook. There are already hooks in many places. There is the public comment period. There is the early evaluation. There are many string evaluation steps in the applicant guidebook.

And so in the list of the agenda today, actually the notion of early warning whatever is not mentioned here. And I wonder whether it is not a good moment to just explore it a little bit further to try to understand what we mean and what it can be.

And, particularly, one of the questions that I have -- and it is not to throw a question at the GAC. It is a question that I'm asking myself -- is if we have this early stage evaluation of the string, what is the consequence of it? Is it something that allows the community as a whole with the different components, the GAC to chime in, the other actors to chime in? What is the consequence? Can it lead to a decision on the string that will be a final decision on the string and then to lead to processing the applicant? Let me even be clearer.

There is a risk that in the processing of the application, problems with the string remain quite some time while we are discussing the applicant and the appropriate applicant and while we're discussing the appropriate registry operations and so on.

And if the problem is with the string, if it takes long, if the objections are coming on the string late, then it is a problem for the whole process. It takes time. It takes money. It takes valuable problems for the applicant and for the administration of the process.

So my question here -- and I want to throw it not only at the GAC but also at fellow board members -- if this notion of early process -- I'm not using "early warning" purposefully -- early step focused on the string, is this something that could be identified as a clarification of the current things that are in the applicant guidebook like grouping elements related to the string very early in the process and that would be closed by a decision on the string saying no to the string. This is the whole objections on very sensitive strings and so on, or there are specific requirements because it is recognized it is a geographic name, da, ta, da, or there are other possibilities of categories as mentioned.

Is there a possibility briefly to discuss this notion now and maybe get feedback from the different actors?

>>PETER DENGATE THRUSH: I think that's very helpful. Thank you, Bertrand. Suzanne, I think you are leading this yesterday. These are the kind of philosophical questions that this new approach raises that I think we would like some help with.

>>UNITED STATES: I'm happy to give it a try and, of course, welcome also input from my colleagues obviously. But we are now, I think, mixing up a lot of the different proposals together. So...

I understood Bertrand to be talking about early warning primarily to review the strings. So we are now mixing the early warning to give an applicant the heads-up that this could be considered objectionable, sensitive, controversial, et cetera, et cetera. So we're merging all of those. Fine.

And I will defer to other colleagues who have been more explicit on the early warning, how we work it in. But clearly you do have an initial evaluation period. And my understanding is that lasts 45 days.

Is it possible -- let me ask you a question because, of course, just as Hubert and Mark did on the I.P. issues, it would be very, very helpful for us to come away with some sense of your reaction to this collection of proposals. So would you consider an early warning to be the initial stage of the initial evaluation, if you will, that has sort of at the outset -- I don't know how long that would be. I don't think we've ourselves kind of nailed down a particular timeline. But that would be the opportunity when, if an applicant -- And, Hubert, I'm going to hope that you will correct me if I misrepresent the thoughts that you have so capably expressed -- that if the applicant becomes apprised of significant concerns and then determines to take the application out of the process, decides not to go ahead, would that be where you could conceivably see a refund of a considerable amount of the application fee? Because that is one of the values of the early warning process. It permits the system to kind of self-correct.

>>PETER DENGATE THRUSH: Bruce, thank you.

>>BRUCE TONKIN: Just responding on the detail, firstly, Suzanne, and then I will make a more macro-level comment.

There is actually already a refund process that exists for just this purpose. So if there were public comments or GAC advice that was received after the applications are posted and the applicant withdraws their application, they actually get a refund of, I believe, 70% of their fees. So that refund is already there and that early warning process, at least for the community as a whole, is there, that you can raise an issue and the applicant can withdraw. And that's the level of refund.

Going back to your broader question about feedback from the board, where we are process-wise is that we have team leaders which I'm the lead in this area. Each team leader has given an assessment of their view or particularly their team view on where we could go forward. But we have yet to discuss that at a board level to be able to come back with a board view. So we are weary of sort of giving individual views at this stage without giving a board view.

So the rest of the afternoon -- the shorter this period is the better because that means as a group, the board can get back together and develop its board position and then we can report that board position back.

>>BERTRAND DE LA CHAPELLE: I fully agree with the notion that Bruce is raising regarding individual board members' views. This is not the purpose.

What I'm trying to do here is exactly to do what Suzanne was alluding to. My feeling, as an individual board member and analyzing the different building blocks a little bit like a puzzle, there are different building blocks that actually are addressing a common concern. And I insist on the term "common concern" for everybody, not only the GAC and the board but for all the applicants, the actors, which is we do not want a process that drags on and raises problems late in the process that are related to the string.

I think this is a big lesson from some past situations. And if I look, for instance, at the flowchart today, the limited public interest proceeding or whatever sensitive string objections that we are maintaining is relatively low in the flowchart after an applicant passes all element of initial evaluation. The objection will be filed relatively early. And actually this type of objection is not related particularly to the applicant. In certain cases, it can be purely the string.

So the danger we are all facing is to have a lengthy process where we do the evaluation for the applicant, the applicant pays money. And I'm (inaudible) some actors here have been painfully exposed to this situation.

And the problem is actually late in the string. So the reason why I'm trying to see whether there is a thread in between this is that we all have a common interest of separating problems that are related purely to the string and things that are related

to the choice of the applicants. So the early possible approach where we can identify problems with the string, I think, is worth the exploring, whether it feeds into the other proposal that the GAC is putting forward of having qualifiers for applicants related to certain types of strings is another issue.

And on that second topic, I do not think that the current proposal or the way the proposal that the GAC has made on community strings is workable the way it is. And I can debate and explain why I feel so.

However, what I'm trying to do here is to thread those different things together so that we clearly distinguish, as actually the GAC has done in the principles in 2.7, things that are related to the string, things that are related to the choice of the applicant and things that are related to the operational conditions.

And I think it would be useful without getting into commitments of any sort, I'm not supporting or objecting to the proposals of the GAC. But I think this is a unique opportunity. We will never have the opportunity to chime in a little bit more on this. And this is no commitment from the board in any way.

>>HEATHER DRYDEN: Netherlands, please.

>>NETHERLANDS: Thank you, Heather.

Coming back to Bertrand's point, I think we already envisaged within the GAC that this early warning could be part of the process as it is now in the initial evaluation period. Even, I think, Suzanne -- correct me if I am wrong -- with the sensitive string evaluation from the GAC point of view is something we would like to accommodate in this initial evaluation period. That means that -- in line with what Bertrand said, we can get problems to the surface much more before we get really into the legalistic steps way far in the process.

That means that, I think -- and now it's in a sense a personal view. We marry a couple of concerns from the GAC by creating a mechanism as proposed by Bertrand which also goes for the geographic and the country names. It goes for sensitive strings, and it goes for community-based strings.

So, yes, I think there is an opening possible in which many concerns can be met from the GAC. Thank you.

>>HEATHER DRYDEN: Thank you, Netherlands.

No more requests for the floor? Bruce?

>>PETER DENGATE THRUSH: Again, in the interest of discussion, I think the difficulty for the board on this, apart from the newness of it, is the departure -- is the complete change of principle that's intended by creating a GAC evaluation of every

string as opposed to using the objection process on those ones that actually raise something. I think this is a complete turnaround; and that's the thing we're trying to understand, I suppose.

We raised yesterday, I think, some procedural objections. Many of us would have difficulty if this was to be implemented if it wasn't done in a very formalistic kind of way on the basis that it has the capacity to deprive applicants of their application.

So we would -- I think we would probably want to talk to the GAC about making sure that the GAC discussions were documented. The person, the country that had raised it in the GAC, all that process would need to be available for the applicant to understand why they found themselves in this position and they could take advice about what to do about it.

So there is consequential steps as well. It is the change of principle, I think, that most of us are spending time thinking about. I don't know whether you are able to help us more with why this change.

I suppose we've covered it. We just need to work out how it operates. Thanks.

>>HEATHER DRYDEN: Greece, please.

>>GREECE: Well, in my view, the answer is very simple because this is the role of the GAC to provide advice, including on this issue. It is not a change of principle as far as the main role of the GAC as establishing the bylaws is. It is a change of principles if one looks at the guidebook. The guidebook goes beyond what is in the bylaws. It says, There is an objection procedure. The GAC is nowhere in the guidebook in its normal role as an advisory body.

>>HEATHER DRYDEN: Thank you, Greece.

I have Bertrand.

Bruce, you had asked earlier. Did you want to speak?

>>BRUCE TONKIN: A really quick comment, I guess, just to confirm my understanding. From what Thomas had proposed is that the GAC could provide advice on the basis of sensitive community or geographic as part of that process. That was my interpretation of what the proposal is in the GAC scorecard; in other words, that GAC advice step, it says the GAC can give advice with respect to an application, I believe maybe Suzanne can confirm, but for any reason.

So all three of those categories are encompassed in your current proposal. Is that a correct statement, Suzanne?

>>UNITED STATES: I think that's what we were trying to convey. And so, yeah, thank you.

>>HEATHER DRYDEN: Bertrand and then Italy.

>>BERTRAND DE LA CHAPELLE: For the benefit of clarifying a few things, I'm not absolutely sure that we're changing necessarily a lot of principles here. There is a possibility of changing major principles in the way the proposal for community string as formulated currently. There is a strong change here, and this is -- and I can elaborate -- the reason why I believe the way it is formulated right now is not workable. But it probably can be discussed further.

What I'm addressing here is a more concrete question to illustrate what could be explored. We have today a public comment period for 45 days. The interesting thing is that it's not limited to the GAC or to just governments. It is a public comment period. And, actually, there is not much today that is said in the applicant guidebook of what we do with this comment period results.

The second thing is if we take the notion that the GAC can provide advice at any time, if it is, for instance, on the string, if it is, for instance, on the fact that the GAC doesn't want or comes to a consensus maybe after a long period of time that this string should not be in the root, that's something that has been discussed, whatever the process is.

It is a problem for the whole process if this comes very late. Imagine the situation where the GAC is discussing it, has difficulties agreeing on something regarding the string and then the whole process goes on. There is no other objection. The applicant is being screened and everything goes okay. What happens if the objection comes very late?

Maybe there is a sort of agreement where we consider collectively that it's in everybody's interest to have a decision on the string relatively early; that if there is an objection on the string, it must be raised and solved and discussed early so that after we can concentrate on the applicant or not if the string has been decided as not getting in. But that's the type of discussion, I think, would be useful to have.

>>HEATHER DRYDEN: Thank you, Bertrand.

In the speaking order, I have Italy and Germany and then we're going to close off the list. So if anyone has any comments they desperately must make on this topic or topics, then please let me know now.

Okay. So Italy, you are next.

>>ITALY: Thank you. Going along the reservation of Bertrand, I wanted just to say something about the timing of objections. Of course, as soon as this happens is

better. And, also, we learn that if there is a possibility of a refund of 70% if this happens in the early phases. While, if the evaluation is going on and the objection is coming later, of course, the refund will not be possible or only very partially.

So we insisted on the point of early warning and trying to have in this 40-day period evaluating the critical strings. This would be mainly evaluation on the string.

But if, for example, we see the community-based proposals, then in this point, it is not only the string that has to be evaluated but also the categories of the community involved in this. And this may delay significantly the time for evaluation.

And so we have to -- in my opinion, it is not possible to make a specific treatment of all these problems in writing because this is something that has to be evaluated in practice. And also, I think, that in these aspects strict collaboration between the board plus staff and the GAC will be very relevant in order to try to locate this kind of timing and consequences about that. Thank you.

>>HEATHER DRYDEN: Thank you, Italy.

And our final speaker will be Germany.

>>GERMANY: Yes, thank you. And I fully accept Bertrand's positions that we should try to evaluate a string at the very beginning of the process and to come to a decision.

What I want to highlight is the question of strings and the mechanism we now have with strings will not concern so many strings.

I hope that there would be not too many strings that ought to be considered controversial. And I know these kind of strings may consider some time and maybe we have to consider more time than the normal application. But we have to see it is really exceptional as this kind of additional procedures for these kinds of strings. And, therefore, it may not be so difficult for the total process.

I would welcome if you could further develop this as a total process and coming forward with the applications for all potential applicants because we know there is quite a time lag and many of the applicants are waiting very, very desperately for a long time. Thank you.

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

So with the time remaining before lunch, we can continue to move through the agenda. You will see that this afternoon we were meant to begin with a discussion of protection of rights owner.

I would like to test that there isn't an interest now in discussing that further, whether anyone has any questions or comments on that while Bruce is at the front, in the hot seat.

>>PETER DENGATE THRUSH: That's actually -- I think that's actually Rita's topic. I think the way to put that is we had the discussion earlier about waiting for the questions to be answered.

Is there anything else that can be usefully discussed given that those questions remain unanswered?

Rita, I suppose that's a question for you. Is there anything else you wanted to cover in the absence of answers to those questions? Or is it simply a matter of waiting for those answers? Is there anything that we can usefully do now while we are together on rights protection?

>>RITA RODIN JOHNSTON: No, I thought we just had this whole back-and-forth 20 minutes ago.

>>PETER DENGATE THRUSH: Until those questions are answered, there is nothing further.

Is there anything else from the GAC?

>>RITA RODIN JOHNSTON: I'm here all day tomorrow because I thought we were going to finalize these issues. So I am here to talk to anyone as soon or as late as possible, but I would like to get the dialogue going.

>>HEATHER DRYDEN: Thank you. Okay.

So next up we have consumer protection and following that law enforcement due diligence. So consumer protection issues.

>>PETER DENGATE THRUSH: I think, again, in relation to that, Ram, you are running that. Do you want to come up? Feel free. Again, I think there were a couple of questions asked during that discussion. And, again, I'm not sure we are able to progress that in the absence of answers.

Or are there still other areas of that that might be usefully further explored?

>>RAM MOHAN: Peter, thank you. I think we can actually move this further right here. Yesterday from the board's view, we had questions about two specific issues. There were three topics of which we had questions and clarity requested on two.

On points of contact for abuse, what we had expressed a concern was the potentially unlimited scope of what's listed as an advice of a registry operator must assist government agencies and agencies endorsed by governments.

It was very good interaction from the GAC on what the intent was and perhaps the language didn't -- was a little broader than was potentially intended.

So I'm hoping that perhaps it is possible to get a little bit -- if it's possible, to get that more specific, then we might be able to move forward without too much further debate on this issue.

>>PETER DENGATE THRUSH: Do you got a specific question?

>>RAM MOHAN: There is no specific question. It really is a request to the GAC to attempt to narrow it down a little bit more.

>>HEATHER DRYDEN: If the U.K. would like to respond, I see the United States has asked for the floor. So, U.S. please.

>>UNITED STATES: Thank you. And happy to turn over to you, Mark, momentarily.

I think what we were trying to convey is law enforcement agencies, agencies with responsibilities for either civil or criminal law enforcement.

So in our case, the consumer the Federal Trade Commission is the agency responsible for consumer protection, but they are a civil entity. So we wanted it to encapture -- And I believe Mark also has colleagues in the Office of Fair Trading, I think it is called there. There are different names of agencies in different countries and they are structured differently. So that's what we were trying to capture.

We will do our best to give -- At this point, let me pause, because are you seeking a list? Because, quite candidly, we can speak to several of the registrars or registries who are currently in the room today who have enormous amounts of experience in interacting through their point of abuse contact, in interacting with all manner and variety of law enforcement agencies, quite considerable experience.

>>RAM MOHAN: Suzanne --

>>UNITED STATES: Perhaps we can borrow from what already happens today and help just flesh that out a little bit further. Thank you.

>>RAM MOHAN: Suzanne, thank you. I think there is clarity on what the GAC wants. Just to paraphrase what I thought I heard, what the GAC wants is to require registries to assist law enforcement agencies including either criminal or civil

entities. That's the way I paraphrase it. And, hopefully, I got that right, and we can take that forward.

>>PETER DENGATE THRUSH: Again, just a point I raised, Suzanne, presumably you only want this to reply -- this may be so obvious -- that they only have to comply with the ones in their own jurisdiction. You are not suggesting that every registry operator has to comply -- in New Zealand, for example, has to cooperate with law enforcement officials in the United States? It is going to be jurisdiction-based?

>>UNITED STATES: It normally is, but there is an enormous amount of collaboration around the world. So if a registry operator were not to be familiar with a request that was coming in from a foreign law enforcement entity, the first step they normally do is to call their own law enforcement entity to verify that this is a legitimate, incoming request. So there is a great deal of

>>PETER DENGATE THRUSH: So it's going to be jurisdiction based?

>>UNITED STATES: It normally is. But there's an enormous amount of collaboration around the world. So, if a registry operator were not to be familiar with a request that was coming in from a foreign law enforcement entity, the first step they normally do is to call their own law enforcement entity to verify that this is a legitimate incoming request. So there is a great deal of coordination that happens. I think the other thing we were also trying to get across -- and apologies for perhaps not being as articulate as we would like to be, we were trying to get across that, in requiring in a contact for abuse, that it be encouraged to also -- because that's for any complaint, as we read the language in the guidebook, which is, of course, appropriate. You need to deal with consumer complaints. You need to deal with individual registrant complaints. We were trying to emphasize this as a very important element of that abuse point of contact. That, to encourage -- and, in particular, we would like to have you respond promptly to request from law enforcement entities. So that was the motivation.

>>HEATHER DRYDEN: Thank you, U.S. I think that was clear.

United Kingdom, please.

>>UNITED KINGDOM: Yes. Thank you very much. The U.S. covered much of what I was going to say. I just wanted to make the point that, quite often in some countries, certainly the case in the U.K., people have opportunities to register complaints about -- as consumers about businesses, not to law enforcement. But they're going to some entity that stands up for people's rights. And these are quite -- these are part of the government approach to consumer protection. So trading standards people, fair trading people, and so on, which are government agencies or parts of government, depending on, as we made in our points yesterday, it depends on which country you're in. Certainly, the jurisdictional point is something we have in mind here as well.

So I guess what I'm saying here is that we could -- we haven't, in fact, been as tight with the language as perhaps we should have been. And we can certainly refine it in such a way as the understanding is perfectly clear. So I guess that's the main point, providing that clarity. Thanks.

>>HEATHER DRYDEN: Thank you, U.K. Ram, do you have additional questions?

>>RAM MOHAN: No. On vetting of certain strings, the one area that we had asked for some clarity and some restriction from the GAC was what it says here is gTLD strings, which relate to any generally regulated industry. And, as it stands, that's quite a broad category. It could be any string. Because in some jurisdictions it's possible that that string is regulated. And that -- you know, makes it rather broad.

In our conversation yesterday it was clear that I was -- that didn't seem to be the intent. So perhaps some more clarity there or some better language there would -- or language there would be helpful to move forward. Thank you.

>>HEATHER DRYDEN: U.K.

>>UNITED KINGDOM: Yes. Very willing to help with improving the language. What we're aiming for is to flag out for certain business sectors that engage directly with consumers. Some of them are regulated. But others may be self-regulated. They may be working to codes of practice, industry codes of practice, and so on. That's what we're trying to capture there.

But I agree, generally, regulated industry is not helpful. It's not perfect language for that. So we'll work on that for you. Thanks.

>>HEATHER DRYDEN: Please, Ram.

>>RAM MOHAN: Thank you. One final piece of clarity. From yesterday's conversation, we had asked about what was the GAC standard on more intensive vetting, what phrase that was there. What that was. And the response we got back was you didn't really have one. But you're advising the board to actually come up with something like that. So the takeaway that I have from it is that we will consider that and reflect upon it and then see what we can do in that particular area. So I would say that that probably does not require much further interaction at this point.

>>HEATHER DRYDEN: Thank you. That's helpful. Yeah. All right. So, unless there are some thoughts on this topic, we can move to the next. Bertrand.

>>BERTRAND DE LA CHAPELLE: Just a very quick question. I understand there are two points, actually, in the scorecard that deal with the point of contact, which seems to be interesting for everyone. However, I understand that the question of providing assistance to law enforcement raises the question within some members

of the community of whether this is going beyond the normal requirements for any actor to interact with law enforcement. So I'm just asking the question is what we're discussing here making a stronger requirement for registries and registrars than what they would normally be submitted to, according to the national law? And, if so, maybe this is worth discussing because it's a transborder exercise. It may require faster cooperation or more extensive cooperation. But there are many extensive rules regarding interaction between law enforcement agencies and what actors must do. Are we going beyond? This is something that I cannot judge, only the community can judge. And, if so, why and to what extent is this absolutely necessary or not? Just to put the question here for further discussion.

>>HEATHER DRYDEN: Thank you, Bertrand. Okay. So let's conclude on that issue.

Next up we have law enforcement due diligence. For the GAC side we have the United States leading on that issue and the board, Gonzalo.

So, as we have in the past, could we start with any questions that you may have for the GAC?

>>GONZALO NAVARRO: Thank you, Heather. Actually, we made our questions yesterday. So we are still waiting for the answers. And then, knowing that, maybe we can move on on this issue. Well, the questions -- Suzanne, sorry.

>>UNITED STATES: Thank you, Gonzalo. Actually, what I would find particularly helpful -- I am not traveling with a law enforcement representative on my delegation. What I would find very, very helpful is to receive those questions in detail in writing, please. Thank you.

>>GONZALO NAVARRO: Surely we can do that. I can tender the questions immediately.

>>HEATHER DRYDEN: Okay. Thank you. So there will be questions circulated to the U.S. and the GAC. And, unless there are additional comments forthcoming on this topic, we can leave that as our action item. Cherine?

>>CHERINE CHALABY: I just want to suggest something. I get the feeling that the energy level has dropped in this meeting and that the GAC has put forward to us the scorecard. We have a day and a half of discussion. I think it's time we retreated as a board, spent a couple hours and come back with a response. And I think we owe it to the GAC.

[Applause]

I know there are other issues to discuss, but I think the energy level has dropped. And we will reignite the energy, if we came back with what we -- with our position.

>>PETER DENGATE THRUSH: Exactly where we're at factoring -- if we've -- so what we're giving, though -- what we're actually doing, though, is giving everybody the chance that this meeting represents to make sure that all points have been covered. And -- as you seem to have just gone very quickly through a couple of them. Let's do that in relation to these last ones. If there is no further exchange -- can I continue? Thanks. Post-delegation disputes? All right. Geographic names? Expanded community-based strings? All right.

Go to lunch. And then we'll go into our room and see if we can't puff some white smoke.

>>STEVE CROCKER: One thing, there was a subtlety in what I heard Cherine say. I heard the phrase "a couple hours." So the question -- and not to be facetious about it is to what extent, when we repair for lunch here are we going to go through -- have enough time to go through everything and give a full response as opposed to kind of trying to pack our time into a shortened period here. So I don't know whether you intended it, but the way I heard it -- we'll open up the possibility of maybe we'll want to jigger the agenda a bit and actually give more weight to the preparation process that we're about to go through.

>>PETER DENGATE THRUSH: Are you suggesting something, Steve?

>>STEVE CROCKER: Yeah. Well, I'm raising the question as to whether or not we want to extend the period for lunch and --

>> No, this is the rest of the afternoon.

>> When do we reconvene?

>>PETER DENGATE THRUSH: I think the question, really, is how much time does the board think it needs before it's ready to come back and make either an announcement or ask some further questions. And it's in the board's hands. I'm about to open an option for how much time the board thinks it's going to need.

>>STEVE CROCKER: You get first.

>>PETER DENGATE THRUSH: Starting bid from Cherine of two hours.

>>CHERINE CHALABY: Two hours was not 120 minutes. What I mean is we can come by 5:00 and let everybody go and the energy dissipates. At some point we have to come back respectfully to the GAC and tell them our position, whether it's 4:00 or 3:00. Let's get to work and come back with an answer. That would be my posture. So, at the latest, 4:00. But, if earlier, earlier.

>>PETER DENGATE THRUSH: So Ram the bid is at 4:00. Any advance on 4:00?

>>RAM MOHAN: I actually don't want to get into this bidding at all. What I suggest we do is repair for lunch and that the board sits down and discusses how long it might actually need. And come back and have you or have staff actually tell the GAC and the rest of the community when we'll reconvene. So it's a little more orderly rather than doing an auction on the fly.

>>PETER DENGATE THRUSH: Let's take that sage advice. Let's go back and come back and give a more reasoned decision. We'll try to come back after lunch and let the GAC and the community -- sorry? So we'll come back after lunch and report our deliberations. Thank you. Or an hour.

[Lunch Break]