

**Controversial Names Working Group (contro-wg) Teleconference
TRANSCRIPTION
3 May, 2007 15:00 UTC,**

Note: The following is the output of transcribing from an audio recording of the Controversial Names Working Group (contro-wg) Teleconference on 3 May 2007 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at

<http://gnso-audio.icann.org/controversial-names-20070503.mp3>

<http://gnso.icann.org/calendar/#may>

Attendance:

Avri Doria - Chair Nominating Committee appointee to the GNSO Council

Marilyn Cade - CBUC

Victoria McEvedy - NCUC

Absent - apologies:

Greg Shatan

Absent

Tamara Reznik - IPC

Mike Palage - Registries constituency

Glen de Saint Géry – GNSO Secretariat

Glen Desaintgery: You're back on line with just one moment.

Woman: Okay.

Glen Desaintgery: Please go ahead. Madame, thank you.

Avri Doria: Okay. Thanks.

So at this point we're being recorded. In terms of who's on roll call, I believe, Glen is on, Marilyn is on, Victoria, myself. Anybody else joined while I was away?

No. Okay. Well, hopefully (Mike) and Tamara will join.

What I thought of as an agenda since I sent out a copy of this and Marilyn just sent out a copy of the piece that I need to fold in this on process, what I was thinking we would do is quickly do or - quickly - I mean spend the meeting basically doing a walkthrough of the various points, figure out which are the things that I put in there, are indeed things that seemed to be agreed by I guess we have at this point, and which of those were still at variance on so that I can put them, you know, move things around to the right, add anything that's missing, and then basically have this ready for this afternoon, send out an updated copy for this afternoon -- oh, I guess it's already afternoon in some places -- for the 18 UTC reserved names working group meeting.

Does that sound reasonable?

Marilyn Cade: That'd be fabulous. Can I just ask a question because I'm going to be in the chair for this afternoon?

The most important thing that we can do I think, Avri, I'm really going to try to focus time for the groups who haven't had a chance to present it all.

Avri Doria: That makes sense.

Marilyn Cade: And I talked to Chuck and he's in agreement on that. So I just want to give you a heads up on this.

Avri Doria: Okay. And since I sort of did (do that) at the last one, I certainly don't mind if we're at the end and if the scheduled doesn't allow us to get to us, I won't complain at all.

Marilyn Cade: And my goal is to give you time. I must have been giving you the wrong hint.

Avri Doria: Excuse me? I didn't understand, but anyway.

Victoria McEvedy: I'm going to (unintelligible) of your patience if that's alright. I know this is sort of anti-procedure but, you know, one should look into all the cause and what you. But I may need to ask you to just clarify one or two things if that's okay.

Avri Doria: But there's only three of us on - four of us on the call. I think, you know, we shouldn't be formal about this at all and should try and make sure that we've got recommendation. So feel free to ask anything.

Victoria McEvedy: Okay.

Avri Doria: And I know that...

Victoria McEvedy: Great.

Avri Doria: ...you know, Marilyn and I have been having an ongoing discussion about various things to, so.

Victoria McEvedy: Okay. Well these are really - you may think these silly questions. I'm going to just ask the very basic question if you don't mind. I've got two questions.

And the first one as I was scrambling through my controversial name papers, now I just want to refresh my recollection. I know that this dispute procedure that we're looking at is entirely different from the string criteria issue which was already dealt with earlier in the - I think working group. Isn't that correct? Is it correct, isn't it?

Avri Doria: I'm not surely - not a 100% sure. There is within the new gTLD policy, there is sort of a space created for disputes. And that the disputes would be based at the beginning of the process once the names have all been announced.

So it's not the internal string criteria, do you meet the technical one. Is it, you know, our visual is similar or whatever. If once you come out of that, then basically people are able to bring up disputes on various criteria and whether it was the geographical remarks or whatever that there was a blank spot left for a dispute mechanism.

Marilyn Cade: So maybe it is good to use example, I think, Victoria. Let's say that three parties applied for names that are confusingly similar to each other. That's not in this - that would not fall into controversial. Right?

Victoria McEvedy: Right.

Marilyn Cade: Let's say that somebody applied for a trademark that belongs to someone else.

Victoria McEvedy: Yeah.

Marilyn Cade: That wouldn't fall under controversial.

Victoria McEvedy: No - right.

Marilyn Cade: Let's say that someone applied for - and this an area - actually I'm going to mention that it, reference it, Avri, because I raised the question.

Let's say that someone applies for a name that is a religious significance. Then it's very - that could fall and/or is obscene or is considered obscene by some or is considered profanity by some or - that could fall under this...

Avri Doria: That goes back to our definition of controversial names...

Marilyn Cade: Yeah.

Avri Doria: ...which was the first thing in this report, was - and this is from the last report, if the name is designated as the controversial name, if it qualifies as a TLD under then prevailing screen criteria, in other words, you know, it doesn't start with the dash or end with the dash, it does not fall under any other reserved category.

That is, for example, the - you know, the trademark or geographical even. And this is disputed for reasons under than it falls under any other reserved name categories.

Marilyn Cade: Right. Okay.

Avri Doria: So that's excluding things like that (FTUK) which is a trademark even though some people might contend it was...

Marilyn Cade: Uh-huh.

Avri Doria: ...a variance of an obscenity. And that would fall under a trademark because that has priority. Or that it infringes (unintelligible) legal rights, but I guess that would have been that one. That would have been (FTUK). But - so...

Victoria McEvedy: Okay. And I seem to - okay. I mean I seem to remember again going back that there was - there's something in the draft. I found a GAC draft principle following Lisbon...

Avri Doria: Yeah.

Victoria McEvedy ...that there was something in the report - the final report draft or the amended final report about the string criteria as it relates to controversial names, (unintelligible).

Avri Doria: Well, they did have I think the one, and I think it's quoted in this draft, if I remember. They basically do have their statement of - if individual GAC members or other governments express formal concerns about

any issues related to new gTLDs, the ICANN board could fully consider those concerns and explain how it will address them.

So that was certainly - and the controversial name would - could fall under that condition, that principle of the GAC.

Victoria McEvedy: And so - okay, so our underpinning is the GAC principle that - so we've got for example, 2.1, wasn't it? They amended (unintelligible) is that the provisions of the Universal Declaration sensitivities regarding national, cultural, religious significance.

Avri Doria: Yeah. That one is not specifically in there or it is in there, yeah.

Victoria McEvedy: Yeah. Okay.

Avri Doria: But basically one of the interesting things is that when the GAC speaks of it, they speak of it in relation to the board, not in relation to dispute mechanisms within new gTLD policy.

However, a part of missing and that's part of what I tried to include in the discussion here later is that we're trying to create a process that doesn't drop every controversial issue into the end game with the board. But...

Victoria McEvedy: Yup.

Avri Doria: ...indeed has a process for dealing with it within that. Knowing that the relationship between the GAC and the board is such that as part of the end game that that will always be a consideration, and sort of thing if you want to avoid that deal with it earlier, and certainly from the

perspectives that I've been taking at this point in terms of scalability of the new processes, if every controversy ends up in the board's agenda, then the process won't work.

Victoria McEvedy: Yeah.

Marilyn Cade: Avri?

Avri Doria: Yeah.

Marilyn Cade: One thing I just wanted to mention and it's relative to what we're talking about, we are asked to provide examples. So, one of the things maybe the three of us can try to do is come up with - because right now, the definition of controversial names is it's just - it's not concrete enough and, you know, we're asking all of our recommendations to...

Avri Doria: Yeah.

Marilyn Cade: ...include some examples.

Avri Doria: Oh yeah. And in fact, if you had looked at - I know that no one did. I had tried - I've put up on Google, you know, a basically working note where I had listed a bunch of examples that we can work through and so on. I just didn't get to them yet at this point. I don't know if anybody took a look even at the - I sent you all invitation.

Marilyn Cade: Yeah, I did. I did. I did. Yeah.

((Crosstalk))

Avri Doria: And that was just sort of working place for people to just add stuff as we went along. But it didn't quite work out that way. But...

Victoria McEvedy: I'm - yeah, sorry, yeah.

I thought that sort of part of what did last time. And that (unintelligible)1044 working group would sort of want to avoid - didn't we want to avoid working by - I mean, I thought that was sort of (unintelligible). But I thought that was something we specifically avoided last time working by way of example.

Avri Doria: Right. At this time the - this time when we got the working group, not charter but...

Marilyn Cade: Statement of work.

Avri Doria: Statement of work.

Victoria McEvedy: The new statement of work, right.

Avri Doria: We included - we add example.

Victoria McEvedy: Right. And had they added that on?

Avri Doria: Right. So in others, they they're looking for examples at this point, so - and two, I have not added any to this part yet. But this is still just, you know, the first draft of that.

And also I didn't think that we would want examples before we actually have the process well.

Victoria McEvedy: Because it's thought was dangerous -- one of thoughts. And...

Avri Doria: Yeah.

Victoria McEvedy: ...giving examples and...

Marilyn Cade: Wait, wait, wait, wait, wait. We're not giving you examples. We should verify. In this, I think we'll be giving you examples of category.

And I don't think we actually have a choice where to try to help people understand that. A name for instance might be controversial because it has religious significance in a region, or it has - or it's considered profane by a significant...

Avri Doria: But that's an intrinsic example. As soon as you - and I think I see what Victoria is driving at. As soon as we say, for example, Mohammed....

Marilyn Cade: Uh-huh.

Avri Doria: ...might be controversial. We have made it controversial.

Victoria McEvedy: Yeah.

((Crosstalk))

Avri Doria: ...mentioning it, we do it.

Marilyn Cade: Okay.

Avri Doria: That's why I was going on things like misspelling of Natzi because that's one of the ones that, you know, Natzi, almost everybody - it already comes to mind, so we're not creating a new example.

And then I too - as going for the variance of if I spell Natzi, N-A-T-Z-I, have - am I still in the controversial category?

And that's where I figured I was sort of coming between the sort of danger of - by mentioning I created and using one that is always on the tip of everybody's tongue, anyway. And I don't know if that works with you...

Victoria McEvedy: Yeah, that's -yeah.

Avri Doria: ...Victoria that, you know, obviously if I say that .natzi is controversial, no one is going to say, "Oh my God, it never occurred to me."

Victoria McEvedy: Yeah, yeah. Exactly.

So, Marilyn, were you saying that we ought to be working by category in any event, but that's not required - that's not what we....

Marilyn Cade: I - my suggestion in this particular case is that we work by category, not by specific example because I do think it's very difficult. You know, I'm chairing this afternoon, so I've been really trying to - and I have spent a lot of time on the reserved name working group report.

In other categories, specific examples are good. So let me give you an illustration.

When you think about use of confusion, when they look at something and it is a 1 and a capital O, the user could read that in certain script as can.

Victoria McEvedy: Uh-huh.

Marilyn Cade: That is probably useful example. But I don't think - another example might be when you say that you are limiting - that you are proposing that symbols not be allowed except for the "dash," showing an example what a symbol is may be helpful.

But I don't think in this case we need to get specific word examples. I think broad categories - and you'll see when we go through my suggested elements. I, for instance, said that I don't think we can predict what all the categories are, because it could be that something is proposed and one of the advisory committee leaks up and says, "This is controversial for the following reasons." And we would all go (unintelligible) to the subgroup, "Oh, it didn't occur to us it was controversial."

So if we go with categories, I mean that would be my preferred approach to it just...

Avri Doria: I see categories as having pretty much the same problem...

Marilyn Cade: Okay.

Avri Doria: ...as individual example. But I'm not saying we shouldn't because as soon as you say one category is religious, well, I'm not sure, you know, that that should be a category but we'd made it one.

And also then it immediately opens up the question well what kind of religious term, you know, is that blessed are the meek a controversial religious name. Is that what you mean by religious controversial?

Marilyn Cade: I wouldn't get to that level of granularity.

Avri Doria: Well no, I'm not - yeah, I'm not suggesting that we do. I'm suggesting that as soon as you suggest the category, that's one question that comes to my mind.

In other words - but I agree, we've been asked to include definition. And if we don't include definition, then we need to include a statement as to why definitions are not appropriate.

I tend to believe that - you know, I agree with Victoria to a certain extent that they are dangerous. And I think listing categories of things is almost as dangerous as listing specifics. But, but - yeah.

Victoria McEvedy: You know - yes, yeah. Sorry.

And also I know that, you know, (unintelligible) I found this error report and I'm just looking at them. I know that, you know, you sort of said that should not - we're not clear at the very side of the report that you've sent the draft of, Avri, you said it should not be a reserving category. And I think that was sort of based - part of our other work...

Avri Doria: Yes.

Victoria McEvedy: ... - earlier work as well.

And so arguably, I suppose the danger is that however we do it, if we make list of things, we're creating exactly what we said we wouldn't create which is a list of controversial names basically. Or whether it'd be list or categories or, you know, I mean, that was decided not to be done arguably.

Marilyn Cade: Well, we're not going to create of blacklist of controversial names.

Victoria McEvedy: Right.

Marilyn Cade: But if the name is disputed - but if the name is determined...

Victoria McEvedy: That's right. You know, that's what I'm saying, exactly. If the name is disputed, then it ends up on the sort of - then it ends on the list.

Marilyn Cade: Well, it ends up on a heads-up list.

Victoria McEvedy: Yup. So, that would mean that we shouldn't probably make this right now because we - the dispute process will in itself create a category of unsuccessful names, right?

Marilyn Cade: I'm not - so I'll just express my minority opinion. I think we have to come up with some categories of controversial names in order to be able to create the dispute procedure.

There's no way of scaling or identifying the qualifications of people who we need to be thinking about if we don't have some idea of what's going to go into it.

Avri Doria: That's what we have the other issues that's been the issue between you and I that we've been discussing.

((Crosstalk))

Avri Doria: In the original report, we basically said that in terms of controversial names, those were put forward by advisory committee by consensus of an advisory committee or a supporting organization.

I mean that's what was in the first draft. And therefore, it doesn't need to be categorized because it's just GAC says, "Oh, that was controversial," and they don't need the category for whatever reason GAC (felt) it was. It went into the dispute.

Now, your position - and I haven't called the minority and majority because it has been, you know, me supporting the old one and you supporting something new and different, was that no, it has to be wider than just inside ICANN that anyone, you know, individual organizations.

Maybe there are some notions of standing needs to be able to create one of these controversial disputes. And at that point, you're forced to have categories perhaps, although I'm not sure.

Marilyn Cade: Avri, I think - I don't consider this a dispute between you and I and I think that's important to clarify. I think...

Avri Doria: It's different of opinions is what I meant.

Marilyn Cade: Right. It's just a discussion.

Avri Doria: Right, yeah.

Marilyn Cade: But let me offer some clarification because, of course, this is being transcribed and recorded, and so other people are looking to it as the record. So let me just offer some clarification.

I - at this point based on many discussions at ICANN, not limited to the LSC review discussion, so it's much broader than that, there is ongoing effort to understand what broadening participation means and how people who evolved into being interested in ICANN on a sporadic basis or a longer term basis, how many learn about ICANN and how they get involved, I look at that process as being very evolutionary and just really wonder whether it's feasible to burden the presence gNSO process with being - so right now as I read this, that ccNSO could put forward a - objection, that would let the ccTLD - but they will have to create process to allow...

Avri Doria: Yes.

Marilyn Cade: ...all ccTLD managers to come to them because they do not fully represent all cc.

Avri Doria: Yup.

Marilyn Cade: The GAC we can assume even if for a government not involved in GAC, the GAC could provide some kind of process to...

Avri Doria: Right.

Marilyn Cade: ...the other support - the other advisory...

Avri Doria: ALAC also. I mean ALAC is becoming structured, is having its...

Marilyn Cade: Right.

Avri Doria: ...sort of its various groups. So...

Marilyn Cade: Right.

Avri Doria: ...that is - would be open so pretty anyone in the world can come through an ALAC process.

Marilyn Cade: And as long as...

((Crosstalk))

Avri Doria: We got ASAC, we got RSAC, we've got all these guys.

Marilyn Cade: The - I don't have an ASAC. We have...

Avri Doria: You don't have a what?

Marilyn Cade: We don't have an R - are you talking about the ASLD...

Avri Doria: We're talking basically any group within ICANN at the moment, whether it's an advice - anything that ends in AC or anything that ends in SO it is as was originally written, able to raise the dispute.

Marilyn Cade: I understand. But I'm raising a different question. Each of those groups needs to then be instructed that they need to create a process...

Avri Doria: If they wish.

Marilyn Cade: And so one of the things that this group needs to do - and that's why I don't think there's a whole lot of disagreement between you and me. I think one of the things that we need to do is to say that regardless of whether it's kept with in its present wording, each of those groups needs to be advised that they need to provide a process by which a challenge could be raised. And that process doesn't exist right now.

Avri Doria: Right, yeah.

Victoria McEvedy: Avri.

Avri Doria: And I think it includes as part of it that it really isn't up to us to tell them how to do it. And that's one of the places where we said for example by consensus in the GAC.

And this is one of the places where I may find myself moving off a little saying the GAC has to do it by a consensus. Well who are we actually to tell the GAC how they do stuff?

((Crosstalk))

Victoria McEvedy: I agree. I totally agree. I mean is it for us to tell any of those groups?

Marilyn Cade: Right. Right. You're a working group, here's what it is for you to do. If you think more work is needed, then you need to say more work is needed in order to do the following, but we have not - but we're not providing guidance on what the more work is.

Avri Doria: Oh, okay. I could certainly see adding a line that the implication of this is that each group would need to come up with a process by which it could filter and present dispute. All right, that makes - would make a lot of sense to me.

Marilyn Cade: And...

Victoria McEvedy: Yeah, I agree.

Marilyn Cade: And if we do that, Avri, that's why I'm not sure you and I, (I feel far) apart.

Avri Doria: Oh, okay. If that is what works for you, then we're not far apart at all. I was basically understanding you're wrong, obviously, and understanding that you felt that there should be some methods separate from ACs and SOs for a dispute to be raised.

Marilyn Cade: Well, let me - so let me just say something. I'll just say this for the record. I'm happy with - I think we can reach a pretty broad agreement on the idea there has to be a process by which other folks who are not presently member of a constituency can come to one of these other mechanisms, we're not defining the process saying they should be running more work, what we needed, blah-blah-blah.

The point I'm going to make, and I'll just express this as minority opinion, is look, the gNSO counselors, I'm not elected to play this role. And I was a gNSO counselor, I'm not now.

But I do know that the qualifications for election from the constituencies did not assume this particular function was a councilor function. So, you know...

Avri Doria: Right. Okay, yeah. And that's one place I sort of argue that it's a policy calling it. It's something new, but I believe that, you know, it's something they could learn to do.

Marilyn Cade: I would say, and this is where, you know, I would say it may be the task of the gNSO Council. The counselor is - counselors are not elected to manage the gNSO.

They are policy councils. That's a narrow job. The council could create a process within the gNSO to ask for the ideas on how to create such a process, blah-blah-blah.

So, I'm - but I, you know...

Avri Doria: Okay, I understand what you're saying, yeah.

Marilyn Cade: And it might end up that community goes, well we're going to add that to the work of the council, I'd be...

Avri Doria: I understand that. I understand.

Marilyn Cade: Okay.

Avri Doria: It isn't currently in the charter and perhaps that's another sentence that I can add to this process that generally this is not an activity that is chartered and it's not for us to say how they would charter it or how they would go about doing it, but...

Marilyn Cade: And I...

Avri Doria: ...an additional work would be needed...

Marilyn Cade: Right.

Avri Doria: ...in each of the responsible ACs and SOs assuming the proposal is accepted, blah-blah-blah-blah, down the line, et cetera. Yeah.

Marilyn Cade: Right.

Avri Doria: Okay. Certainly I'll add something like that before this afternoon.

Marilyn Cade: Victoria...

Victoria McEvedy: Can we just - can I just ask a question...

Avri Doria: (Of course).

Victoria McEvedy: ...to be sure that I'm following at where we're in?

So then how the - I mean so just that I understand the existing proposal, will the existing proposals that are in their drafts that, Avri, you've circulated.

I mean each of those, SOs or what have you or whatever, GAC or whatever bring forward their disputes through whatever procedure they may determine through their own processes or what have you, right?

Avri Doria: Yup.

Victoria McEvedy: Is there then some sort of - now I'm not familiar with this ASCII model which...

Avri Doria: Right. And that's - if you can see the mail that Marilyn - and it might...

Victoria McEvedy: Yes.

Avri Doria: ...(unintelligible) Marilyn, to do a walkthrough of that. That's the mail that Marilyn just sent through...

Victoria McEvedy: Yeah, I've read that.

Avri Doria: Oh, you did. Okay.

Victoria McEvedy: I've read that, but of course I don't know what the usual, I don't know is - I mean I can see that you're...

((Crosstalk))

Avri Doria: There is a current one now for new technical proposals...

Victoria McEvedy: Right.

Avri Doria: ...that basically does that. But...

Marilyn Cade: No. No, no. There's a...

((Crosstalk))

Avri Doria: ...services, right, from a technical perspective.

Marilyn Cade: The RSTEP is very limited and addresses new registry services only from the perspective of do those new registry services affect the security and stability of the Internet.

So one of the limitations of this is it doesn't address, it doesn't affect competition, it doesn't affect this, it doesn't affect that. It's very narrow and it's one of the main differences between what we are asking an external group to do and a different group to do.

This group, the funnel goes like this. The registry submits a request to the ICANN staff, the ICANN staff looks at it and go, "Well, we have a technical question about whether it affects the security and stability."

If they don't have a technical question, the staff is free to approve the new registry service without a whole lot of further outreach or discussion. It's a - so it's a very narrow constructed policy recommendation.

And it has a - what we did, Victoria, is based on previous discussions, we took it as a - example. I say we - sorry - Tamara and I, we're going to work on this. Tamara has been tied up at Intel, will be returning on Saturday.

So this is what I've been able to do, kind of like Avri kind of stepping ahead but as an individual.

Victoria McEvedy: Okay. Well, no, I did read it. I mean I just have a couple of questions. I mean first, maybe you want to talk us through it anyway, Marilyn. I don't want to jump in on you.

Marilyn Cade: I - if, Avri - Avri, I would like to walk through to it because I think this at least would get the airing with you and Victoria.

Avri Doria: Yeah. I think that's good because we pretty much were not going through it directly, have talked through what the recommendations are. But yeah, no, I think walking through that would be good because that is the newest piece.

Marilyn Cade: So, do you want me to do that now?

Avri Doria: Yeah.

Marilyn Cade: Okay.

I'm - I used the RSTEP procedure roughly as the background, but it is a rough examination of the approach that the - that RSTEP takes. So I don't, you know, I think it could be improved and may be edited significantly.

The idea is that there would be a standing group with identified experts in some categories that are known to be controversial. I'm not even sure that my number 13 is still accurate as where I raised the - now, I

need to fix that because it's now 14 instead of 13. Let me just slide back that for the two of you.

I was proposing that this be a little bit different than the RSTEP because since the scope is potentially broader than it has a security or stability question, I was proposing a chair with two vice chairs, all with different areas of expertise who could consult interactively with each other on for instance, how to form a panel for evaluation, et cetera.

I could think of three or four areas that might be viewed as controversial. It may be there's a few more than that, but I - when I said examples, I should probably change this to be I was proposing categories of example, which is more accurate to what I was just talking about.

I don't think that we could predict all controversial categories, so I would think that chair, vice chairs, would need to be free to say, "Okay, this is a new one on us." And we'll have to find an additional addition to our stable of "experts" that can be tapped.

The, you know, if someone could convince me that it's a chair and three vice chairs, and I'll talk just a little bit later about what I think the work of guys is or gals is as opposed to the panelist.

I don't think they can have other business relationships with ICANN. So, they I think will have to have a contract of work, be paid a stipend and be available on relatively short notice, and typically somebody has to do the chairing and the convening and the writing up of the work that the panel undertakes.

So there has to be a methodology of doing that and is compensating somebody to do it so that it gets done in a timely manner and neutrally.

The - if that I do think they should have - they shouldn't be potential applicants for a string. They shouldn't be a registry or a registrar. The way the RSTEP works is participants in the panel can have other ICANN relationships.

But as I understand it, the chair takes great care on any particular application for a new registry service to make sure that direct conflicts of interest are avoided.

So, you could for instance think that someone might be a WIPO panelist on a dispute resolution procedure that wouldn't necessarily or one of the other disputes (unintelligible), that wouldn't necessarily - from being in the expert stable list, but...

Victoria McEvedy: Marilyn, can I jump in because I'm just thinking we perhaps - seem to get a little too much detail given that we're sort of looking at the overall at this point. Do you mind if I just take you back and just ask you a couple of questions?

Marilyn Cade: I'm happy to take questions at any point. So, (what do you have)?

Victoria McEvedy: I have read a - I mean I have sort three issues - I mean there are three issues with it that I would like to discuss. But if we want to do a more general run-through, we could do that at the end. I just - I don't know if we need to go into the detail of conflict...

Avri Doria: I think with the few of us, if we've all read it and if, Marilyn, if you're comfortable just talking about it from the question.

Marilyn Cade: Oh...

Avri Doria: I mean I did suggest and I did agree that walking through it but...

Victoria McEvedy: Yeah.

Avri Doria: ...if doing questions works better, that's cool with me too.

Marilyn Cade: Okay.

Victoria McEvedy: Okay. Well the three things that I wanted just to talk through was - I thought this is four actually. Just working from your proposal, I'm wondering - okay, I mean I suppose Issue Number 3 is something that sort of just - is - touches on what we've already discussed earlier. So obviously Question Number 3 is something we need to come back to because I think that we just discussed whether or not we want to do that.

I mean I would also question whether or not there was any (native) different compositions of panels or what have you or whatever tribunals or, you know, whatever the tribunal is going to be.

I would question whether the composition of those tribunals would need to be any different given the - dependent on the category. So I'll just put that point down for discussion.

As to the selection of panelists, to my mind, just on the first (unintelligible), this does not look terribly new, you know, this process didn't look - I know it's not - I mean I know you were trying to explain the neutrality in the conflict situations and what have you.

But I'm - it didn't look - and well I'm just wondering, I mean I think there are issues about neutrality and the greater distance from ICANN (to be here) and I'm wondering whether they should be retired judges or, you know, inter - you know, I'm just wondering if this could be some sort of an international selection process from, you know, and an established and recognized independent (PRO). I think you mentioned WIPO. I don't know, you know, if that's possible so we can come back to.

In Point 14, I think that's again something that we talked about already about the categories.

And the only other thing that occurred to me sort of on the sort of again a first blush sort of look at us is whether or not perhaps one of those - the chairs could - I don't know whether or not it's necessary or advisable, but perhaps a chair could take, you know, with all these organizations sort of bringing the dispute through dependent on their own processes, you know, that that's qualified as a dispute, whether or not the chair might - there might be some sort of preliminary determination procedure or sort of strikeout procedure with the chair or, you know, seeing your panelist or what have you basically takes a look at it and says, no we're not going to - this just doesn't qualify, we're not going to determine that, we're not going to put together a tribunal on that or something like that.

So that was just another thought. And, again, I think that my last point is that we may - I mean it brings us all back to the same issue. I mean the criteria is supposed to be predictable and transparent and what have you.

And I'm wondering, you know, what's the panel's - what guidance does the panel has, you know, and should we be saying things like, you know, what are the predictable criteria by which they're going to make their decisions? And is that part of our work? I don't know.

Marilyn Cade: Let me take them all the way through.

I think on the question of differences on neutrality, I - when I originally wrote this last night, Victoria, I was - I had a statement that said that they couldn't have any relationship at all with ICANN.

And I went back and reviewed what the rules are for the RSTEP, and that's not the nature of the requirements. As a matter of fact, I think that ICANN actually has a pretty heavy dependency in RSTEP on technical people that come directly from the ICANN community.

Victoria McEvedy: Okay. But it's quite a different sort of issue. I mean...

Marilyn Cade: Right.

Victoria McEvedy: ...the technical issue is a quite different. And this is so controversial obviously that the greater neutrality and the greater distance sort of - you know, I mean I think the danger is obviously the people that, you know, ICANN insiders are, you know, maybe can proceed, just

compromise and then, you know, subject to political influence and what have you.

And I'm just wondering, you know, I mean just as a lawyer, I suppose it occurs to me that, you know, using an - some sort of existing body we've got complete neutral is just probably a much better idea.

Marilyn Cade: You know, I like the idea of strengthening it and I think actually I don't think retired judges are going to be - let me just - let me think about that for a minute.

It might be interesting to think about retired judges, but a retired judge might not necessarily be an expert in culture or in language. So...

Victoria McEvedy: Would that - which again takes us back to the other issue, doesn't it?

Marilyn Cade: Well let me just finish this stuff if I could.

So, I thought actually you should have a - if you're a range of different expertise, right? So...

Victoria McEvedy: Yeah.

Marilyn Cade: ...a retired judge might be the one kind of expertise might be retired judge. Another kind of expertise might be expert in language. I'm very interested in the idea of strengthening the requirement of neutrality and arm's length relationship to ICANN. I think that's actually a very good thing.

Avri, do you have a comment on that?

Avri Doria: I actually like the idea of getting as much external as possible, although I guess I'm not quite as strong on dictating that it must be all external. And I think that once you've got a mix of people in this standing body that basically the fact that someone is involved with ICANN or has been involved with ICANN in the past should not preclude them.

Marilyn Cade: So maybe we could - I could rewrite this to say, "Efforts" - "All efforts should be made to have as much neutrality at arm's length as possible," blah-blah-blah. "If exceptions are made, appropriate steps need to be taken to ensure neutrality and avoid conflicts of interest."

Avri Doria: (Right). Yeah, because one of the things we do for example when we look in the board or when the NomCom is looking for its people for placing, you know, look at someone like Jon Bing. Now, some days, he won't be an ICANN counselor anymore.

Marilyn Cade: Right.

Avri Doria: But he's still, you know, a legal professor who knows a lot and, you know, could be expected to be remained neutral. But knowledge of ICANN might be useful too, so I wouldn't want to say that someone like that because they had (spent three) years as a volunteer, you know, or, you know, someone that gets pulled into a working group who has knowledge because we go out, you know, we get some lawyer or some ex-judge or some academic to help us do something, but at that point, they immediately become (painted) by ICANN and are therefore no longer qualified.

And that's really the concern that I'm looking.

Marilyn Cade: Okay.

Avri Doria: So yes, someone who can be neutral and if they'd be having served ICANN before isn't necessarily a precluding (thing).

Marilyn Cade: So...

Victoria McEvedy: I don't have a problem with that. I don't have a problem. I suppose you know that the real concern that I was sort of worried about is not a situation like that, (unintelligible).

It's more the situation where, you know, you worry that someone's influenced, you know, that someone's too much of the community and that may be influenced by current thinking in GAC or....

Avri Doria: Right.

Victoria McEvedy: ...you know what I mean?

Avri Doria: Yup.

Victoria McEvedy: Will may know that so and so, you know, that such and such nations have strong feelings about those and, you know, just be too sort of involved in the current politics of the system.

Avri Doria: Right. So I think it makes to say that the members of this group should not currently be active in ICANN. You know, that perhaps is enough of

a - that obviously you can't be on the council and (in this). You can't be on the board and (in this).

And so just precluding a concurrent activity.

Marilyn Cade: And do you think they can be a presently active panelist at WIPO, which is a list of - or any of the other dispute resolution providers which is a list of thousands of people?

Avri Doria: I don't see why...

Victoria McEvedy: I wouldn't see no problem with that.

Marilyn Cade: Uh-huh.

Okay. Okay, I think I captured that one.

To the point you raised about a preliminary determination, what could be a function of that little chair/vice-chair group? And that's one of...

Victoria McEvedy: Uh-huh.

Marilyn Cade: ...I sort of thought they would do.

Victoria McEvedy: Uh-huh.

Avri Doria: The chair/vice-chair, won't they be people who are necessarily more connected with ICANN?

Marilyn Cade: I'm sorry?

Avri Doria: Wouldn't the chair/vice-chair be people who probably would necessarily be more actively concerned with ICANN? Simply because they'll be in constant - during their chairship.

Marilyn Cade: I didn't actually - I think they will be in - I think they - but I see them as having a management role of this process but not a management role within ICANN.

Avri Doria: I agree with you that they have a management role in the process, but I guess I have trouble with them having a - and as I see them largely as administrative management and less of making decisions themselves. I think that puts them in a funny spot.

I think that there may be reasons for a structure that allows a quick group, a small group that sort of say, "No, not valid" or to say, "Yes, valid. Let's go further." Kind of like the way some courts do where you get a quick panel of two to three judges and say, "No, no standing. We're not taking this one."

Marilyn Cade: Uh-huh.

Avri Doria: And saying, "Yes, we are taking this one and the full court will fit."

Marilyn Cade: Sure. So, Avri, why wouldn't that work with the idea of the chair and the vice-chairs?

Victoria McEvedy: I mean I think the analogy if it's any help is sort of, you know, your chief justice or your...

Avri Doria: Yeah.

((Crosstalk))

Victoria McEvedy: ...you know, hear of the court or what have you. So I don't - I mean I'm not - I mean, (I don't know).

Avri Doria: I guess I was just looking at it in the RSTEP where, you know, you have people who are experts and may or many not members of the ICANN community.

But then, you have somebody who was very knowledgeable about ICANN like Lyman being the chair of it. And I was kind of thinking that in this, you'd end up in a similar situation...

Marilyn Cade: Lyman was...

Avri Doria: ...where the chair would be more of an ICANN...

Marilyn Cade: Yeah.

Avri Doria: ...person interface administrator makes this work...

Woman: Yeah.

Avri Doria: ...than actually an active participant, but that's at the (unintelligible).

Marilyn Cade: Lyman wasn't chosen for that reason. He was chosen of his...

Avri Doria: He's a great man.

Marilyn Cade: ...broad knowledge of the security stability issues and his broad awareness of other knowledgeable parties in the community.

Avri Doria: Right. And because he is eminently neutral.

Marilyn Cade: Right. So, you know, why don't we take the - I was....

((Crosstalk))

Avri Doria: ...you go along with it, I'm quibbling, I'm - I wouldn't object to it being the way it was said.

Marilyn Cade: Why don't we do this, why don't I when I write this up, why don't I know that in the quick - there's a possibility of a quicklist process in which the chair/vice-chairs would - but let's just go back to something, let's take an example.

The four of us decide to complain about a proposed during this controversy or we put it in through the council nearly-established process. It comes to the chairs, the vice-chairs and the chair/vice-chair go, "Well, that's not controversial. We're not going to convene a panel." What does ICANN do then?

They allow the - they accept the application because these three people have said, "We don't agree that's a controversial."

Avri Doria: Right. And then at that point, you know, that, you know, obviously, one would help that they say it's not controversial for some reason. And they would - either because we've already talked about that issue in

the past, and this is just a varying on the word we've passed on or whatever reason they would give that these people would give a considered reason why they weren't doing it, they just wouldn't say no, then one could expect that those who objected, who disputed, went to the process would either be satisfied or they wouldn't. And at that point, they do end up in the board end-game again.

Marilyn Cade: Okay.

Avri Doria: We can't prevent.

Marilyn Cade: Okay.

No, no, no. No, no, this is very helpful. So what I'm going to propose is, there is a quick look to accept the need to convene a panel. That quick-look could resolve in the chair/vice-chairs rejecting the need to convene a panel.

And then we, you know, and further work is going to be needed because remember, we're not completely developing this, right?

Avri Doria: Uh-huh.

Marilyn Cade: We're putting this into the fuller taskforce role. So that then the question would be - if the question is what happens when - because I - because there's another question I want to come to, but this question is what happens when the chair/vice-chair reject?

Victoria McEvedy: Yeah. "Is there an appeal" is the question really, isn't it? Is there an appeal from that dissemination...

Marilyn Cade: Yeah.

Victoria McEvedy: Yeah.

Victoria McEvedy: ...whether to the board or to a full panel or whatever.

Marilyn Cade: Right. So...

Victoria McEvedy: But I mean, you know, this is I mean - the only reason I said, as you said there has to be a lot more work in this, you know, we just sort of thinking on our state really (unintelligible).

But at the end of the day, you know, there's going to be, you know, the big issue is resources. I mean this sort of procedures could just be absolutely busy all the time.

And so there just may need - be a need to, you know, have some kind of social process, otherwise, you know, just - I mean, you know, I mean potentially anybody in the world could have an issue with anybody else's application unless, you know, the procedure could just be...

Victoria McEvedy: Well, that's one of the reasons why I wanted all of those for scalability purposes to have been filtered by...

Victoria McEvedy: Yeah. They're - yeah.

Marilyn Cade: ...someone within ICANN is willing to take the responsibility bringing that forward.

Victoria McEvedy: Yeah. Absolutely.

Avri Doria: Because otherwise, you're right, the scalability of it is impossible if it's not prefiltered by someone who's (enough) of insider to take responsibility for it.

Victoria McEvedy: Yeah. Yup.

((Crosstalk))

Avri Doria: And say it doesn't stop them from sending in, you know, as much of a comment as they want. And at that point, you know, yes the boards have to take that into account, they have to look back, they have to see the due diligence was done, et cetera, you know.

And that we're not going to eliminate that is the final check that the process works properly. And obviously, if everything still ends up a controversy for the board, then the process has failed.

Victoria McEvedy: Yeah.

And of course, the requirement to give reasons I think takes us back to some of our earlier point as well. You know, will there be a criteria by which these people operate? I mean what's the criteria?

Marilyn Cade: So that's the final thing I wanted to come to.

I think that what we can say is we think there needs to be some establishment of predictable and transparent criteria, but we're not

trying to propose what that is. We're flagging the need to work further on this.

Victoria McEvedy: Yeah. And we might mention things like "freedom of expression" and "sensitivities," like the two balancing things that kind of, you know. And...

Marilyn Cade: I don't know what "sensitivity" means.

Victoria McEvedy: Oh, that's what GAC (unintelligible), you know, then, you know.

Avri Doria: "Sensitivity" is the opposite of freedom of expression.

Victoria McEvedy: Exactly. So they're the two, you know.

Marilyn Cade: I thought the GAC made references to things like "common sense"?

Victoria McEvedy: Well, I'm just looking at the, gosh, 2.1 in their public policy.

Marilyn Cade: Right. Right.

Victoria McEvedy: And, you know, they refer to the universal human rights (unintelligible) need to assume fundamental human rights in the dignity and worth of human person, equal rights of men and women. And sensitivity regarding in terms of national, culture, geographic and religious significance.

Marilyn Cade: Right.

Victoria McEvedy: So, you know just one level, you can say the two polarities for these are on side, freedom of expression and then sensitivity to the other side, although, you know.

Marilyn Cade: Right. I think - I'm not sure sensitivity - I understand...

Victoria McEvedy: I don't like it. No, I don't like it. It's the worst. I mean absolutely.

Marilyn Cade: No, no, no, I'm going to say something different. I just - I think I need to explain that a little bit more than just use the word "sensitivity." But I do think, you know, you and Avri and I being may be very far apart on the following statement that I'm going to make.

I don't actually believe that just because I can pronounce the word, it needs to be top-level domain. But, you know, that may be a difference in perspective that the three of us have, but I don't think that that's necessarily...

Avri Doria: Well, I could...

((Crosstalk))

Avri Doria: In fact, I don't necessarily believe that because I can pronounce it, it needs to be a top-level domain. But someone else might believe that and it's not for me to say they can't.

Marilyn Cade: Uh-huh.

Avri Doria: So, yeah, I can make the same statement as you, it's just that, you know, someone else might believe it needs to be and it's not for me or

anyone else to say they can't. And that's the freedom of expression side.

Marilyn Cade: But I think...

((Crosstalk))

Victoria McEvedy: I mean - but the concern here - but hang on. It's a little - I think it's a little just - if you don't mind me just adding to this.

I mean I think, you know, we are looking at the controversial names category, right. And it is highly controversial in the sense that this procedure we're looking at allows essentially other people to impose their opinions on other people, all right?

So it's, you know, I mean it involves this very sort of complex. And I don't think the wider issue is really - you know, it's about the ability of certain groups to impose their views on others. And so it's not - I think I would just I think I would I rephrase them in that sense in terms of that issue.

Marilyn Cade: Uh-huh. Okay. And then - but there is another thing I want to call your attention to, because it's Item Number 15.

Avri Doria: Item 15.

Marilyn Cade: I don't know if this is, you know, I'm unclear, Avri, on, you know - so if these groups advise advisory, is it binding?

Victoria McEvedy: Oh, it would have to be. I mean it would have to be.

Avri Doria: It has to be which?

Victoria McEvedy: Binding, I would have thought.

Avri Doria: Yeah, I was thinking it's binding to the...

Victoria McEvedy: I mean, isn't the whole point of this...

Avri Doria: ...process.

Marilyn Cade: Yeah, yeah, yeah...

Avri Doria: It's not binding to the board or ICANN.

Marilyn Cade: Well, so let me just say that actually the board could overrule.

Victoria McEvedy: But that makes the whole thing political when all - this is that makes this whole process pointless. There will be no neutrality and then it would be fully political and politicized...

Avri Doria: Right, but - right.

Victoria McEvedy: ...which is entirely what we're - I mean that would be pointless.

Avri Doria: Yeah. Except that I don't believe that within the confines of ICANN at the moment, there's anything that - because people are arguing, and this is one of the issues that came up in the new gTLD policy at the beginning, that all new gTLDs ultimately have to be approved by the board. And...

Victoria McEvedy: Okay. Well I mean that's obviously a big policy issue and personally I think we want to...

Avri Doria: Right. And I can agree with that one but...

((Crosstalk))

Victoria McEvedy: We - I think we ought to recommend a person - I mean I think the board itself ought to be pleased to be to be removed from having some sort of veto, because...

Avri Doria: Before, arguing, they have to deal with their fiduciary responsibility.

Marilyn Cade: Well, wait.

Avri Doria: I didn't understand that that's the argument before.

Marilyn Cade: Yeah, yeah, yeah, but let's make a distinction here about what the board - what an individual board member may have said they wanted versus what some people in the community are saying is the accountability and the responsibility of the board, right, Avri?

Avri Doria: Yeah. But I was talking about within the new gTLD policy...

Marilyn Cade: Right.

Avri Doria: ...basically, one of - I mean, there's been a few of us who thought that we were trying to design a process that did need the board involvement.

Marilyn Cade: And...

Avri Doria: And basically, it was a predictable and whatever process that didn't require the board doing a review.

Now, if the board was only doing a - was due diligent done review as opposed to a material review, but there's no real distinguishing that.

Marilyn Cade: Wait a minute, let me go back. I said this before but I think it's worth restating. If a name is not controversial and it meets the criteria, I believe the new process in fact will take the name all the way through and the board is not going to be making a decision.

Avri Doria: I believe the board signature is still involved at the end of the puzzle.

Marilyn Cade: Yeah. But it's not a - but it's a - the way it's structured, it's going to be a (unintelligible). Yes, there were. Click.

Avri Doria: I don't believe that's been clearly stated. I believe that the board gets to review each new TLD and decide to approve or disapprove based on the process. I don't believe anyone said it's purely a formality to check that all the process has been clearly.

Marilyn Cade: I think we can go back and look at that, but my understanding was for those TLDs that - gTLDs that are encumbered by challenges, et cetera, that the board is not going to be reviewing - there's going to be I thought or as of matter of fact there needs to be an audit process which makes sure that all the steps were followed.

Avri Doria: Well, in which case it makes sense to make that for all TLDs and not preclude that for (the disputed).

Marilyn Cade: But I'm one of the people who says that at the end of the day, if it's a disputed TLD, I do not see how to completely remove the board from the accountability for the decision.

Victoria McEvedy: Okay. I mean, I think, you know, this is obviously getting to fairly technical level. I mean we were looking at the more practical question right now whether the board should have - but this should be - there had been an appeal to the board or a veto to the board.

Marilyn Cade: So, we're looking at 15 and, you know, I mean I'm - look, I would be happy to have their advice to the board as binding, but I still think that's going to mean that the board - actually the - it's - this group doesn't actually advise the board, do they? They advise earlier in the process.

Avri Doria: They advise ICANN process.

Marilyn Cade: Right.

Avri Doria: This is - and I had thought that at least for the ICANN process, it was binding.

Marilyn Cade: Okay. That, I'm fine with. And I...

Avri Doria: And I think the larger issue of whether the entire process can be taken to the board and politicized. I mean this was the argument that I had made right at the beginning that if any controversy can fall through to the board, it will fall through the board.

Marilyn Cade: Right. So, Avri, what I'm going to do with you and Victoria, okay, I'm going to change the C to say the advice to the ICANN process is binding and then in parenthesis, the larger question of...

Victoria McEvedy: I wouldn't have said it was an advice either. I would have said that they make a determination.

Marilyn Cade: ...guidance is binding.

Victoria McEvedy: No, no, a determination.

Marilyn Cade: Okay. I'm happy to use the word "determination".

Victoria McEvedy: Or decision or whatever.

Marilyn Cade: I'm happy to use the word "determination", okay?

Okay. So what else?

Victoria McEvedy: Okay, well, I think there was something out we didn't really talk about. Well we've got - we still have predictable criteria to come back to, right?

Marilyn Cade: No, I thought we agreed on predictable criteria and said that we believe there needs to be the establishment of predictable and transparent criteria. We referenced freedom of expression and the sensitivity code.

Victoria McEvedy: Oh, okay.

Marilyn Cade: And...

Victoria McEvedy: So we just - decide about that?

Marilyn Cade: ...note the need for further work, right?

Victoria McEvedy: Okay. Okay.

I think we need to look at the draft thing that says - I mean, that would need some careful drafting. I mean I'm just saying I don't think we'd agreed that wording like (unintelligible) but that was more of a suggestion.

Marilyn Cade: Do you want to submit some language?

Victoria McEvedy: I'll be happy.

Avri Doria: I would add a recommendation because so far for the conversation, I've added one recommendation earlier about, you know, how are disputes initiated, et cetera, and the one we talked about. So this would be a new recommendation...

Marilyn Cade: Uh-huh.

Avri Doria: ...which is that - and perhaps it's worth spending a couple of minutes (word-sniffing) while we're talking.

Marilyn Cade: But it seems to me, it needs to be further work is needed but we believe that needs to include predictable and transparent - further work

is needed to developed - predictable and transparent guidance to the -
or guidelines or something...

Victoria McEvedy: Criteria, I think.

Marilyn Cade: ... criteria. I think it's going to have to be - I think there's going to had to
be some flexibility for them as well that it - did you say you could
submit some language?

Victoria McEvedy: We're recommending - I mean I think we could - I just wanted that
freedom of expression and perhaps, you know, balancing name which
includes us, you know. So I mean I was totally happy with the
language you would be developing there.

Avri Doria: Right. Yeah...

Victoria McEvedy: We can't (unintelligible) on the list though. We can circulate it,
right?

Avri Doria: Right. Right. This is just a draft. I will put it words that are similar to
basically what Marilyn just said, post what, you know, Victoria had
said.

Marilyn Cade: Okay.

Avri Doria: And then, you know, we can talk about it some more.

Marilyn Cade: Okay, good. I wanted to take you back to 14 which, Victoria you had
mentioned and I was saying - I do think some examples of categories
of controversial names are needed. And I didn't understand - you had

flagged that, but I didn't understand whether I had adequately addressed your question.

Victoria McEvedy: Well that was kind of - well and we addressed that in the very first issue we've discussed, didn't we, you know, whether or not we could come out with examples, didn't we?

So do we no sort of eliminate it at that point? Should we decide that we couldn't?

Marilyn Cade: I wasn't in agreement with not offering them. And so I'm not sure what you mean by...

Victoria McEvedy: Oh, I see. I thought that we sort of we went back to the original - the earliest statement - the earliest sort of report - the full working group report and also the draft which says that, you know, there should not be a reserved names category, but just a list of disputed names as the result of the dispute process and sort of 14 would be inconsistent with that.

Marilyn Cade: Okay. I'm not - I don't understand that inconsistency. I don't understand how to create the panelist or of there's not a way to say - for example, the kinds of categories that maybe viewed by some of this controversial could include the names of religious people, et cetera.

So how do we create the panel, how do we tell the panelist what the job is...

Victoria McEvedy: What is the credits - criteria would do, right, which is about for further work.

Marilyn Cade: But, no - what - no. The criteria is I think how do you make a determination...

Victoria McEvedy: Is to work controversial.

So, you know, this is like a criteria of by which they can work to decide at any given situation whether (some) is controversial. And you're alternatively suggesting creating a list of examples.

I think they're going to be smart enough to not (made) list of examples and - they should be something in writing that's transparent and predictable I think that, you know, a criteria to point to. But I think a number of label was this - the decision has been made, there shouldn't be a list.

Marilyn Cade: We're not making the list of controversial names.

Victoria McEvedy: Well actually we would be. When you say it's by example or not, that's exactly what it would be.

I don't think it's necessary. They're going to be, you know, really intelligent people. I don't think it's necessary and I think it's restrictive.

We can agree to disagree on that, I guess.

Avri Doria: Okay.

Sorry, I was trying to word (unintelligible) we were talking and I missed where the point of disagreement was.

Victoria McEvedy: Okay, we're talking about whether or not to - whether or not Point 14 which ones to create a list of example of controversial names...

Avri Doria: Oh, okay.

Victoria McEvedy: ...is necessary or whether or not it's actually contrary to the decision not to have a list of - or list of controversial names.

Marilyn Cade: And actually, Victoria, I would refer you to 3 as well where it's mentioned as well.

Victoria McEvedy: Yeah, I think I raised this. Yeah, exactly. And I see - I mean I raised it as well. Exactly.

Avri Doria: Doesn't creating the things that I was just working on trying to write the recommendations where we are creating open...

Victoria McEvedy: Uh-huh.

Avri Doria: ...and transparent criteria supercede the requirements to create categories?

Now, the work that's done in creating these criteria may indeed decide to - that in the end you've got to create categories. It may also decide that no one can create criteria in some way without having to be explicit about categories for example.

And does that really become part of the continuing work that needs to be done and as opposed to defining now that to define the open and

transparent criteria to protect freedom of expression, dignity of the human being and sensitivities, et cetera, you know, they may or may not decide to use?

Marilyn Cade: So here's my proposal. To strike 3 and to change 14 to describe that further works is needed to - and I think that we need to figure out where we're going to insert your redrafting.

And then we can leave the question open of whether the establishment of criteria may lead to the emergence of patterns that are being disputed and just not make a - not go into this.

I will just say that the idea of developing a budget for this however, we need to then I think go back and spend more time on the definition of the qualifications for the participants and give some examples of who we think might be possible participants just generally at a very high level, so that the budget can be developed.

Avri Doria: Yeah. Yeah, the whole idea of how a budget for this thing is created is - is that a separate from that issue though, isn't it?

Isn't it that the issue...

Marilyn Cade: No, it...

Avri Doria: ...of a budget more related to a statistical how many of these do we think we're going to get and what sort of effort will it take to process them than actually a mapping to the criteria?

Marilyn Cade: Avri, if you don't know what the general categories are that you consider controversial, you can't do any kind of speculation about how many of these you're going to get.

Avri Doria: Well, yeah, you can.

Marilyn Cade: Okay.

Avri Doria: I mean you can basically...

Marilyn Cade: Give me an example.

Avri Doria: I mean - okay, there's the pessimistic version that sort says, you know, almost anything that you say someone will consider controversial. Now, we're putting in scalability that says, "Okay, yeah, but they've got to be filtered".

So we can basically, you know, I mean it's a guess, it's a finger in the wind, but it's basically saying half of them, a quarter of them, 10%. But knowing the criteria isn't going to make it anymore accurate because we could say the criteria of religious terms, but that doesn't tell us what percentage of new gTLD application will be religious terms.

Marilyn Cade: Okay, so...

Avri Doria: We can say the criteria is (dirty swear words), again, we don't know what percentage of application will be (dirty swear words).

So it's a finger in the wind. Let's say, you know, assume 20% it, you know, and maybe this is something where ICANN has some

experience from past applications and note - or maybe this is something that, you know, we kind of look at .com and sort of say, "Since .dot com is sort of a - we'll take anything". We can look at it and say, "Out of, you know, the world of second level domain names, how many are by any criteria controversial?"

Marilyn Cade: So, Avri, yes, what I take out of this. You and Victoria want to really treat this is pretty much a blank slate because you're concerned that if you give examples of categories, you're going to bias people. So okay, I heard that.

Avri Doria: It's basically the social Heisenberg principle. It's as soon as we say it, it's real.

Marilyn Cade: I heard you say that. I understand it. I grasp it. Okay?

Avri Doria: Sorry.

Marilyn Cade: There's this thing called selling pass the (clothes).

So I (strap) 3. I (strap) 14. I'm going to propose to include under further work the question of that we - there needs to be the development of criteria (for) the background of the panelist.

At this point the subgroup has not been able to do any scoping or scaling of the possible number of such applications that might be received.

Avri Doria: Okay, yeah.

Victoria McEvedy: Uh-huh.

Marilyn Cade: Okay?

Avri Doria: Yup.

Victoria McEvedy: Uh-huh.

Avri Doria: By the way I can also read you at a point when we get to it what I put down as our Recommendation E.

Marilyn Cade: Okay. And I want to do that, but I want to call one more thing...

Avri Doria: Yup.

Marilyn Cade: ...to both of your attention because it's something that I'm happy to have a minority statements in either one of you on, but my understanding of this from the previous work in the full task force is that we expect and that's 8 and 10 =- 8, 9, and 10.

Avri Doria: Eight, nine and ten.

Marilyn Cade: So 8 is based on the idea that, you know, people need to be paid, they can be held accountable. I'm not suggesting a huge payment, but I did do some research on what the present process is, would be something like stipend to the chair and then a fee that's paid to a panelist when you're actually doing work.

Avri Doria: Right. And there's possibly another piece of this that you may want to add, and maybe this needs to be minority and maybe not. But that perhaps one has to pay to dispute.

I mean if applicants, you know, this is something that's come up various times whether it's in a different context in the PRO or in another places that yes, the applicant has to pay more, but also maybe the person that's raising the dispute has to pay. And that the cost for a dispute needs to be slipped between applicant and disputant.

Victoria McEvedy: Oh, I see. So it's - okay, that's interesting. I mean...

Avri Doria: I don't know, but if we're going to make the applicant pay because I've disputed them or maybe I should have to split their payment.

Marilyn Cade: Can I ask a question as an example?

So would you see the idea that a name is a geopolitical indicator and it's subjected to by government?

Avri Doria: Which would be a different category than this, but yeah.

Marilyn Cade: I just want to be sure.

Avri Doria: Okay.

Marilyn Cade: But let's take a name - let's take Natzi, misspellings of Natzi for example...

((Crosstalk))

Avri Doria: Right.

Marilyn Cade: ...reference. The dispute to that could be a group of civil society. It could be survivors of the Holocaust. It could be government. How would you see sharing the cost working in that situation?

((Crosstalk))

Avri Doria: I believe they would form a coalition and they'd have to figure it out.

Victoria McEvedy: Given that - can I just ask a question? Are we really supposed to really go to the sort of level of detail at this stage I mean in terms of...

Marilyn Cade: I think the more detail we can go to...

Victoria McEvedy: Is it? Okay.

Avri Doria: ...the better in some sense. I mean we keep saying more work and we can say that these are just guidelines...

Victoria McEvedy: Right.

Avri Doria: ...on what it might be like. But I think...

((Crosstalk))

Marilyn Cade: ...or, Avri, maybe a if you - we could say initial preliminary discussions included topics like the following questions, and they need to be flushed out in the more work.

Avri Doria: Yeah. In another word, so we could include a shared payment arrangements for this and the details of how that would work or something that, you know, needs further.

Marilyn Cade: Well, you know, this kind of goes back to the question that I had earlier which you're going through perhaps a solution to a question that I had earlier, and that was what gives somebody standing and how do we avoid having a test for standing.

Avri Doria: Right. Well that - yeah, and my solution to that was everyone has standing with some AC or SO.

Marilyn Cade: Right.

Avri Doria: And it's the AC and SO that basically determines standing.

Marilyn Cade: So what I'm probably going to do is put this in to a questions that need to be - that could be addressed in the more work category.

Avri Doria: Yup.

Marilyn Cade: Victoria, is that okay with you?

Victoria McEvedy: Yeah, fine.

Marilyn Cade: Okay.

Then the - but the - I wanted to call 10 to your attention. My assumption is regardless of whether it's a shared cost or not, we did

talk in the full PDP task force that application for gTLDs are expected to be cost-recovery to ICANN. That's an existing small policy, not big policy. That's an existing small policy.

And then I just want to mention something, Victoria, that you won't - I don't know if you're familiar with this, but there has been a conversation between myself and Mawaki, Avri, and Neil Blare about the possibility of their being different ways of dealing with some parts of the cost, in particular for people from developing countries.

Victoria McEvedy: Right. Yeah, sure. Uh-huh.

Marilyn Cade: But these parts of the discussion we had I recall some of the discussion we had, Avri, where, you know, it's like if you pick a controversial name, you as an applicant need to understand there may be more cost to that.

Avri Doria: Right.

Marilyn Cade: And so your fee is actually not the standard fee which is supposed to be predictable and transparent. But it would have to include the cost - I called it compensation. That's maybe the wrong word. Maybe it's the...

Avri Doria: Yeah. But I've tried to distinguish that on basically that the slow (unintelligible).

Marilyn Cade: Right.

Avri Doria: I mean (unintelligible) was predictable.

Marilyn Cade: Right.

Avri Doria: And that the (unintelligible). So if for whatever reason you're putting yourself into the process that requires many panels, many reviews, many whatever...

Marilyn Cade: Right.

Avri Doria: ...that you're incurring extra cost.

Marilyn Cade: Okay.

Avri Doria: So if you want an easy one, you go for (XEZY).

Marilyn Cade: So I'm going to change this to say applicants shouldn't expect that their fee was an application fee.

Avri Doria: Right. And you might want to add the other one that sort of says, you know, serves as a recommendation for dispute and should share the cost of a dispute in a manner to be determined by further work or something.

Marilyn Cade: I didn't accept that as a recommendation.

Avri Doria: Okay.

Marilyn Cade: I accepted it as...

Avri Doria: As a minority review.

Marilyn Cade: ...under more work examination of how the cost will be recovered, should it be shared, et cetera.

Avri Doria: Right, but I was just saying that it sort of goes along with the one that you're changing now when we're saying that the applicants got to pay if they're going to be - remember applicants might not think of picking something controversial.

Marilyn Cade: That's why I changed it to say applicants should expect that their - that the - I must say to say the fees will include the cost associated with (CNDRG), but not discussed whether that money has to come from them or could come from a shared process.

And then include under more work the idea that that's more work could be - more work needs to be done about that.

Let me take a crack out...

Avri Doria: Yeah, okay.

So you're going to resend me your list because I already cut your old list into my report, the one I was going to send out just before the meeting. But if you send me a new one, I'll cut that in its place.

Marilyn Cade: I'm going to make some - as many quick changes as I can before 1:30 for you.

Avri Doria: Okay, and I've got until 2:00. Okay, so if you send it to me at 1:30 then just before 2:00, I'll send out an updated copy. I can...

Marilyn Cade: Okay. Okay, can we go back to the overall report for just a minute?

Avri Doria: Yup, okay. At the moment I've got now A through E in recommendation.

Marilyn Cade: Okay, can I - A to B.

Avri Doria: A to E.

Marilyn Cade: A to E.

But what page am I suppose to...

Avri Doria: Those - well, I only had A through - that's on Page 5.

Marilyn Cade: Okay, sorry.

Avri Doria: At the beginning I only had three. I've added two. And I can read them to you guys if you'd like.

Marilyn Cade: Please, thank you.

Avri Doria: Okay, so (D) - I'd left the first three alone.

(C), within dispute process, dispute would be initiated by the ICANN advisory committee, for example ALAC or GAC or supporting organizations, for example GNSO or ccNSO.

As these organizations do not currently have (processes) for receiving and deciding on such said activities -- that might (not) be the wrong word -- these processes would need to be defined.

As it's not the prerogative of gNSO or a sub-committee to determine the internal processes of other ICANN bodies, this remains as work that needs to be done if and when this proposal is accepted.

Marilyn Cade: I'm happy with that. I have some changes in C but can we go to D - E first?

Avri Doria: Okay, then E.

Marilyn Cade: So - but wait a minute. I didn't hear - I didn't mean to cut Victoria off.

Avri Doria: Oh, sorry.

Victoria McEvedy: No, I was fine with that.

Avri Doria: Okay.

E, further work is needed to develop predictable and transparent criteria that can be used by the controversial resolu - controversial names resolution panel. I'll get it right.

This criteria must take into account the need to: -- bullet -- protect freedom of expression. Bullet -- affirm the fundamental human rights and the dignity and worth of the human person and the equal rights of men and women -- that was taken from the...

Marilyn Cade: Uh-huh. Yup..

Avri Doria: ...GAC.

And third bullet, take into account sensitivities regarding terms with cultural and religious significance.

Marilyn Cade: Uh-huh.

Avri Doria: I left out the geographical and the other one because they weren't relevant to this particular statement.

Marilyn Cade: So okay, I'm okay with that. I have some changes on C.

Avri Doria: Okay, the C was current - the new gTLD process should be based on the existing RSTEP process which should be appropriate - okay, yeah now that you're suggesting one.

Marilyn Cade: Right.

Avri Doria: Right. Okay, what would you like to say?

Marilyn Cade: Well, I think you could say the news gTLD controversial names, whatever we call it.

Avri Doria: Controversial names dispute.

Marilyn Cade: Resolution.

Avri Doria: Resolution.

Marilyn Cade: Panels.

Avri Doria: Panel, I think you called it.

Marilyn Cade: Yeah, okay. Should be established...

Avri Doria: Should be established.

Marilyn Cade: ...as a standing mechanism.

Avri Doria: Yes.

Marilyn Cade: That is convened at the time (A) application that is considered controversial.

Avri Doria: At the time that a dispute is initiated.

Marilyn Cade: Okay, that a dispute is initiated. And then we could say preliminary elements for that process are provided in this recommendation but need to be referred for further work. But further work is needed. We need to...

Avri Doria: Right, right. So preliminary elements of that process are provided but further work is needed in this area.

Marilyn Cade: Right.

And then we could just say - and we don't - then we could just keep the reference in the draft concept that we have used the RSTEP process as a point of reference.

Avri Doria: Okay, but that doesn't go into the recommendation itself.

Marilyn Cade: I don't know that it's needed in here.

Avri Doria: Okay, fine. That's fine with me. How are you - so let me read what I wrote.

The new gTLD controversial names dispute resolution panel should be established of a standing mechanism that is convened at the time the dispute is initiated.

Preliminary elements of that process are provided but further work is needed in this area.

Does that work for both of you?

Victoria McEvedy: Yeah.

Marilyn Cade: And that we probably need to say where they're provided. We could say provided in (NX1).

Avri Doria: Well, I won't get - I'll just put XXX because that'll be what Liz does to move things around.

Marilyn Cade: Yeah. Right.

Avri Doria: So are provided within or are provided in this report and...

Marilyn Cade: Right. Good. Okay.

Avri Doria: And I'll let Liz determine...

Marilyn Cade: Okay.

Avri Doria: ...exactly where they are.

Marilyn Cade: Okay.

Avri Doria: Okay, so those are - now, one of the things I probably won't do after this discussion, I won't do before the meeting, after this discussion I think I have to add more content to the overview and discussion.

Marilyn Cade: Uh-huh.

Avri Doria: But I won't get that done...

Marilyn Cade: Right.

Avri Doria: ...necessarily before the meeting. I mean I'll look through it and if I can - what I can get tweaked, I will get tweaked but...

Marilyn Cade: So, really if you just go to Page 8, if you don't get it redrafted that you could just point to the fact that the group - that the subgroup worked out actually a consensus approach to how to address this.

And it's - you can reference in the recommendation, right, but note that you're going to provide more written detail. Right?

Avri Doria: Yeah.

Marilyn Cade: Okay.

Avri Doria: I'm not sure - I mean if you've done any specific changes that you're recommending.

Marilyn Cade: No, no, it's just what we agreed to that you captured it in the recommendations. You can almost I think replace this last bullet with the - or add the recommendation here in the body too. Where you said that each of the groups needs to develop a procedure?

Avri Doria: Yup, yup.

Marilyn Cade: Yeah.

Avri Doria: Okay, yup.

So now I'll look at that and I'll try to adjust it in a reasonable way.

Marilyn Cade: And D on Page 9.

Avri Doria: D on Page 9. Okay, although...

Marilyn Cade: I just don't know what that means -- restate recommendation.

Avri Doria: That was from the - that was from our statement of work.

Marilyn Cade: Okay. Oh, okay.

Avri Doria: So what I'm doing there is, as you've seen above, the underlying ones, I'm repeating our statement of work and how we address that particular statement of work in this report.

Marilyn Cade: Okay

Under the Summary of Relevant Information Sources?

Avri Doria: Yeah, I haven't done anything there.

Marilyn Cade: And so I can give you two bullets.

One is obviously the GAC principles.

Avri Doria: Yeah.

Marilyn Cade: The other I think is actually the previous discussions and work related to this topic that took place in the full task force, which are available in the transcript.

Avri Doria: Previous discussions and work related to controversial names done by the previous RN Working Group?

Marilyn Cade: No, no, no, the task force.

Avri Doria: Oh, yes, that's right.

Marilyn Cade: Task Force PDP05.

Avri Doria: Done by - to gTLD Task Force as opposed to using that.

Marilyn Cade: Right.

Avri Doria: And then GAC principles. Anything else people have, (just let me know), I come later.

Marilyn Cade: Right. Right. Terrific.

And by the way, Victoria, welcome back.

Victoria McEvedy: Thank you.

Avri Doria: And thanks...

((Crosstalk))

Victoria McEvedy: Thanks for being so patient with me because I'm sorry I have - I'm not up to date with everything.

Avri Doria: And if you read through this and see other things that need editing, especially after I send the next one, please send, you know, send me specific edited...

Victoria McEvedy: Uh-huh.

Avri Doria: ...or send the list specific edited. You don't actually have to do them in the document. It's probably easier for discussion purposes to send an email with the text that you think has changed.

So please, you know, the more discussion we have in the next two days - and that's just - this will go away again, you know, in less than a week.

Victoria McEvedy: Yup. Yeah. Okay, great. But nice talking to you.

Avri Doria: Nice talking to you and thank you. And thank you, Marilyn.

Marilyn Cade: Sure. Thanks, Avri.

Avri Doria: Okay, bye.

Victoria McEvedy: Bye.

Marilyn Cade: Bye.

Bye, Glen.

Avri Doria: Bye, Glen.

Victoria McEvedy: Bye.

Avri Doria: So there's Glen?

Glen Desaintgery: Bye.

Avri Doria: Hello. Everybody gone? Okay, I guess we'll hang-up then.

END