

**Cross Community WG discussing Recommendation 6 of the new gTLD process  
(Rec6 CDG-WG)  
TRANSCRIPTION**

**Monday 30 August 2010 at 20:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG) meeting on Monday 30 August at 2000 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:

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Konstantinos Komaitis

Mary Wong

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**Registrars Stakeholder Group**

Tony Kirsch

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Chuck Gomes – GNSO Council chair

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### **Individuals**

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Jothan Frakes

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Frank March – GAC - New Zealand representative

Bertrand de la Chapelle – GAC - French representative

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### **Apologies:**

Heather Dryden - Interim GAC Chair – Canadian representative

Stephane van Gelder - RrSG - GNSO Council vice chair

Coordinator: Excuse me, I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time.  
You may begin.

Glen de Saint Gery: Thank you.

Chuck Gomes: Hello to everyone and welcome to the Recommendations (Section) Community Working Group call. And I would like to ask Glen is she would identify who's on the call please?

Glen de Saint Gery: I will do that as a pleasure to you Chuck. We have on the call yourself Chuck Gomes, Stuart Lawley, Avri Dori who is from the GNSO, Frank Mush from the GAC, Konstantinos Komaitis from the Noncommercial Consumers Non-commercial Stakeholder Group, Bertrand de la Chappelle from the GAC, John Nevett, Business Constituency but I believe in an individual capacity, Caroline Greer from the Registry Stakeholder Group, Robin Gross from the Non-commercial Stakeholder Group, Milton Mueller from the Noncommercial Stakeholder Group, Richard Tindall I believe in a individual capacity, Sebastian Bachollet from the ALAC, Krista Papac from the Registrar Stakeholder Group, Alan Greenberg from the ALAC, Evan Leibovitch from the ALEC, Mary Wong from the NCSG, Paul Stahura in an individual capacity, Cheryl Langdon-Orr Chair of the ALAC, Andrei Kolesnikov nominating committee appointee on the GNSO Council.

And for staff we have Marika Konings , Kurt Pritz -- sorry turning my page -- Dan Halloran and myself Glen de Saint Gery. Have I left off anybody?

Chuck Gomes: Thank you Glen. I didn't hear anyone that was missed. So...

Bertrand de la Chappelle: There are - this is Bertrand. When I look at the participant list on the Adobe Connect there are other people that are listed in the attendee list.

So I don't know if they are not on the call and are just on the Adobe Connect. But I see Caroline Greer, (Dave Kissandriall), Krista Papac and other people, (Tony Kirsh).

Chuck Gomes: Both Krista and Caroline were mentioned Bertrand...

Glen de Saint Gery: Yes.

Bertrand de la Chappelle: Oh sorry, my mistake then.

Chuck Gomes: Yes. So I don't know about all of them but certainly there...

Glen de Saint Gery: (Tony Kirsh) was not - is not on the call yet.

Chuck Gomes: Okay it sounds like...

Glen de Saint Gery: Jonathan Frakes has just joined and (Tony Kirsh) is now on the call.

Chuck Gomes: Okay good thanks -- Appreciate that.

(Tony Kirsh): Good evening everyone. (Tony Kirsh) here.

Chuck Gomes: Okay thank you. Okay this is Chuck Gomes and I'm co-chairing this meeting with Cheryl and with (Frank) in the other's place.

And so Cheryl and (Frank) please feel free to jump in at any time and keep me straight.

The outline for our meeting today is to first of all go through the excerpts that are in Appendix A to the terms of reference. And they are excerpts from the Draft Applicant Guidebook Version 4 and just identify any areas of those excerpts that anyone has a concern about.

We're not going to talk about why you have a concern first time through just identify where there are concerns.

And then after we make that list we will come back and talk about the concerns with the initial goal of trying to start getting people thinking in terms of first of all understanding the concerns so that we all the mutual understanding.

And then secondly -- and I don't know how far we'll get on this today -- but is to start thinking about possible ways that we might be able to recommend changes that might address the concerns in a way that most would support.

Any questions on that approach? Now is there anyone on the call that is not connected in the Adobe Connect room?

Evan Leibovitch: This is Evan. I'm rebooting and should be there shortly.

Chuck Gomes: Okay Evan...

Milton Mueller: This is Milton. I'm not on Adobe Connect but I can get on as soon as I dig up the URL.

Chuck Gomes: And in the meantime if you want to comment just because so that I can put you in a queue.

Milton Mueller: Okay.

Chuck Gomes: Okay?

Milton Mueller: Thanks.

Chuck Gomes: Thanks. Thanks for letting me know and hopefully you'll be able to get in. All right anyone else have anything to say before we start?

All right, looking at Appendix A in the terms of reference and the - in the guidebook, there are four rounds for objections.

We're concerned with just the one area and that's the morality and public order objection. And that's the one that you see there, the apply for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

Keep in mind that our terms of reference don't deal with making any changes to Recommendation 6 but rather the implementation of it.

So going then to Section 3123 morality and public order objection note that it's - that it basically gives the standing for objecting. And that's very broad. Anybody may file an objection.

Does anyone - and they're subject to a quick look procedure. We'll come back to that a little bit later. But any concerns about Paragraph 3123?

Evan Leibovitch: Chuck this is Evan. I'm not in Adobe yet.

Chuck Gomes: Go ahead Evan.

Evan Leibovitch: The one thing that just kept shouting out at me as we were going over this during the at-large summit was what internationally recognized standards for this exist that this wording was referring to? We had a real problem just finding out even what this was talking about.

Chuck Gomes: Well Evan I'm sure...

(Frank): Chuck it's (Frank) here. I was going to raise the issue of course of the definition in the paragraph above that is that recognized under international principles of law which of course we have discussed and recognize that there are no such principles of law.

So Evan I think that that point is recognized but there is no universally acceptable international definition of what that term means.

Evan Leibovitch: So what's the value of this preamble if it refers to nothing tangible?

Chuck Gomes: Well I'm not sure it's accurate to conclude that it refers to nothing. I'm sure all of you read the documents posted by the ICANN Implementation Team.

And I think -- and I'm not an attorney, certainly not an expert in international law -- but and I'll invite Kurt or Dan to jump in if they would like -- but as I went through those documents again I don't think they claimed anywhere that there is - that there are any internationally adopted treaties that cover these things.

But what I did note in going through them is that there are elements of national laws that appear to be common across the international arena.

Now Kurt or Dan do you want to - did I say that right? Is that an accurate interpretation? Kurt, Dan are you both still on?

Man: Yes I'm here Chuck. So is the question what does the - what did we do about the - so restate - say the question again.

Chuck Gomes: Sure let me break it down into a couple components Kurt and thanks for responding. The point has been made on previous, you know, exchanges in this group that there are - there's no international law with regard to morality and public order, no international treaty that has that for anything like that.

So but when I read the proposed standards for criteria that the third-party panel would use, the principles that were adopted were based on common elements of national laws, they're common across the international arena.

I think that's - to me that seems like another way to fulfill the GNSO recommendation. Am I saying that right?

Man: Well I don't think you said anything wrong. I think, well gosh so like you point out at the beginning we were at a pretty what we think is a fairly comprehensive paper on how these were developed.

So, you know, I think your first focus on what are accepted legal norms, so you look at legal norms across different jurisdictions and look for those types of names that might be controversial and across essentially all jurisdictions.



So we're not necessarily looking for international law. We're looking for legal norms across many jurisdictions. You know, legal norms are generally accepted.

Chuck Gomes: Okay I see several hands up. Let me let them jump in. Milton?

Milton Mueller: Yes hi. Thanks Chuck. The problem with as I read these descriptions of laws is that they - actually they all, particularly the items having to do with incitement, this is referring to, typically to behavior in a particular context which causes a crime. Of course I'm most familiar with the incitement laws in the US.

But for example inciting a riot okay, there's no way that a TLD string can incite a riot. The mere existence of the TLD string cannot do that.

What might do it in certain cases is certain kinds of behavior or content associated with a TLD. But it's very difficult to say that a TLD string by itself would be inciting anything. So that's one of the major problems with this whole approach.

Chuck Gomes: Thank you Milton. Konstantinos?

Konstantinos Komaitis: Yes hello I actually understood exactly the same what you do Chuck, the fact that the ICANN staff went to those jurisdictions and actually tried to understand the experience of what's happening there.

But even if that's the case which mainly we're talking about the collage of various laws we cannot possibly - we cannot possibly (cognitive) international principles of law.

International principles of law under international law are only the ones that are derived by treaty or any other international law instrument.

So it is unsafe to refer to five laws, national laws that happen to be similar or the same as international principles of law. And I would like to bring that to the attention of the group. Thank you.

Chuck Gomes: Thank you Konstantinos. Avri?

Avri Doria: The only thing I'd like to add is that the definition is pretty much what you expressed plus another piece that really says plus the jurists they'll recognize it when they see it.

So I think that if the group comes to sort of accept that that stands in instead of international law then you'll have your definition.

But basically you'll have addition that is as Konstantinos said the collage of national law plus jurists recognize it when they see it. Thank you.

Chuck Gomes: Yes thanks Avri. Bertrand?

Bertrand de la Chappelle: Yes I think it is important to make a distinction here. In international law there is this notion of general principles of international law that can be used in a court at the international level or in an international dispute.

And among those general principles of international law the typical sources are indeed on the one hand treaty is international agreements and things that have been ratified at the global level or even

declarations without an implementation procedure that have been sufficiently endorsed by a broad range of national governments.

The second source is the fact that when a court of international level wants to find a principal they sometimes refer to the presence of this principle in a sufficiently broad range of national jurisdictions and legal systems.

However in most cases those principles are positive principles. It can be for instance, the principle of fairness. It can be the principle of freedom of expression. It can be a certain number of other positive principles and sometimes a general prohibition like prohibition of slavery, prohibition of child exploitation, or things like that. These are universally accepted somehow principles.

But the distinction I want to make here is that these are not principles that are called morality and public order.

Because as the GAC has raised, morality and public order is only used as exceptions in certain international agreements for taking national measures as an exception to the implementation of the general principle that is a positive one.

And so here the problem we're facing is that there are general principles of law but no general principles of morality and public order.

And the problem we're facing is that there are two categories of objections that are likely to arise, some that will be based on more or less universal principles -- and this is typically the three first bullet points at the end in the list of possible grounds -- and other objections

that will not be made on the basis of an international principle but on the basis of national sensitivities or national exceptions or national legislations. And I think it's very important from the onset that we make this clear distinction.

There are no international principles of morality and public order. There are sometimes international principles of law which are usually positive principles.

Chuck Gomes: Thank you Bertrand. Robin?

Robin Gross: Thank you. Yes I just wanted to raise a couple of points. One is to pick up on the concept that Milton was talking about with respect to the legal notion of incitement and how these recommendations are saying there can be no incitement of lawless activity and there's agreement across the board that there can be no incitement for lawless activity.

But the problem is is what is considered lawless is entirely up for grabs, is entirely different from jurisdiction to jurisdiction country to country.

So if it's not so simple to say well we all agree you can't incite lawless activity because, you know, what is perfectly legal in one country, a protected right for example, abortion in the United States, it would be considered inciting lawless activity in some other countries.

So, you know, it's not good - it doesn't solve any problems to say well, you can't incite lawless activity, okay done let's go on to the next issue because that's - again that's just a - it needs to be defined and can't be

defined. It's entirely up for grabs and different from jurisdiction to jurisdiction.

And the other point that I wanted to raise was on this issue of - well I'm concerned that what we're hearing is well there doesn't seem to be any kind of morality and public order standard. So what we're going to do is we're just going to take all the national laws and create a hodgepodge of those and we'll use those instead.

But that's not what the GNSO recommended. The GNSO did not say we want ICANN to enforce all the world's national laws. That's not what this is about.

So I'm not at all comfortable with sort of trying to take this in that direction that this is just going to be a catch all any law you can come up with we'll come up with a policy in the GNSO new gTLD policy to go along with it. So I just wanted to raise those two points. Thanks.

Chuck Gomes: Thank you Robin. Andrei? Andrei are you still with us? Andrei Kolesnikov? Okay we'll come back to Andrei if he's still there. Jon, John Nevett?

John Nevett: Yes thanks Chuck. I just wanted to offer maybe something that will give some comfort to the folks who are trying to parse through the GNSO objection.

And I think we really need to focus on the term generally accepted legal norms of morality and public order verse international principles of law.

If you read the exact recommendation from the GNSO it says that the string must not be contrary to generally accepted legal norms morality and public order. And that would entail taking into account the panoply of national laws which of course international principles of law will recognize national laws.

So instead of looking for a, you know, a silver bullet in a treaty or something we should just look at the, you know, what's out there as generally accepted legal norms related to these areas.

And if you're looking at - if you're talking about incitement to violence for example, there are clear examples that you could come up with. And hopefully we don't have to discuss them.

But, you know, I think Milton and others, there are clear examples of something that could be listed in a string that would incite violence just based on the name itself. And we should take that into account certainly the GNSO recommendation was targeted at those kinds of strings. Thank you.

Chuck Gomes: Thank you Jon. Evan? Cheryl did you want to jump in?

Amy Stathos: No Chuck, this is Amy Stathos.

Chuck Gomes: Oh Amy. Yes thank you Amy. Go ahead.

Amy Stathos: Sure. Sorry to jump out of the queue I just thought that Jon's comment was a good segue to what I was going to suggest.

I think there's been some really good comments and some, you know, understanding and possibly misunderstanding in terms of what was done in the research paper and how staff got to the point where it did.

What I might suggest I think that, you know, Jon made some good comments, Bertrand made some good comments.

What I would suggest and see if I can try to set up is have our outside international expert who helped work with us on the research paper possibly at least present the approach that we took, maybe if we can do that at the next call.

Chuck Gomes: Is there anyone that would object to that?

Man: Amy who is the international law expert, Amy?

Amy Stathos: That's (Kera Borgan) who is - works out of (Joan Seraterra)'s office.

Man: Okay.

Chuck Gomes: I think that would be a very, very good idea Amy. I appreciate that suggestion. Cheryl and (Frank) are you okay with that suggestion as co-chairs?

(Frank): Absolutely fine by me. Thanks Chuck.

Amy Stathos: Yes and at least it's just a way Chuck, to get you guys understanding how - the approach that we took.

Chuck Gomes: Yes. Thank you Amy. Cheryl are you okay with that?

Cheryl Langdon-Orr: Yes Chuck but on the other side of the room if you read the Chat on the greens.

Chuck Gomes: No I don't even try. But I can look right now. I'm not seeing very much showing on my screen. Oh, oh down below okay. Here we go. And we - your point Cheryl is what?

Cheryl Langdon-Orr: Having come back to the other side of the room now and not being able to see the room, yes Chuck I'm agreeing with you and it first what you outlined which was for us to go through and identify that particular sector that is this Appendix A that merit return.

And this is, you know, one of the primary points that the at-large and ALAC statements have made from the very beginning that this is a discussion that - one of the discussions that we certainly need to have.

And I think Amy's suggestion is having a - probably completely dedicated call to the topic and a great deal of on list activity as well is essential. A long worded version. Yes, let's do it.

Chuck Gomes: Okay thanks appreciate that. All right...

Cheryl Langdon-Orr: Now I'll go back to that part of the room again.

Chuck Gomes: (Kevin) you're next.

(Kevin): Hi Chuck. I guess I just wanted to go back to the original plan that you had having started part of this mess. I thought the intention right now was just to identify things right now rather than discuss them out.



Chuck Gomes: That is correct and I was planning to get us back on target here. Quite a few people jumped in so...

(Kevin): Yes it wasn't my intention to start drilling down right now. You wanted to identify some things and that looked to be as core as anything in terms of what we need to go through but not right now.

Chuck Gomes: Yes and I probably was guilty in causing that myself by my response. Very quickly let's go to Bertrand and then Milton and then we'll go back to making our list. Bertrand?

Bertrand?

Bertrand de la Chappelle: Yes do you hear me?

Chuck Gomes: Yes I do now.

Bertrand de la Chappelle: Yes, two points. Regarding the example, we are really talking in the document about violence lawless action. It's not only lawless action.

So the argument that it can be lawless in one country and not - and according to the law in others is not relevant here. We're talking about the expression violent lawless action we'll come to later.

I've seen in the Chat that Milton has mentioned a - the example of kill the Jews. I wanted to use a .killhindus or .killmuslims or whatever.

I'm sorry in as much as we can defend free speech in whatever way, I do not see that this could not be contrary to international norms. And this is clearly inciting to violent lawless action. So in this case it's a topical example.

The second point is regarding Robin's comment regarding a hodgepodge of national laws. I want to make something very, very clear here that she's absolutely right.

The purpose is not to introduce the obligatory respect of every single national law by the TL - by a TLD string.

And I don't want to speak on behalf of the GAC here but as far as I'm concerned and positioned for France the system that we want to put in place does not amount and should not amount to giving basically or requesting from the GAC a veto right to a string given to any single government. This is clearly not the purpose.

What we're trying to handle is on the one hand the cases where the string is clearly universally or objectionable, whatever the criteria are. And we can discuss that.

And on the second hand how to handle strings -- and this will come to the universal resolvability issue -- how to handle strings that are illegal for whatever reason in one country but could nonetheless be considered acceptable at the global level or not.

So it is not about forcing every single national law on the common international global root. I don't speak on behalf of the whole GAC but I don't think that the whole GAC would consider that this is the position

they're starting from. I think it's very important to make that clear from the onset.

Chuck Gomes: Thank you Bertrand. And now I'm going to very quickly call on Milton and then Andrei again. And then let's go back to making our list and save the discussion for a little bit later in the call. Milton?

Milton Mueller: Yes I want to find out better when you talk about making a list what exactly you're talking about. Maybe I won't need to intervene here but you're going through as I understand it the proposal by the staff for implementation and asking if people have any problems with it, is that correct?

Chuck Gomes: Yes identifying particular elements where they might have a problem, yes.

Milton Mueller: Okay. So let me just say that I'm really confused now about the position of the GAC when they are identifying the problems that they have. And maybe this can be clarified.

So I heard (Frank) say very clearly that there is no internationally agreed standard of morality and public order.

And now I've heard Bertrand say that there are internationally agreed norms. And I don't find myself understanding the distinction.

If the GAC believes that there are internationally applicable norms of morality and public order then why did they object to this procedure?

Chuck Gomes: Let's come back to that. It's a very valid question. Let's get back to our list. But before I do that let me give Andrei a chance to get in the queue here.

Andrei Kolesnikov: Thank you Chuck. Somehow I was disconnected exactly at the minute I have to speak. So basically this discussion identifying the issues and somehow related to the (where) Bertrand was.

So if there is no international norms nor laws why don't we move to the next step and define the (perfect) security levels and probably status which can be internationally accepted for example as universal experts who can object to the TLD string.

I see that those experts are much closer to the governmental environment, governmental level rather than to the panel of the international experts. Because most of our (unintelligible) at this conference call are (unintelligible) government. What's this noise?

Chuck Gomes: Yes I don't know. If you're not talking you might want to put your phone on mute in case the interference is coming from your phone. Go ahead and finish Andrei.

Andrei Kolesnikov: Yes I see that those experts which I've referred to are much closer to the governmental level, governmental environment rather than to the panel of international experts.

Because most of us that discover international experts are not representing the governments and all the desires of local government. So maybe this issue should be addressed somehow to the

governmental institutions, not to the GNSO community in general.

Thank you

Chuck Gomes: Thank you Andrei. Jon did you still have your hand up? John Nevett?

John Nevett: I'm sorry. I need to take it down.

Chuck Gomes: Thanks. Okay now let's proceed and very quickly just let people identify if there's an issue. You don't need to explain why you have an issue at this point, defend it or argue against it or whatever.

But let's go to Section 3123. And hopefully you have that in front of you so I don't need to read it for everyone.

Is there - are there any elements of that paragraph that anyone has a concern with? Just raise your hand if you do and I'll call on you?

So at least for right now I'm assuming that that paragraph is okay.

John Nevett: I'm sorry Chuck I can't - when you say 3123 you're talking about Roman numerals in this or are you talking about the document that I don't have it?

Chuck Gomes: Yes the terms - there's a couple ways you can get to it. You can go to Mod 3 of the new gTLD recommendation, section 3123 or in the Appendix A of the Terms of Reference. Those excerpts are put into Appendix A so that they're easy to find.

John Nevett: Well let's not assume nobody objects until we can actually find them. You might want to move on though until we've looked them up.

Chuck Gomes: Okay.

Man: It should be on your Adobe screen if you scroll down about halfway into the document.

Chuck Gomes: Okay in the meantime Avri?

Avri Doria: Yes thanks. I'm - I guess I have issue with manifestly unfounded.

Chuck Gomes: Okay.

Avri Doria: And I did read, you know, this section. And I understand, you know, the (Potter Stewart) clause that says the venerable one will recognize it when they see it.

But still the notion of manifestly unfounded is sort of troubling to me. Because for some of us none of it is well-founded and to some people everything will be well-founded. So I have trouble with that as a phrase.

Chuck Gomes: Thank you Avri. Anyone else have anything on Paragraph 3123?

Mary Wong: Chuck it's Mary. I do. And one point was the point Avri just raise. And the other one is something I don't want to get into now but because the QuickLook procedure document is so interwoven with the specific grounds that really is the other reason for my concern. And I can explain that later.

Chuck Gomes: Okay thank you Mary, got that. And then we have Avri is your hand still up? I guess not. So anything else on Paragraph 3123?

Bertrand de la Chappelle: Chuck, this is Bertrand, just a very quick comment that goes all through the text. One of the problems we have is the use and how we use the notion or the expression morality and public order.

So of course everywhere we use this very expression there might be concerns. In the case of GAC submission there is this notion of sensitivities.

In the more general term there could be a replacement expression of public interest objections or so. But apart from that it's a more general cautionary note regarding the term of morality in public order which in many respects is not the right expression for the reasons we've already mentioned.

Chuck Gomes: Thank you Bertrand. I don't see any other hands. Anyone else on 3123? Okay then 313 has a couple excerpts there that are pretty straightforward, I think more process procedure orientated and the selection of the dispute resolution provider. Anyone have any concerns about that section?

Man: Sorry, what point again?

Chuck Gomes: Excuse me?

Man: Yes just very quick I'm I've always had a problem with the selection of the International Chamber of Commerce as the arbitrator of free expression rights.

I'm wondering how this selection was made. I don't understand the connection between the ICC and morality and public order.

Nothing against the ICC, but it's a business organization. It has no particular expertise in either freedom of expression or morality and public order. So I'm just wondering how that's justified?

Chuck Gomes: Okay and we'll come back to the question later. Konstantinos?

Konstantinos Komaitis: Yes I basically just want to say that I'm stating exactly the same concern for reasons that I can explain later.

Chuck Gomes: Okay. Thank you. And Mary?

Mary Wong: Hi. My concern is similar but not entirely the same. To the extent that we're using the international Center of expertise of the ICC, what I wanted to ask -- and I don't know if it's within the brief of this group -- is that because there's some GRSPs that provided some detail as to who the panelist might be and what the selection processes might be.

I think it will be helpful if the ICC could indicate if they were going to do that and if so when.

Chuck Gomes: Okay. And not seeing any other hands. Anyone else have anything in Section 313? All right...

Bertrand de la Chappelle: Chuck?

Chuck Gomes: Yes?



Bertrand de la Chappelle: This is...

Chuck Gomes: Bertrand.

Bertrand de la Chappelle: ...Bertrand. Just to reiterate something that is always made as a confusion, it is not the International Chamber of Commerce. It's the Arbitration Center which is a separate structure inside which is not purely commercial and which I think is being used in a very broad sense for various arbitration disputes. So it needs to be explored further because I think most people misunderstand the distinction.

Chuck Gomes: Okay thank you. Let's go on to Section 315. Now it has to do with the independent objector. And of course that in itself is a fairly involved process that has a lot of elements.

And our focus isn't so much in this group on the independent objector process itself but as it relates to Recommendation 6 and the implementation of that.

And let's take a - that particular Section 315 -- there are two paragraphs, one fairly long -- and see if anyone has any concerns in that area. Bertrand is your hand still up?

Bertrand de la Chappelle: No, no sorry.

Chuck Gomes: Okay Robin?

Robin Gross: Yes thanks. I'm concerned about this concept of independent objector who's going to - I mean it sounds like some kind of morality czar to me who's charged with defending the morality in the DNS.

And, you know, it seems to me that if nobody has objected, if no governments have objected, no one has objected, you know, the idea that we need some special independent morality czar to raise the objection for us I think is a bit over the top. So I object to the concept of an independent objector bringing these kinds of objections.

Chuck Gomes: Thank you Robin. And please refrain from defending your concern at this point in time. We'll come back to that. Andrei?

Andrei Kolesnikov: Yes I completely agree. I don't like this idea. It's all - it's a moral czar. It will not be accepted but most of the community and also so most likely will not be accepted by many governments. Thank you.

Chuck Gomes: Okay Mary?

Mary Wong: Similar concerns Chuck.

Chuck Gomes: Thank you Mary. And Avri?

Avri Doria: Yes just a quick question. Would the independent objector's objection be able to be deemed manifestly unfounded?

Chuck Gomes: That's a good question. Thanks Avri. No it's a really is a - I'm laughing but it is a very good question. So please don't interpret my interpret my laughing as minimizing your question because I think it's a very good question.

Marilyn Cade: Chuck?

Chuck Gomes: Yes.

Marilyn Cade: It's Marilyn. I just wanted to announce I'm here and tell you I can't raise my hand because I'm on a phone but may I make a comment now?

Chuck Gomes: Yes Marilyn go ahead. And then you'll just need to let me know when you want in if you're not in...

Marilyn Cade: Sure.

Chuck Gomes: ...Adobe Connect.

Marilyn Cade: Sure. I'd like to agree in concept with the concerns that have been raised by Robin and Andrei and by Avri I guess as well.

I do think it's very difficult to identify a morality czar. So the idea that we can find an independent objector who is just sort of floating out there and determine the need to act on the - in the best interest of the public raises all sorts of questions of which part of the public, et cetera.

Chuck Gomes: Thank you Marilyn -- appreciate that. Anyone else on Section 315 and the independent objector idea?

Okay there's a one sentence paragraph just before Section 342 in the appendix of the terms of reference that just basically says for a morality and public order objection, the applicable, the suit resolution

service provider rules are the rules for the expertise of the International Chamber of Commerce.

So of course that obviously comes back to the concern about that Milton raised about the ICC, Milton and Konstantinos I think. So I don't think we need to spend any time on that. It will relate obviously to the selection of the provider in that case which is already identified. Evan?

Evan Leibovitch: Chuck I just wanted to - I don't know if it's dangerous at this point to broaden it. At-large had a generic problem with what we call the outsourcing of making this kind of judgment that it didn't really let ICANN off the hook to simply outsource doing something that shouldn't be done in the first place.

So whether it's done by ICC or any third-party we had a problem with what we saw it to be outsourcing of moral judgment just in general.

Chuck Gomes: And Evan that was the ALAC in general that had a problem there?

Evan Leibovitch: That was part of the At-large statement that came out of the summit and was a formal comment to DAC too I think.

Chuck Gomes: Got it, okay. Thanks. I just wanted to clarify that so I could note it. Thanks a lot.

Okay going on to 343 and here is where we - this has been referenced already by Bertrand at least.

The - 343 is a critical part of the criteria as proposed in Applicant Guidebook Version 4. And as Bertrand mentioned before there are

three elements that start with the word incitement and are common at least across the jurisdictions that the ICANN staff and the experts look at from different countries of the world.

And then there's a fourth one that's a little more broadly stated. Let me just open it up. And I see hands already. Avri?

Avri Doria: Hey yes, thanks. Mine is actually contrary to perhaps positions I've taken elsewhere. And I have trouble with the incitement to a promotion of discrimination based upon race, color, gender, ethnicity religion or national origin in that I wonder why a narrower interpretation was taken of who shouldn't be discriminated against.

For example the French including disability and sexual preference and then there are other groups.

So while in general principle might have problems with the whole set of rules, if there are such incitement rules for discrimination I think the list is too narrow. Thank you.

Chuck Gomes: Okay. One second, I want to write myself a little note here. Okay and then we have Mary.

Mary Wong: Thanks Chuck. I have for the moment two concerns with this paragraph. One is a language issue because if you look at where it is here in DAC, it says general principles of international law for morality and public order as reflected in the agreements.

Bertrand's already alluded to this. But that's a different formulation from Rec 6 which talks about legal norms.

And without getting too technical or too much into international law this is part of the terminology that as we get on with our discussions we really, really need to agree on and clean up.

The second concern I have is really with the three grounds. Because the way I read the explanatory memoranda there were experts consultant that did not recommend there to be specific grounds.

So I am just wondering if this is something we should look at. I think we should because it seems that there wasn't an adequate explanation as to why those specific three grounds as opposed to what other experts recommended to be included. Thanks.

Chuck Gomes: Okay thank you Mary. And anyone else on this area?

Now by the way -- and I mentioned this early on but I should remind people -- you're welcome to raise not only issues with that text that's here but also if you think something's missing you can point that out as we are doing this as well.

Anything else on 343?

Okay. Going then to - well then we just have the new gTLD recommendation Principal G which was added there. The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law. I think we're all familiar with that.

What I'd like you to - okay Bertrand? Your turn Bertrand. Bertrand are you on mute?

Bertrand de la Chappelle: Do you hear me?

Chuck Gomes: And now I do.

Bertrand de la Chappelle: Yes well this seems to be a problem. I was not on mute. Anyway I want to just highlight the fact that this sentence is a good illustration of the proper use of the expression internationally recognized principles of law.

Chuck Gomes: Wait...

((Crosstalk))

Bertrand de la Chappelle: Because freedom of expression right...

Chuck Gomes: Tell us what sentence please? What sentence are you referring to?

Bertrand de la Chappelle: That Principle G.

Chuck Gomes: Oh okay. Thank you.

Bertrand de la Chappelle: And so freedom of expression is clearly an internationally recognized principle of law. So this is okay.

But morality and public order concerns are not internationally recognized principles of law. That's the typical distinction that I wanted to highlight in the beginning.

Chuck Gomes: Thank you. Sounds like we have an echo now. So okay anything else on that?

Now then I'd like you next to look at the flowchart that's in Appendix C if you're not familiar with the process the way it is outlined.

Now essentially it's probably covered by our previous discussion but I did want to give opportunity in case anyone would like to talk about the flow of the process in any way.

Do you have any concerns there or any questions there? This is the process as proposed in Version 4 of the Guidebook. Okay Evan?

Evan Leibovitch: I just want to note that the whole possibility of a role of the independent objector is not I believe in part of this flowchart but is another part of it.

This is the specific part I guess that had the (mapo) based objection, the possibility of a sensibility shall we say, based objection coming from the independent objector is far further down the process if I recall.

Chuck Gomes: Yes okay thanks for thanks for calling attention to that.

Anyone else?

Okay then let's go back then and we'll proceed sequentially through these.

Now my suggestion -- and I'm open to discussion on this -- my suggestion is with regard to international principles of law and the



issue that Evan raised right at the beginning is that we defer discussion on that to next week when we have the expert on.

Does anyone have a problem with that? please speak up if you do?  
Okay and I see Bertrand you have your hand up.

Bertrand de la Chappelle: Yes I do. I just wanted to make one comment regarding the flowchart because the flowchart is dealing with the process of the objection itself.

There's one element we haven't discussed that would be probably important is whether the positioning of the objection for those issues in the general workflow is appropriate.

And in particular if there is a real concern regarding a string I just want to insert in the discussion here that it would be probably best to have this addressed as early in the process as possible instead of launching a whole range of discussions with the applicants that would end up with the string itself not being accepted.

So I just wanted to flag this at that level. We might have to address when in the whole process objections regarding the string on that basis would be handled. Thank you.

Chuck Gomes: Thank you. Okay now I'm not hearing any concerns with deferring the overall topic of international principles of law and the different ways of expressing that that have come up several times in the discussion. We'll defer that to our next meeting.

But let's go to the items that I've listed here and starting with 3123. And this one actually covers several of the items because the term is used over and over again and it's in the GAC letter to the board as well.

And that's the use of the term morality and public order that Bertrand raised when we were talking about 3123.

And let's spend a little bit of time talking about that. Bertrand I think gave some rationale for that before. He can add more as well as others that would like to.

But in particular is there - does anyone see - we've heard the concerns about the use of those terms. Is there a way to fix that in the Guidebook? (Anthony)?

(Anthony): Hi Chuck. I would just like to ask a question that may be interesting. We are talking about the string itself correct, not any content within the string or content in the second level domain that might be inferred from this string? It's just the string itself, is that correct?

Chuck Gomes: Yes I think that is correct. But please Kurt, Amy, Dan correct me if I say - misstate anything. So let's - I think that is correct (Anthony).

(Anthony): Okay so that's just an important point. I mean I don't think - I think we should be careful about looking at a string and thinking oh well that's likely to have this or that sort of content.

And I think we should just make sure that the string itself is what may or may not be objectionable. So that's my comment. Thank you.

Chuck Gomes: Thank you. Okay. Does anybody - I mean - and I think do we have anybody besides (Frank) and Bertrand from the GAC on the call? And any of you are welcome.

Do either of you see a possible way that the - of changing the implementation process and the use of the term morality and public order that might at least partially satisfy some of the GAC's concern or is that not the way to approach it? Any thoughts on that?

(Frank): Chuck I I've been trying to put my hand up. I'm not quite sure how I put my hand up in Adobe. I was going to address exactly that point. It's (Frank) here.

Chuck Gomes: Go ahead (Frank).

(Frank): The issue has come out of - the problem with the phrase is not the phrase itself but it's a proposed origination that is that it comes out of some form of international law.

I think that's a definitional issue. I think if we were to find a mutually agreeable definition of morality and public order that didn't rely on international law then the problem would disappear.

In other words it's where the phrases come from rather than phrase itself that I think raises the problem.

Chuck Gomes: Thank you.

(Frank): If that makes any sense.

Chuck Gomes: Yes I'm just writing that down, just a second. Okay Mary?

Mary Wong: I just had a question. At the risk of going down historical roads that nobody else wants to I was wondering if those of you who were involved in the process prior to the GNSO's final report can give a brief summary as to where the phrase morality and public order came from it says in Rec 6 and so forth?

Chuck Gomes: Yes and I'm having been involved in that process but it's been a long time. I have to be careful. Maybe somebody else can help me out.

But I - it is - I mean the terms of morality and public order did come out of some of the international documents that the GNSO PDP...

Mary Wong: Right.

Chuck Gomes: ...working group did do.

Mary Wong: I guess I should clarify Chuck. And I guess, you know, yes the phrase does come from those agreements some of which have been referenced in the various documents.

I guess my question probably more properly asked is whether the - that particular phrase, morality and public order was actually dissected in some of the discussions?

So for example morality and public order are not exactly the same thing or was this simply taken as a phrase and then recommendations worked out after that?

Chuck Gomes: I don't recall and there are several people on this call that were also involved us really dissecting those terms. Anybody correct me on that? I don't think we did.

Mary Wong: And the reason I'm asking too is that since we are going back and looking at it then it might be something that we discuss.

And this goes back to (Frank)'s comment as to whether or not there would be any sort of common definition.

It sense that there would not be but maybe we could look at either replacing it perhaps along the lines of what Bertrand has suggested or some other course of action?

Chuck Gomes: And I really encourage everyone to think about possible replacements that might alleviate a little bit of the concern in that regard.

I appreciate (Frank)'s comment though that it's not so much the terms although a common definition is needed as he said. But it's the, you know, connecting the concepts of morality and public order to international law. So that point was well taken. (Anthony) is your hand still up intentionally?

(Anthony): No it's not Chuck. Pardon me.

Chuck Gomes: Thanks okay. By the way (Frank) did you figure out how to raise your hand if you look at that...

(Frank): I did.

Chuck Gomes: ...mic? Okay.

(Frank): Yes Chuck. Thank you very much. I did.

Chuck Gomes: Okay good. I thought I should have said something earlier. I'm sorry.  
So okay, very good.

Any other - so be thinking about ways that maybe we can better, you know, maybe use other terminology in certain places in this that might help a little bit.

We don't have to come up with those right now but I think that would be helpful if people are thinking in that direction.

The next thing in my note shad to do with the quick look procedure that Mary brought up. Mary you want to talk a little bit about that?

Mary Wong: About the quick look procedure?

Chuck Gomes: Yes you had some concerns with that, right?

Mary Wong: Right and I have like about 12 windows open.

Chuck Gomes: Okay.

Mary Wong: I think the first thing was what Avri said, this question of what manifestly unfounded means. Is there a standard for it?

And I don't know if anybody else has comments about that. Maybe that's something we should deal with first because I don't Avri and I are the only ones who have concerns about the standards.

Chuck Gomes: Okay. Now again, I'm a little bit hesitant to put staff on the spot but we specifically invited some of the implementation team including legal staff to join us if they could so that maybe we could hear their position with regard to how they came up with the term or maybe have some clarity there.

Anybody from staff want to comment on that, what does manifestly unfounded mean? Is that a term that can be defined somewhat objectively or is it a subjective judgment call on the part of the experts that are doing the evaluation?

Amy Stathos: Chuck this is Amy.

Chuck Gomes: Thanks Amy.

Amy Stathos: So, you know, haven't really thought about defining it. I mean yes the goal of the quick look was to weed out those types of claims that would be frivolous.

That was the goal of the quick look based on public comment coming out of the process. Manifestly unfounded was something that was meant I believe to focus on that to out to weed out frivolous claims if you will.

I don't know at this point whether there can be more definition put to those terms. But I'm certain anybody's willing to consider if there's a more definite standard to put on those we could certainly consider that.

Chuck Gomes: Avri you have any thoughts there?

Avri Doria: Unmute. Not at the moment. I mean I'm thinking about it. But basically you - it all comes back to the subjectivity problem where you're basically relying on some subjective jurist or as I say wise man or woman somewhere be the one to make a subjective determination and that - where I see everything that we've got in this boiling down to, and I'm just concerned about that.

So I think that those manifestly unfounded is really a ambiguous and it's so ambiguous that it really doesn't say much. And but it opens a big old door. Thanks.

Chuck Gomes: Well what about if that - those two words were eliminated and it just said an objective found to be an abuse of the right to object may be dismissed at any time? Is that any better or is it still the same problem?

And while you're thinking Mary go ahead.

Mary Wong: Okay I apologize if some of this is slightly scattered. I guess one thought I had was the quick look procedure itself, I understood from reading it that certain things still need to be ironed out because there's the use of the word could and therefore.

And one question there was define the nature of such a thing, particularly given that the panel itself that's recommended as making



that determination. And then that raises questions of appeal and so forth. That's one thing.

The other thing is with regard to if it is going to be the panel itself that makes that determination -- and I'm not sure everybody's on board with that -- why option might be to say instead of saying it is or is not meant to be unfounded simply to say that the panel considers the complaint to be the bounds of its (authority) to be within what the skill resolution process is designed to deal with.

Whatever the words are that we come out of the end, it seems to me that's maybe practically speaking all lead us to the same place. But it seems to start off from a less negative boundary driven determination.

Chuck Gomes: Thank you Mary. And I appreciate the thinking going on that to see how it can be better worded. I'm sure staff does as well. Milton?

Milton Mueller: I it sounds like we're having a substantive discussion of the manifestly unfounded issues so I'm going to weigh in on that.

I just want to express support for the idea that we need to recognize that there will be frivolous objections and that there have to be some written in procedures to filter those out.

I think it would be extremely naïve and irresponsible that if you create in a competitive business environment and also an environment that is rife with people abusing regulatory processes to shut up people who are their critics or who they don't like that we have to recognize that there's going to be frivolous and manifestly unfounded objections.

So that's good. I think the objection to this wording is coming from the fact that there seems to be a vacuum in terms of how we determine that.

So I like what Chuck suggested that if it is determined that the purpose of the objection is to create, you know, simply to harass an applicant or to censor them in violation of their free-speech rights or something like that that there would be grounds for just tossing it out.

However that creates a whole another layer of bureaucracy. But in general I'm happy with the fact that this was recognized.

Chuck Gomes: Thank you Milton. I see Avri in agreement with that statement. Any other suggestions on that? I mean good discussion by the way. I think this is constructive discussion that if I was staff I would be very helpful for that and I think I'm sure they are. So any other comments on this area?

Okay. Let's go on and then to the next thing I identified here raised by Milton and Konstantinos and Mary use - the use of the International Center of Expertise of International Chamber of Commerce. And then Bertrand also weighed in on that. Let's talk about that a little bit.

Milton already, you know, expressed his concern that this is a commercial organization. Bertrand expressed that maybe not so commercial as it appears. But let's talk about that. Who would like to be on the queue there?

Staff want to comment at all in terms of why this group was selected? Anything like that might be helpful too. Evan?

Evan Leibovitch: Again I wasn't going to get involved in the issue of whether or not any particular dispute service provider was a good idea but whether or not the entire concept of farming it out was a good idea.

When we had our discussions within At-large on this in depth we basically came to belief that this was simply ICANN trying to pass the buck and toss this off to some third party as a way of absolving itself of the responsibility of actually making more, you know, relative moral judgments that, you know, this moral claim that this TLD goes in is more worthy than that objection that it doesn't go in.

Chuck Gomes: Okay.

Evan Leibovitch: That this entire idea of having to make moral comparisons was not alleviated simply by farming it off to a third-party.

So I just want to toss in my 2 cents that rather than the issue of, you know, is the ICC any better than, you know, getting a panel of ethics professors or whatever, that the entire concept of tossing this off to a third-party because ICANN doesn't want to dirty its hands with what's really a very messy issue is a problem unto itself.

Chuck Gomes: Thanks Evan. I have a question for you. Now is your position on that, does it only apply to this because it's "a moral issue?"

Because and the reason I'm asking that is because the objection process is referred to independent third parties for all four types of objection, not just morality and public order.

Evan Leibovitch: Understood, but this particular one gets into the field of, you know, having to have someone dispute whether or not your sensitivities are more important than my sensitivities.

And, you know, just - and we just came to the general conclusion that putting ICANN in a position where it or a group that it had to subcontract to made such a decision was going to be problematic in and of itself.

Chuck Gomes: Now and usually I'm going to avoid inserting my own personal comments but in this case if you'll forgive me I'll do it.

If I was a board member I would a lot rather have some expert jurists evaluate something like this in an area where they had an experience in it.

But it - and it still comes down to me when before something gets in the root, the board is still involved. But that's just my own personal opinion and I respect the fact that we can disagree on that.

Let's go to Bertrand.

Bertrand de la Chappelle: Do you hear me?

Chuck Gomes: I do now.

Bertrand de la Chappelle: Yes okay. Just one point unless I'm mistaken I've not seen in the DAG or in the discussions an indication or a clear indication -- and I may be mistaken -- but a clear indication on whether the

recommendation of such a panel wherever it is is binding or not on the board.

The reason why I ask this is we have to remember that actually the board has to make a positive decision to accept a TLD in the root.

And so we have not sorted out as far as I know whether if for instance whatever panel says this is contrary to international norms or we consider that it is not appropriate.

The board could say yes we do consider that it should nonetheless get in. Or on the contrary if the panel says we see - we don't see a specific problem than the board says well actually we still do for whatever reason. So the question of whether the panel recommendations are binding are not. Second - is important.

The second thing is we clearly have a discussion that was going on on the Chat on the notion of super majority or not for the board for instance either to overcome the decision or the recommendation of the panel or to on the contrary overcome the objections that would be expressed by other actors.

Maybe this notion of a supermajority is something that could be worth exploring. And I tend to agree with Milton in as much as we can envisage useful input from a panel of experts on those issues particularly to have a clear understanding of what the legal norms at the international or national levels are, ultimately it remains a decision that the board has to make. So it's important to keep that in mind I suppose.

Chuck Gomes: Bertrand for the sake of any who like me because I'm leading the meeting -- it's difficult for me to keep up on the Chat -- but for others who may not have got the discussion on the Chat could you explain a little bit what you're talking about with the super majority and how that would come into play and what we're talking about please?

Bertrand de la Chappelle: Well actually if I understood correctly the notion was raised I think by Milton and taken up by somebody else of this notion that in certain cases related to those let's say sensitive strings maybe the board should take a decision to put a string in the root with a super majority either to endorse a string in spite of objections or to overrule the recommendations of the panel or the objections.

And so this notion that there are cases when the board may have to show that there is a clear large majority to support for instance entering a string in the root even if it raises some local even national concerns is something that could be explored.

And I could come back later to try to clarify the type of cases where this could apply. But I think it's worth maybe exploring a little bit more.

Chuck Gomes: Thank you and I again I appreciate the people thinking of a possible solution. But I do want to ask one question for clarity there.

So would the - could the concept be that it - a two - it would require a 2/3 vote of the board overrule a decision by the expert panel either way.

In other words maybe they approve the string and the board goes against that recommendation or the board, they deny a string and the board could approve it.

Is that - I mean does that fit in what you're thinking about or others that are thinking about that?

Anyway I'll just leave it there. I don't want to monopolize the time there. Let's go to (Anthony).

(Anthony): Hi Chuck. Thank you very much. I just wanted to - I don't know (if correct) but certainly not my understanding, something that Bertrand said.

While I like the idea of the super majority and I believe that it is ultimately the board's responsibility to decide on this sort of thing (unintelligible) there's a big problem, (I'd also) like to note that it is not up to the board to accept the new TLD. That is something that the ICANN community did by putting together the new gTLD program.

And it is up to the board to agree to that program. And once that program is in place assuming that it looks somewhat like it does now, then what we have are a series of evaluation.

And absent any problem of which we're discussing one, that application will go ahead and will be put into the root.

So I don't want us to think that what we're doing is putting together a process where the board is going to pick and choose between the different TLDs that they like. I do not believe that's the case.

So what I would say, although I like the super majority idea, it really should be to have a super majority to deny a string rather than to affirm it. I do not believe that the board's role here is to pick and choose different TLDs. Thank you.

Chuck Gomes: Thanks (Anthony). Now correct me if I'm wrong but is the concept of super majority of the board being thrown out there as just applying to morality and public order objections, strings, not generally? Is that correct?

(Anthony): That's certainly my idea. And the reason that it would be so is simply because the process that was in place has foundered on the objections of the Government Advisory Committee which doesn't like how it's formulated.

And obviously we are dealing with a subjective issue here. And so it's not really very amenable to objective standards in which case it pretty much needs to be overwhelming that there is a problem with a particular string before it can be denied. So I would say yes, this is only for this particular kind of objection (type).

Chuck Gomes: Okay thank you. Now both Bertrand and (Anthony) have raised a very fundamental question and I briefly see that some discussion is going on on the Chat as well.

And either now or sometime in the very near future I think it's fairly critical to our discussion in this group to get an answer to the question.



And I'll rephrase the question this way. Does the board, assuming its new gTLD applicant - application go through the entire process and everything's passed and approved and ready for delegation, is an action of the board required for that name to go into the root?

Kurt Pritz: I think so.

Chuck Gomes: Okay thanks Kurt. I appreciate that. And so and I thought that was important based on what your assumption was (Anthony) to make sure that we're all on the same page there.

(Anthony): Can I ask a...

Chuck Gomes: I'm not advocating one way or another but that was my understanding as Kurt stated.

(Anthony): Can I ask a follow-up to that of Kurt?

Chuck Gomes: You're breaking up a little bit. Say that again please (Anthony)?

(Anthony): May I ask a follow-up question?

Chuck Gomes: Oh yes you may.

(Anthony): So Kurt as I understand is the whole process is to evaluate and qualify the different applications. So is - does the board have absolute discretion on what they can say yes or no to?

Kurt Pritz: Well this is Kurt. So first I didn't say I think so. And I think the person that I said I think so doesn't sound like me.

Chuck Gomes: Okay.

Kurt Pritz: So I think, you know, the board has yet to define its role in the new gTLD process. You know, certainly one form of board role would be to look at the evaluation that's taken place, verify that it was according to the published process and therefore approve the results of the process.

So for example each board meeting it could take the applications that are accepted and rejected during that time period and affirm those results or it could just take the ones that are approved and direct those to be delegated, or the board might cut out for itself a more, you know, a more active role.

So certainly the board has discretion to do what it wants in these matters. And I think the first step will be for the board to make clear what its role is going to be in approving these delegations.

Right now as you probably know it considers very carefully applications for request for delegation or re-delegation that primarily take place in ccTLD.

And certainly a new type of process is required for the board to be able to consider the higher volume of delegation requests that are going to occur with the new gTLD process.

So does the board have discussion? Sure it does. And but the board - the discussion I've seen on - among the board indicates that it

recognizes that, you know, some sort of process that enables it to handle the volume of requests is going to be required.

Chuck Gomes: Thanks Kurt, appreciate that. And so it sounds to me like you mean there certainly would be good timing if this particular group came forward with some recommendations like some of the things that we've tossed out.

Going on -- and we're running out of time -- we've only got about seven or eight minutes, so I'd like to get to the other people in the queue. And I think (Frank) you're next.

(Frank): Thank you. Thank you Chuck. I just wanted to return to the issue of outsourcing because I don't know if that was completely put to bed.

And just a comment, not from a GAC point of view but from a New Zealand perspective perhaps, the it is perfectly acceptable in my view for the board to seek expert advice externally. And don't think that should in any way be confused with outsourcing.

Because the board in the end has all - and I think Kurt has covered this admirably actually, that the board in the end has total discretionary of its actions but it always has legal liability for its actions. It cannot escape that. And it shouldn't try to - it cannot contract out of that.

So the question of outsourcing I don't - I think is a complete red herring. That's all I wanted to say.

Chuck Gomes: Thanks (Frank). Konstantinos?

Konstantinos Komaitis: Yes Chuck I'm not sure whether we moved from the International Chamber of Commerce discussion but I would just like to actually agree with what Milton said is I'm really right now looking at the Web site.

And actually it says that the International Centers for Expertise exactly the same way it's phrased in Appendix A is there to have built up unique access to experts in every conceivable subjects relevant to business operations.

So it appears that it is linked to commercial interests. And I would really like to express my concern about such a sense that no matter the actions that they have the panelists dealing with (unintelligible) and morality and public ordering the national offers many faces.

They can - they may have international law experts on economic law or any other business related or commercially (astute).

But I am not sure whether they are the ones, the appropriate forum to deal with matter disputes. And I would like to ask ICANN staff to provide more information as to the choice of those centers. Thank you.

Chuck Gomes: Okay and we'll - ICANN staff - well I'm not going to give them time right now because I want to get the people in the queue, but that would be helpful information.

And I would also challenge those of you who aren't crazy about the ICC unit there to certainly provide recommendations with regard to alternatives for that body. And let's go on to Milton.

Milton Mueller: Yes just to quickly follow-up, the alternative that I've been advocating to the ICC is a board decision.

That is - and this would only apply Chuck in response to your very good question about other kinds of objections.

In my mind with morality and public order we were dealing with a new form of global content regulation.

And that's a very faithful and very important kind of global regulation that is different from the other kinds of objections which are less significant in their free expression and human rights concerns.

So what the alternative is, is what I'd like to see -- and I think this is a reasonable middle ground -- because it's not my ideal situation in which a lot of these concerns simply wouldn't happen -- but if you are going to raise issues about sensitivities and content regulation and censorship of top level domains I want the board to be the direct and ultimate final arbiter of those.

And I want the board to have to veto a TLD only with a very high super majority, something on the order of 75%.

In that case number one you're satisfying this criteria which we keep seeming to forget about, the objectivity and predictability of the process.

You cannot say oh, you know, we can go through this long incredibly expensive process of meeting all these criteria and satisfying all these

objections. And then at the end of the day the board can just do whatever the heck it wants.

As one of the commentators on the bulletin board said we we've been moving away from that process because of the disasters that it's caused so far.

And we want the process to be predictable and indeed that's part of the policy. That's hardwired into the policy.

So I would like to see people who want to raise these kinds of content-based objections to raise those objections and then see if they can get 75% of the board to support them.

If the string or whatever is associated with it is so repugnant that, you know, the super majority of the board agrees that it just shouldn't exist, then even though again I don't like that kind of censorship, I don't think it should exist I could accept that as a reasonable compromise.

Chuck Gomes: Okay thank you. Now we're very close to out of time. I'm going to jump the queue a little bit because - and let one person who hasn't spoken yet speak. And then I'll come back to Mary and Bertrand. And then we're going to have to call it quits there so I'll ask each of you to be brief.

Richard Tindall, would you please join the queue?

Richard Tindall: Yes thanks Chuck. I just wanted to make a simple observation about process. I'm wondering if it's possible for us to have two calls per week instead of one?

Chuck Gomes: That's a good suggestion. Anybody opposed to exploring that? And we may want to adjust - make the times different so that it's not late or early for the same people.

I'll ask Glen let's - is there a - let's see Thursdays I think are typically bad days because of...

Glen de Saint Gery: Chuck?

Chuck Gomes: ...lots of things going on. Yes? What's that Glen?

Glen de Saint Gery: Sorry I was on mute. Would you please repeat your question?

Chuck Gomes: Yes the suggestion was made that we may want to consider two calls a week. Could we do a doodle and let's try and pick a different - if we do a second day of the week let's try and pick a different time of the day so that the same people aren't always really late or really early if that's possible? Could you...

((Crosstalk))

Glen de Saint Gery: I'll do that Chuck.

Chuck Gomes: Maybe on Wednesdays and Thursdays. I know Thursdays are kind of bad days usually, but if you could do that I'd appreciate it. Thanks...

Glen de Saint Gery: I'll do that Chuck.

Chuck Gomes: ...for that. And so let's go. (Frank) did you still have your hand up?

(Frank): Apologies, it's coming down.

Chuck Gomes: Okay that's all right. Mary?

Mary Wong: Hi, just a very quick follow-up to finish off this point. I think this question of the board's responsibility and whether any panelist inviting is really important because the way I read what's currently in Version 4 is either sounds like a stuck or pretty binding.

It says the findings of the panel will be considered for determination and advises that ICANN will accept within the dispute resolution process. That troubles me.

And the other thing that troubles me and that I think will require this - the board's responsibility to be resolved is that if you're talking about international law, leaving aside morality issues, we're talking about private corporation and private applicants.

And yet the - we're talking also international law where the proper forums international courts and so forth, where nations (unintelligible) there just couldn't any existing mechanism that can take care of it.

And maybe we haven't talked about this but this is a truth that we have to recognize. We're designing a process. We're designing a brand new process that doesn't recognize - that doesn't exist within the public international law regime. Thank you.

Chuck Gomes: Thank you Mary. Bertrand?



Bertrand de la Chappelle: Yes very quickly I support the distinction that (Frank) was using between expert advice and outsourcing and the whole notion of whether the panel is binding or not, the ultimate decision making role of the board. And I wanted to just highlight the following points.

One of the key elements that we're trying to address here is the situation where a string is not completely unacceptable for everybody but raises very strong sensitivities and even high national concerns in some countries that would lead that country to block it.

Therefore the question we're facing is there are two extreme options. One is to say anything should go in the root. And it is just up for governments to block which means that we will have many situations where there would be blocking.

And we haven't discussed the notion of universal resolvability which is an important notion for the GAC. And I can deal with that in more detail later on because it is not an absolute principle, it's an objective.

And the other extreme which would as I said earlier be the solution where there would be a de facto veto right for every single GAC member, for instance, as soon as they don't like one string.

None of those two extremes in my view are acceptable. And so the key challenge that we have is to find a process that can handle the cases where even when there is an objection in a certain number of countries, maybe the string will get in the root nonetheless and the country will block it and other cases where the objections are sufficiently widespread for the board ultimately to make a decision with

the super majority or not to say well all well considered, we think that the cons outweigh the pros and it shouldn't get in.

So it's about exploring this intermediary zone. And I fully agree with (Yvonne) and we can discuss it further. There is no universal resolvability today. And they're clearly will not be a universal resolvability when there are many TLDs.

However we could still have an approach that says basically there is a general objective to try to achieve as much universal resolvability as we can and the blocking of a top-level domain can only be done under specific legal processes at the national level for for instance morality and public order rules.

This is why there's a distinction between using morality and public order at the national level to take a legal decision to block a specific TLD and using the criteria of morality and public order as a general norm to prevent a TLD altogether to get in the root. Morality and public order is and should always be exceptions.

Chuck Gomes: Thank you Bertrand. And I just in closing would suggest maybe a different term instead of universal resolvability is maybe the goal might be to maximize resolvability because you'd probably never get universal. But anyway I'll just throw that out for thought.

And I want to thank everybody for excellent contributions and I think we got a lot of thoughts on the table.

Keep thinking about ways that we can develop some recommendations that maybe most of us could support and put forward.

In the meantime Glen's going to come out with a Doodle to try and find another time during the week when we could meet.

And I don't know that we're going to be able to do that this week or not. But the next - the first meeting next week at least will be devoted to - and Amy if you can arrange for the experts to be on the call next week.

And for right now let's assume that this same time will be on Monday of next week. Now I know that's a holiday in the United States.

I also know that I may not have good connectivity that day. But Cheryl hopefully you will and in case I can't (Collin) you can pick up for me.

Amy Stathos: And Chuck this is Amy.

Chuck Gomes: Yes Amy?

Amy Stathos: Yes I mean I have sent an email. I had not talked to anybody in advance of me making that offer. So we will do our absolute best to get somebody online next Monday. I just can't guarantee it.

Chuck Gomes: Yes, just do the best you can. And if it...

Amy Stathos: Yes.

Chuck Gomes: ...can't be then, that doesn't mean it has to be then. We can do it the next second meeting next week or whatever works. But...

Amy Stathos: Great.

Chuck Gomes: ...I understand the limitations. Thank you. Okay thank you everybody. Have a good rest of the day, good evening.

Woman: Thank you.

Woman: Thanks.

Woman: Chuck are you still on the line?

END