

**GNSO Council New gTLD Discussion
15 January, 2009 at 16:00 UTC**

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A list of participants can be found at the end of the Transcript

Man: We're just starting the recording, so bear with us here.

Glen DeSaintgery: You see (unintelligible) thank you.

Woman: (Unintelligible).

Man: We're now recording.

Avri Doria: We should start this meeting by trying to record attendance. Glen and Chuck, can I ask you to sort of read through the names and then have anyone add as opposed to doing a here and not here. There will be no votes at this meeting, so we don't need an exact (unintelligible). But wait...

Glen DeSaintgery: So you'd like me to read the names, Avri.

Avri Doria: Just read the names so that we have a listing of the (predominants) attending.

Glen DeSaintgery: Thank you. Avri Doria, Cheryl Langdon-Orr, Danny Younger, Chuck Gomes, Olof Nordling, Jeff Neuman, Ron Andruff, Jordi Iparraguirre, Mike O' Connor, Kurt Pritz, Dan Halloran, Tony Holmes, Craig Schwartz, Patrick Jones, Kristina Rosette, J. Scott Evans, Edmund Chung, Dirk Krischenowski, Anthony Harris, Mike Palage, Heike Jensen, Caroline Greer, Greg Ruth, Paul Diaz, William Drake, Marika Konings, Sebastian Bachollet, Mary Wong, Mike Rodenbaugh, Liz Gasster, Nick Wood, Stéphane van Gelder, Pierre Bonis, Ken Stubbs, Ute Decker, Vanda Scartizini, and Olga Cavalli

Avri Doria: Thank you. Quite a crowd.

Glen DeSaintgery: The (Carlos Aguirre) has just joined us.

Avri Doria: Okay, thank you. I must say I apologize for my voice. We're going to go through the agenda quickly. Going to go through the guidelines for the meeting. In terms of the agenda, we have various topics.

We have basically the main issue is to discuss areas at (variance) with the GSNO policy principles recommendations and guidelines. There's been a certain amount of conversation about there being areas that were in conflict.

There's also been a certain amount of feedback from the staff saying, well hold on there, not really or you don't understand or there's a good reason why we had to.

Well we've never really managed to have that conversation to have the staff basically look at those with us and basically talk about why it is as

it is. We certainly had time to ask lots of questions about how does this work, how does that work. And that's not what this meeting is about.

Man: (Unintelligible). Spanish background voice

Avri Doria: Excuse me? Okay. So that's not specifically the purpose of this meeting. It's to basically look at those issues that may or may not be, but appear at this point to some people to be in variance with principles, recommendations and guidelines.

The second, shorter item and lesser item is the GSNO past two motions that relate to gTLDs at the last meeting and I wanted to give the staff a chance to get clarification from us on those motions.

And not necessarily to discuss whether the motions were a good idea or a bad idea, but just to make sure we come out of this with both sides sort of understanding, you know, what we're all doing. So we have that.

I've asked the staff and I don't know if they're ready yet, and hopefully I'll stop talking soon, to give an overview on the comments received. Again, this is not the meeting where we're going to discuss the comments in detail. Is it a good comment, is it a valid comment, et cetera, but basically to get an overview.

Not everybody has had a chance or even necessarily will have a chance to read all hundred pages other than the staff and so I'm asking them to give us a good report on that, but I'm not sure that's ready.

And then finally, to discuss the follow up to this meeting and that contains anything from great, everything's covered, we can leave it alone to do we need to write up something on these variances? Does the Council need to form a design - I mean, a drafting team, not a design team, a drafting team to, you know, work out any of these issues?

And if so, is that something that needs to be done immediately? Or is that something that enough has been said now that we're really paying attention for next time? So those are all questions.

I don't know. Does anyone have anything to add or say about the agenda at this point? Okay, going on to the guidelines for the meeting.

First of all, we've got a very large crowd. We've got council members. We've got alternates for council members. We have staff and we have many, many advisor - I mean, observers, advisors -observers.

Now, in inviting the observers, we weren't exactly clear whether observers could speak or not speak. And what I'm asking is given the number of people, please hold off, but if you absolutely have to, do ask to be in the queue. But please let the council and the council alternates have a priority if you can.

I'm asking that we keep to the topic under discussion and that we not stray off into the many, many side topics there are that are really quite interesting and exciting also.

I'm asking people to not repeat questions and issues someone else made. And those tend take that's if it's important, I want to say it too.

I'm asking to please just, if the issue's been raised, if the question has been answered or whatever, to please leave it for now.

It's not a time to bring up new objections to the implementation plan. We had lots of time to send comments, but only understand issues as they relate to the principle's recommendation implementation guidelines.

Also I'd like to avoid discussing whether the recommendation was a good one or a bad one. We certainly had lots of time to do that. We still all have our varying opinions on whether recommendation, you know, 27 was a good or bad. But, you know, they are what they are and they've been approved et cetera.

And finally, you'll see what we get to by the end of two hours and figure out what to do next. So, any questions on the guidelines?

Okay, and we'll run as we do normally then I'll bring up an issue. Then I'll take a queue and then we'll go through the queue. And of course if they're side issues and what someone else said, we may allow a sub-queue, as it were, on that side issue. But I'd also like to minimize that so we don't start rat holing. We don't have a lot of time.

Okay, to start first, the first - and these are the areas of variance are ones that I basically heard people talking about and I wrote down and I put in front of the Council and on the wiki, you know, almost a week ago now. And no one's come to me saying oops, take that one out, that one didn't fit or, you know, I think I got one mention of something I needed to add.

So the first one on the list and starting from the top was Principle G and basically do the review criteria infringe on the freedom of expression? And that was - so, you know, so I open up the queue. Does anybody want to speak to that issue?

Perhaps it's actually best to have the staff sort of explain why it does or doesn't to start and then start the queue from there. Is that a workable way? Is that okay with you Kurt?

Kurt Pritz: Well, yes I want to - I just have a couple comments, an introduction and then...

Avri Doria: Okay, please. I apologize for not giving you the chance for that. So please go ahead.

Kurt Pritz: Oh no, that's fine. Yes, I just want to say that as you know, as you could guess, staff , and you know, across the breadth of the ICANN staff is currently in the process of preparing analysis of the public comments in determining how the guidebook can be changed to accommodate the comments that have been made through the public comments.

So that is a very intense effort that's going on right now. If you think about a lot of the public comment causing a reanalysis and some causing an examination of basic principles that went in to the analysis.

It's just not adjustments to the guide book but rather it is, you know, redoing some analysis in order - taking into account a different point of view that wasn't - that might not have been in place when the original analysis was made. So the goal of...

Avri Doria: That analysis right is sort of the analysis of what the principles recommendations mean. It's not actually changing those.

Kurt Pritz: No, of course not. Yes, so - but yes, so I just - I, you know, I'm prefacing this discussion with saying staff right now is very focused on that and, you know, taking into account every comment and trying to communicate to the community and, you know, perhaps you can help us with this, that in fact we're looking at each and every 'comment' that everyone's been looking to and there's quite a bit going on.

So in the writing you'll see coming out of this, you won't just see conclusion, but you're going to see an attempt which is very hard in the ICANN community to convey that, you know, every individual comment's been listened to.

And so, where are we? We're at a point where, you know, we published a draft and we're iterating the guide book and according to some of the comments that were received, then another, you know, another draft version will be issued

Avri Doria: Okay.

Kurt Pritz: And then another just - and then so how did we get here? You know I think everybody on the call knows that there's considerable overlap in the policy and implementation processes.

While the policy development was going on, the council requested from staff information on the implementability of certain policy recommendations. While the board was considering the policy

recommendations, both the council and the staff worked together to demonstrate the implementability of the recommendations.

And then since the board has approved the recommendations, you know, the staff has provided several briefings and taken several comments from the council and the open community on how the initial guidebook of the - how the initial guidebook might be configured and is now taking comments on how we could make an adjustment to the guidebook.

So, you know, and as part of that we've provided a couple documents indicating how, you know, the policy recommendations map to specific implantation aspects.

So I was - you know, I was looking at some of that old documentation last night where we first talked about well we've got these policy recommendations, guidelines and principles and how are we going to map that into an implementation plan.

So, here we are. We're at where we have this first draft for public comment. And I'd like to - so with the topics, you know, for this meeting give a really broad (unintelligible) out of specific questions. But, you know, really don't indicate the specific issues. So are we launched - did you start with the first question about Principle G?

Avri Doria: Yes.

//Chuck Gomes//: That was a yes, Kurt.

Kurt Pritz: Yes, I can speak Avri. So...

Avri Doria: Sorry.

Kurt Pritz: Yes, so we're - go ahead Avri, I'm sorry.

Avri Doria: No, that's quite all right first of all. I just wanted to respond that I think we all appreciate the amount of work and feedback. And I'm certainly grateful that you all were able to make yourselves available for this meeting. So yes, at the moment we're at - if we're ready to start with Principle G.

I don't know if any of the people on this call want to add more detail to that. I was trying to basically put in neutral statements or questions about the statements that I had heard from people as opposed to trying to get in the details though.

You know, sort of give you a chance to make an opening, you know, statement about, you know, how you feel the review criteria compare and deal with the issue of freedom of expression and then allow the other people on the call to comment and go back and forth on it.

Kurt Pritz: Okay, well the review criteria is really broad, so I'll talk about a couple specific instances. So for example in the development of standards for objections and dispute resolution processes, we worked with outside providers and - including those who will provide the dispute resolution service in order to develop standards.

And in each case, you know, the information provided to them was essentially cut and pasted out of the GSNO report and documentation

and specifically started with, you know, freedom of expression and that the process speaks not to curtail that.

And then talked about how some government, you know, seek to limit, you know, everything about freedom of expression has a limit on it. And ICANN in its public documents does not use the term, you know, freedom of expression because we're not - you know, are limiting it because we're not a government.

But, you know, what limits would - what limits should be put on - or could be put on the process? But - so the answer is that, you know, the roman numeral one in formulating the standard was, you know, it shouldn't curtail freedom of expression rights.

Number - Roman numeral number two in the example of morality and public order say were the treaties that the GNSO called out that should be considered in formulating the standard.

And then Roman numeral three was then the policy recommendation and in fact in the case of morality and public order, you'll see the exact wording of the policy recommendation, you know, in that standard that, you know, calls out only those things - only those items should be excluded that are recognized and enforceable under general (unintelligible) international principles or law, so.

So all of the development was targeted at that. And a lot of the writing was about principles and free speech, you know, as a preamble to doing any work on it. So I think, you know, and I don't know if there's any other of the criteria that attendees on the call want to discuss.

Avri Doria: Okay thanks. I'll take a queue if anyone does have an issue that they would like to put before Kurt on the Principle G and the review criteria. Do I have anyone? If I don't I'll thank Kurt for the answer.

Chuck Gomes: Well, Avri let me ask a question of the people on the call that I would only request a very brief answer to.

But are there - is there anyone on the call that thinks that the implementation guidelines limit freedom of expression understanding that the GSNO - what they implemented - what they tried to implement was the GSNO recommendations where obviously we did have recommendation six where some people obviously opposed.

But put that aside, in terms of what they've done, does anyone on the call think that freedom of expression was limited beyond what was in the GSNO recommendations? And just a yes answer by anybody and identify yourself would be fine.

Avri Doria: Is there anyone that would like comment?

Mary Wong: Hi this is Mary Wong from (NCUC). Can I just make a brief comment?

Avri Doria: Of course, please.

Mary Wong: Yes, hi. Chuck, I'm not sure I can give a yes or no answer. It's simply that as everybody knows, (NCUC) has a big concern with freedom of expression and with Principle G as reflected in the current guidelines.

So I think for now, we just want to say that we appreciate that the staff are looking at the issue and that in our statement and our comments,

we had asked for more information as to the research done and the expert consulted. We hope that information will be provided before the next round.

Chuck Gomes: Thanks Mary.

Mary Wong: Thank you.

Avri Doria: Thank you. Were there any other comments on Principle G or the discussion so far?

No, in which case I'll move on to recommendation one which was basically dealing with price levels not being discriminatory and there's certainly been a lot of discussion about price levels.

And I don't know whether we should actually be very careful to split this off from guidelines B, (IGB) which was recommend cost base C for different applicants (unintelligible) in the Cs. And whether those two can be discussed separately.

So perhaps, you know, those two will get combined, but basically I'll stop for now. Kurt.

Anthony Harris: I have a question.

Avri Doria: Okay, yes.

Anthony Harris: This is Tony Harris.

Avri Doria: Yes, Tony.

Anthony Harris: When we're talking about price levels are we talking about application prices or registry prices to consumers?

((Crosstalk))

Avri Doria: ...I think that was recommendation one was application price?

Anthony Harris: I'm sorry?

Avri Doria: I think recommendation one was application price.

Anthony Harris: Okay.

Avri Doria: Kurt, Please correct me if I was wrong. Kurt?

Kurt Pritz: Sorry. Yes, I was going to talk a little bit about each of them. So the application processing effort is - and the fee associated with that is without an expected cost.

So, there's another recommendation of course or another guideline that says that the process should be - that ICANN shouldn't recover the cost for processing the application.

So now ICANN's doing and, you know, what ICANN's doing in this iteration is working with consultants that might provide evaluation services that further hone those estimates and see if there's any significant changes from what our cost estimates were before.

I think that, you know, to a - when I read this question, you know, to a certain extent, you know, all pricing is discriminatory because some people, you know, choose not to, you know, not to pay a price and some people do.

So the effort here is to be fair and follow the spirit and the letter of the guideline by costing out the process. Doing that as well and as often as possible and doing that. I'm sure there will be iterations between rounds where, you know, then costs could be further pointed up.

There's also - there's more comment on the annual registry fees and application fees. So ICANN is certainly doing a lot of work there or we've gotten some of the more constructive comments when to proposing different models for how a registry fees might be configured to better facilitate business models.

You know, ICANN is, you know, the big idea here is to create this big fertilized field, so new businesses can grow. And so we've taken the comments on registry fee very seriously and are fashioning, you know, well, we fashioned different candidate fee structures that might accommodate that comment but looking to change. So that's (unintelligible).

Avri Doria: Okay, thank you. You did basically cover a little bit of recommendation one and implementation guideline B. So I think I'll open the queue to people on basically both of those topics. Anyone in the queue?

Chuck Gomes: Please add Chuck, Avri.

Avri Doria: Chuck, anyone else?

Olof Nordling: And Olof.

Avri Doria: And Olof. Anyone else?

Anthony Harris: Tony Harris.

Avri Doria: Tony Harris. Anyone else? Okay, go ahead Chuck.

Chuck Gomes: Kurt, it seems like under the current model and I appreciate the fact that the dispute process fees were separated from the other because that was one way of spreading to cost to applicants that - where they actually occur.

But it seems to me that the current costing model would cause some applicants who really went through relatively cleanly, to subsidize others with the fees.

And I know that it would be a total nightmare and unfeasible to, you know, have each applicant pay the exact cost that they actually incur – that were incurred to process their application.

But I guess I - in reading all of the public comments on costing and so forth, I wonder if there would be some value in differentiating cost a little bit further than what was done so that there's less subsidization by some applicants where the cost to process their applications turns out to be quite a bit less than what is designed in to the system now.

And again, I am not talking about an exact cost structure for every different applicant. That would be ridiculous, but some modification I

think might be helpful to differentiate a little bit between those who incur less cost in the process - the main process and those who on the other hand, pay, you know, require more time and expense.

Kurt Pritz: Yes.

Avri Doria: Can I understand Chuck? Did you indicate which ways it was in variance with the principles and recommendations?

Chuck Gomes: You know, Avri, I don't think we were that specific. So I'm not suggesting that what staff did was in contradiction to what the GSNO recommended.

We basically just said, you know, it should cover cost. And we didn't really, I don't believe, get in to whether some applicants should subsidize other applicants or not and whether, you know, how those costs should be spread out.

Obviously at the one extreme you have everybody pays the exact same fee for the total thing and then - even - that's different than what staff recommended - even with regard to disputes. That obviously would involve even more subsidization by some applicants where there were no disputes of others.

Now staff has covered that. I'm suggesting that they could possibly consider a little bit more delineation of cost so that it works out even a little bit better than what they have done without going to the extreme of making it exact for every applicant.

Avri Doria: If it's okay with you Kurt, I'll let everyone talk and then you can address all of them or would you like...

Kurt Pritz: Okay.

Avri Doria: Or would you like to address individually?

Kurt Pritz: Well I think it's a very specific question. So before my poor few memory cells die. So Chuck's unwritten policy recommendation is that 'nightmare' and unfeasible implementation should be avoided. So, staff agrees with that.

Avri Doria: Okay.

Kurt Pritz: I think - so I think that's the - that was a joke. So I think that, you know, the really short answer is that's sort of balancing that went on, but perhaps it should be reexamined.

So for example - well the broader principle is where we would try to parse the costs among applicants where that would give rise - in some cases, that actually gives rise to more uncertainty because it's just not, you know, it triggers a charge this applicant. But, you know, how much do you charge this applicant? It's really uncertain.

And so, you know, in certain cases parsing the cost further causes more uncertainty and uncertainty would cause, you know, perhaps an increase in the fee.

Or if the parsing, you know, created the need for additional administration that would raise the cost of the evaluation - the

administration's evaluation then that would be an area where, you know, we don't - we're trying to keep the cost and the effort fairly simple and straightforward.

Certainly we're going to learn stuff in the first round. So one example of that that's been controversial and where we've heard the opposite sort of comment that the effort should be consumed in the general application fee is whether a proposed registry service would possibly disturb the stability of the GNS.

And in, you know, in that case, you know, we think that's going to be a rare occurrence and when it occurs though the price is very well known - or the cost, I'm sorry. The cost is very well known and it's substantial.

So - but even if it's very rare, you know, it might occur one time and it might occur 10 times or 20 times. And so because it's an individual high cost that might, you know, material impact the fees that everyone would have to pay. So in that case, we said that's a perfect candidate for separating out.

In other cases where, you know, there could be a blurring between say initial and final - an initial and extended visits evaluations and how that occurs and, you know, the debate over, you know, whether you fail and then go in to extended evaluation where really we want to - sorry - where we really want a smooth running process and not be debating about whether you're going to extended evaluation or not.

You know, we chose not to. So that sort of balancing, you know, a lot of hours and a lot of talking about it, but I'm not reticent to talk about it again in a different form.

Chuck Gomes: Avri, could I follow up with something there briefly?

Avri Doria: Please.

Chuck Gomes: Yes, Kurt, you went in to the area kind of my thinking along the same lines because what I was thinking - and it sounds like you guys have already thought that through which really is not a surprise to me. But, not everyone will go through extended evaluations. So that - and you kind of mentioned that.

So that was one other differentiation point between the application process. And similarly not everybody will go through (string) contention. So there were just a couple thoughts that I had.

And again, I have not done the detailed analysis that you guys have, but I think those are areas where maybe the cost could be broken out a little bit differently. And again, I'll defer to you guys doing the detailed analysis because I certainly wouldn't want this to cause costs to go up. Thanks.

Jeff Neuman: Hey Avri, this is Jeff Neuman. I know I'm an alternate or observer. If I could jump in a queue on this.

Avri Doria: On this topic? Sure go ahead.

Jeff Neuman: Well, no I don't want to jump in. I want to wait.

Avri Doria: You just want to be in the queue?

Jeff Neuman: Yes, thanks.

Avri Doria: Okay, great. Okay, Olof.

Olof Nordling: Much of what I was going to say this covered by Chuck already. I was going to give us one particular example that there's been a fair amount of discussion about the components in the fees that are essentially liability ones that are there in case something blows up.

And suggesting that perhaps the different classes of applicants, be they profit, not-for-profit, the equivalent of sponsored, perhaps could be assessed differently and lower those costs in the cases where they're not likely to be, to cause major problems in the past.

But essentially I was saying the same as Chuck that clearly there is going to be some uncertainty in this first go-around because we really don't know which ones are going to cause problems and how they're going to flow.

But more discrete classes of applicants might yield very significant differences in fees and I think that's something we would like to see in the next round for at least that analysis has been done and confirmed that's it's been done.

Avri Doria: Okay thank you. Tony?

Anthony Harris: Hello.

Avri Doria: Hello, Tony.

Anthony Harris: Okay well actually Chuck has covered quite a bit of what I wanted to say. But there is one thing which I don't think that Chuck mentioned and which is in the comments that we submitted to the book.

And that is we have suggested eliminating the requirement for applicants to pay dispute resolution service providers when responding to an objection. I mean if the objector pays the DRSP, that's fair enough. That will make sure that we don't have people just object for the heck of it.

But really, I mean all of the money that's being asked of an applicant and on top of that to have to pay to respond to every objection it doesn't seem quite right to me.

Avri Doria: Is there any - is there one of the principle recommendations or implementation guidelines (unintelligible) trying to keep everything on that level. So if there is one you could point out that would be good.

Anthony Harris: Well it is spelled out in the guidebook that an applicant has to pay to respond to an objection.

Avri Doria: Yes, I understand.

Anthony Harris: That's the reason I brought this point up in my comments.

Avri Doria: Thank you.

Anthony Harris: I think I have it here if you need the actual reference.

Avri Doria: No I wasn't looking for - from the guidebook. But what we're looking for...

Anthony Harris: It's in DRSPs 3.3.2, response filing fees.

Avri Doria: Yes, yes I understand. Thank you.

Anthony Harris: Okay?

Avri Doria: Yes. Jeff?

Jeff Neuman: Thanks, Avri. The question I have is kind of related to the recommendation and implementation guideline of recovering costs for the application.

I think it was going in - and if I'm mis-stating people can speak on this phone - with the understanding or belief that recovering costs would be related to covering costs of evaluating applications and moving forward in the process.

I don't think anyone anticipated recovering costs were to mean to recover costs of the past three years that ICANN's staff has spent on working on new GTLDs.

So in my mind at least I see a deviance from - or a deviation from the GNSO of what the recommendations are and what ICANN has chosen to implement which I believe has resulted in, you know, in a large chunk of the application fee.

So when was it decided by ICANN staff that the last three years of work had to be recovered in the application fee? And I don't believe that's something that the GNSO has weighed in on.

Anthony Harris: Can I get in queue again? Tony Harris.

Avri Doria: Okay.

Stéphane van Gelder: Avri, Stephane as well. Stéphane van Gelder, please.

Avri Doria: Okay, I've got Tony. Kurt, did you want to respond to...

Kurt Pritz: When were the policy recommendations approved by the GNSO?
September...

Avri Doria: 2007.

Kurt Pritz: September 2007. So it's about year and a half right, Jeff, not three years?

Jeff Neuman: I had understood that it was at least two or more years that you were asking - that you had weighed in on your costs.

Kurt Pritz: Yes. So it was from that date. So it's a year and a half of development costs and triggered after this policy development support effort and started the implementation.

Jeff Neuman: But before the board approved it.

Kurt Pritz: Right, but the board told us to go ahead with the implementation efforts. So, you know, the question is, you know, why did we include the start-up costs as part of the application fee? And I think there's a two-bullet answer.

One is - let me get my thoughts together here - you know, one is, you know, think about a factory starting up - a plant or a business starting up a manufacturing plant, you know, they have to factor - what do they charge for their product?

Well if they charge at least the cost, they have to factor in the overhead or product development costs in order to make the product break even.

And then second, you know, how did ICANN get the - so from a cost accounting standpoint that's sort of the reasoning in typical product development.

And then second is, you know, where did that money come from since ICANN fronted it? And it really came from, you know, the ICANN reserve fund where goals - to meet the goals that augment the ICANN reserves were put on hold while we spent money on this.

And contributors - so the question is should - and the question might be - should the contributors to the ICANN budget, you know, be charged for what we told them would be a contribution to reserves in the budget, but in fact was, you know, was used for this effort.

And so another way of getting at it that decision that the current contributors to the ICANN budget should see their contributions go into

reserve where, you know, we laid that out in the budget that the reserves would increase at a certain rate and we were unable to.

And that's kind of three-tiered answer for why the 18-month implementation start-up was included in the costs.

Avri Doria: Okay. Thank you. Okay (unintelligible).

Ken Stubbs: Avri, I have a follow-up question to Kurt's comments if possible. Ken Stubbs.

Avri Doria: Oh okay, Ken.

(Mike Polage): And (Mike Polage) as well.

Chuck Gomes: And Chuck.

Avri Doria: Okay Mike and Chuck. Go ahead, Ken.

Ken Stubbs: Yes could - I'm assuming that the time period you're talking about also includes any work that was done on IDN as well. So any of the work that was done on IDN development prior to the time period to the start date that you're talking about was in effect written off and charged against previous (carriages) ?.

Is that correct? You're not being - you're not attempting to recover those costs as well in this process?

Kurt Pritz: Right. So it's much too early to discuss how the IDN contract is going to fall out but certainly in potential fees to be charged there, we've

identified the development of that process and earmarked it, you know, to that effort.

Avri Doria: Okay, it would be to that effort. Okay, thank you. I have (Mike Polage).

(Mike Polage): Yes, thank you Avri. Kurt, on your first point of about using the analogy of a start-up factory cost, to my knowledge ICANN did not take the approach either in the 2000 proof of concept or the 2004 STLD round.

So again, I would have to agree with Jeff that ICANN seeking to recover these costs is inconsistent with its prior activities in previous new GTLD rounds. So again, I just wanted to reiterate the points that Jeff made.

Number 2 and I'll keep this brief because I think it reiterates some of the comments just made by Ken Stubbs, but you talk about how money was somehow diverted from the ICANN reserve fund.

I would assume that you would be using those same equity principles of, if you will, reinvesting in the ICANN reserve fund any money that was, if you will, forwarded in advance of the edccTLD IDN fast track process.

So I just want to make sure that ICANN is treating similarly situated people similarly. Thank you.

Avri Doria: Thank you. I would like to remind everybody to stick to the agenda so recommendations and such. But thank you. Chuck?

Chuck Gomes: Yes thanks, Avri. I think there's a couple of points. Mike, kind of hit on one of them.

But first of all as far as the funds, the source of the funds that were used for the preparation for new GTLDs, it's very easy to conclude came from the GNSO. So it certainly was not diverting funds from one source of funds to another source.

So I think that's an important point to recognize since the GNSO registrant fees cover well over 90% of the ICANN's revenue. Secondly and this is what Mike hit on. There seems to be an effort to make sure that the GNSO - that no other activities in ICANN subsidize any GNSO activities and I'm fine with that.

But what I'm not fine with is there doesn't seem to be any concern that the GNSO subsidize other activities, as Mike mentioned, the IDN fast track and much of new GTLDs had to do with IDN.

And the work that was done there benefits both the CCNSO and the GNSO in their respective communities and so I think there is an inconsistency there that is important to recognize. Thank you.

Avri Doria: Okay thanks. (Unintelligible) back to Tony.

Anthony Harris: Yes, very briefly a lot has been said that I wanted to say. And I would just draw attention to something which is the foundational principle of ICANN to promote competition in the domain name marketplace.

And it would seem to me that if funds we used to develop some - or consultants that had to do with the new round of TLDs - ICANN was

simply complying with their foundational principle. And I find it difficult to understand why that would be diverting funds in the wrong - in an incorrect manner.

Avri Doria: Okay, thank you. Stephane?

Stephane Van Geld: Yes, thanks Avri. I just want to go back to the variance with the principles and the recommendations. If you look at recommendation one, there's a part in there about fairness. And it's a point that was - I heard raised in the Cairo Public Forum to which I've not seen any answer.

It is fair to have a process where certain applicants will not be able to apply as easily as others because the application fee level has been set rather high for them?

Now I know we've touched a little bit on that at the beginning of the call and it's always going to be unfair for some people. It's always going to be too expensive for some people. But I'm not sure that there is an element of fairness built into the way that the costs have been proposed at the moment.

Sorry. I thought someone was speaking there. I just wanted to hear Kurt's views on that.

Avri Doria: Okay, thank you.

Kurt Pritz: So, you know, our views are we took that input into the implementation, that recommendation and also the one that the process should be done on a cost recovery basis and made the very

best calculation we could that we continue to own to say, you know, what's fair?

Well, if we were to arbitrarily lower or raise the price from what we perceive the cost to be, then we would be including or excluding others on a somewhat arbitrary basis where the one sound reason for setting an application fee I think and the one objective way is say let's recover costs.

Because this is the first round and they are so many uncertainties, I think that there will be considerable, you know, considerable learning from this round and an ability to be able to parse types of applications or provide a different fee structure or some sort of grant structure for other applicants that might not - that might be in a position where they can't afford the evaluation fee.

Remember this is the first draft of the first round and that, you know, so certainly ICANN staff and council and I think the community share your input that we want to make this process and this opportunity available to as many people as we can.

I just have a couple more comments on the costing out. With regard to not doing it this way in the past, some - I know in the 2003 round when we did the - when we created the \$55,000 fee, you know, we had put in that number some of the development effort. But, you know, the \$55,000 fee turned out to be inadequate in retrospect.

And so what we've learned from the first two rounds is that the process needs to accommodate all of these various contingencies that you see in the different panels and string confusion and the objection based

process and comparative evaluation. And all of these developments are really significant departures from how the first two rounds were conducted.

And so, you know, those first two rounds were a big part of this. There is considerable learning that went into there. And that's why I think there will be learning going forward in the future.

And I just want to reiterate something about IDN. So there are some IDN development costs in this application fee and because there will be IDNs and new GTLDs and there will be, but IDN development costs for Fast Track are parsed out and, you know, with the goal of finding where they belong most accurately. But I understand Chuck's comment in that regard.

Stéphane van Gelder: Avri, may I just follow up?

Avri Doria: Quick, but I think most has been said. So I'd like to move on but okay.

Jeff Neuman: Avri, this is Jeff. I have one thing that has to be said and it's really brief too.

Avri Doria: Okay.

Stéphane van Gelder: I just want to make a really brief suggestion. (Stefan), again.

Avri Doria: Okay.

Stéphane van Gelder: I understand what you say, Kurt, and I also understand we're at the beginning of the process and we're not certain about the way it's going to go. I just have a one suggestion about maintaining fairness.

Might be to try and differentiate between certain types of applicants. Even broad types of applicants might help. Certain categories come into the process more easily. And the fact that there's absolutely no differentiation between any type of applicant does mean that some get harsher treatment than others at this stage.

Avri Doria: Okay, thank you. And Jeff?

Jeff Neuman: And this is just on, you know, Kurt you made the analogy to a for-profit factory and recovering historical costs. I think had...

Kurt Pritz: I didn't say for-profit factory. I said in calculating what the break-even point is.

Jeff Neuman: Okay my point is still the same is that, had the GNSO known that the interpretation - known how you were interpreting the GNSO recommendation - I think the GNSO may have insisted on some sort of oversight over the costs that you were spending to make sure that it's principle of fairness, as people have been talking about, could be - and promotion of competition could be implemented.

So if in the future the GNSO ever makes a recommendation on recovering costs, I believe the GNSO should also maintain some role in oversight over what those costs are.

Avri Doria: Okay thank you. As I said, we'll talk later whether we need to do anything further on this, but I think people have basically gotten this that new points on the issue settled, I mean said not settled.

I would like to move on to recommendation two in the extent (unintelligible) of using similarity. I've heard several conversations that have never been completed on the application process not necessarily going as far as recommendation two intended. So, Kurt?

Kurt Pritz: If there's no further honing of that question. So recommendation two is implemented by taking into account all types of situations or similarity that might result in user confusion and process as first developed is an objection based process along with the other reasons for objecting to a string.

And the standard for that process says that user confusion would result then. So that confusion could be visual, it could be oral, it could be meaning. You know, the standard is that the likelihood that there would be user confusion.

So the first, you know, the first iteration of the implementation here put that in.

At a later date we - in our thinking we also decided to put in, you know, an early examination into the process to catch, you know, obvious cases of visual similarity where we thought that a panel acting alone without input from somebody who is claiming a type of similarity could look for visual cues and determine if similarity existed in order to call out applications that are - that would result in string confusion with existing TLDs or existing names.

So that if you think about a determination of whether user confusion exists, the, you know, the input from the council and our implementation indicated that should be an objection and dispute resolution process, which is what we've set up. And then, you know, I think that's probably the right approach especially with things that are less obvious such as oral or meaning cases.

In that case you'll want to hear from someone why they think that's going to result in user confusion.

But then we, you know, we put in the additional protection in the beginning of, you know, putting an algorithm into place and determining what the visual confusions are and having a panel look at that to see if that confusion existed to prevent, you know, objections that, you know, prevent a necessity from objections that might have to occur.

Avri Doria: Okay, thank you. (Unintelligible) to the queue. Anyone want to be in that queue?

Mike Rodenbaugh: Mike.

Avri Doria: Excuse me?

Mike Rodenbaugh: Mike.

Avri Doria: Mike.

Chuck Gomes: And Chuck.

Avri Doria: And Chuck.

Kristina Rosette: And possibly Kristina.

Avri Doria: And possibly Kristina. Okay. Go ahead Mike.

Mike Rodenbaugh: Okay, so Kurt, thanks for the brief introduction there, but I think it doesn't really take into consideration the actual text of the draft applicant guidebook. I think that what has happened is staff has really used a different definition of computing similarities in the context of string contention than in the context of objections based on trademark or otherwise.

So - and I don't understand why that disparity happened. I guess the question is, why did staff, I believe unilaterally, narrow the definition in the context of string contention to eliminate similarity in meaning. In fact, M and N sound and only go with visual similarities.

Kurt Pritz: So, I'll, you know, I will - we will relook at the wording in the guidebook, but the intention was that in the objection-based process that all kinds of similarity be examined.

And, in fact, you know, I might be subtle, but when you look at the standard for similarities in the objection process the word visual is deleted and so the standard given to those people is, you know, user confusion exists based on any similarity.

((Crosstalk))

Mike Rodenbaugh: Okay, so the intention was to have the definition consistent throughout, it just hasn't happened that way yet?

Kurt Pritz: I'm sorry. What?

Mike Rodenbaugh: So the intention was to have a definition consistent throughout the document, but it just hasn't happened yet?

Kurt Pritz: So let me answer in a different way. So - while to reiterate what I said before, it was determined, you know, by input that there should be resolution processes by the, you know, in the GNSO policy recommendations and the visual - and the user confusion policy recommendation.

It was determined that we make this objection based process for determining if there was string confusion and if there is likelihood of user confusion.

The standard for that is any type of confusion in order to any type of similarity resulting in confusion. So that is the objection in dispute resolution process accommodates confusion based on any type of similarity. Any type.

In order to help, you know, in order to make the process more smooth running, it was decided that an additional protection would be put in place early on as a very preliminary look at the strings to determine obvious similarities or, you know, where user confusion would result and those would be based on visual confusion.

So it's an additional protection in place intended to call out to make objections and costs unnecessary by identifying for applicants, you know, you know what this is - this string is going to result in user-confusion.

I don't think you want to spend more money than you have to on the evaluation and we don't want to make potential objectors have to spend money on it. So that was an additional step.

Mike Rodenbaugh: Okay. Well that sounded great, but I think that actually, the objection process for string contention is - has been limited to visual similarity when it should not have been. So I think that needs to change.

Kurt Pritz: Yes, so the standard for the dispute resolution provider just says confusion and not visual confusion.

Olof Nordling: Could I - this is Olof here. Could I perhaps 'add' because I think, Mike, you're asking the question in slightly different manner.

And while it's true that the first check of the - something around 15,000 (pair-wise) combinations we will have, in the initial evaluation on the same similarities, while it is on 'initial' that's foreseen as that and that establishes the initial preliminary contention sets.

Now when we go through the objection process, if objections are upheld and initial - well or similarity is noted and that is outcome of the process. Well that adds to the existing contention sets, as well as if an applicant disappears, well that modifies the contention sets that have initially been established as well.

So it's not true to say that the contention sets and handling of the contention sets is limited to visual similarity only but it is a starting point.

(Owen): It's (Owen). Could you put me in the queue?

Avri Doria: Got you.

Ken Stubbs: Avri, the is Ken Stubbs. Could you please put me in the queue?

Avri Doria: Who - I'm sorry. (Unintelligible).

Kurt Pritz: This is Kurt. I just want to wrap up on Mike's comments that I did get that the guidebook doesn't make this clear and so we're going to look at the wording in the guidebook to determine if - to determine how it can be made more clear.

Chuck Gomes: Avri, it was Alan and Ken.

Avri Doria: I got Chuck, Kristina, Alan, and Ken was it?

Chuck Gomes: Ken Stubbs.

Avri Doria: Okay. Thank you. Okay Chuck.

Chuck Gomes: All right, I'm going to focus in on the initial evaluation. I understand the difference in terms of the definition of confusing similarity with regard to the dispute process where the broader definition is definitely used.

But there is something - as I was reviewing the initial evaluation with regard to string review, one part of that initial evaluation, I - something was not clear to me Kurt.

The - It's clear that the algorithm, which is the first step that the panel will use - the string review panel, is strictly visual similarity. I understand that.

But the panel goes beyond just the use of the algorithm and they use a probability standard - which that's not my purpose to talk about that right now - but did I hear you correctly to say that they're only looking for probability - at this level, not the dispute process - they're only looking for probability of visual confusion and not a broader definition of confusion?

Kurt Pritz: Yes, that's true.

Chuck Gomes: Okay. You might want to clarify that in your - in that language. I don't think it says it's a probability of visual confusion there, but that answers my question. Thank you.

Avri Doria: Okay. Thank you. Kristina possibly.

Kristina Rosette: Sure. I guess one of the problems that I have with the guidebooks implementations, the draft implementation of recommendation two is that the implementation of it is going to give benefits, or in Kurt's words, additional protections to existing TLD registries and ICANN and what other entities manage to get their names on reserved names lists, but aren't going to be available to any other participant in this process.

I mean, there's absolutely no basis that's been articulated as to, for example, why "an application that sells the string-confusion review and is found too similar to an existing string will not pass the initial evaluation and no further reviews will be available."

I have yet to see any articulation as to why those particular participants should be given additional protections and not be required to go through the objection process like everyone else?

Kurt Pritz: You know, if I said additional protection, what I was intending there was that if somebody applies for something that is, you know, with the appropriate standards, cleared to an evaluation panel, that it would result in user confusion with beneficial to the applicant and the process and to somebody who might be asked to go to the expense of objecting to identify that early on and this will result in string confusion.

For other types of string confusion we thought that, you know - so when I said additional protection I didn't mean a special status accorded to GTLD registries or those seeking protect-reserve names.

It was to create some, you know, some initial review so that we didn't have to force people that would have to object to obviously similar strings to go to that expense...

Kristina Rosette: Then why not afford the same protection to, you know, certain categories or trademark owners or certain, you know, clearly recognized, unique, you know, peoples or communities. I mean if you you're going to do it there, you really need to do it everywhere.

Kurt Pritz: Right. So what you're suggesting is that some entity should be looking out across all strings to look for obviously objectionable strings?

Kristina Rosette: I'm not necessarily advocating for that, but I'm saying whatever ICANN does it has to be consistent. It cannot give favored - preferential treatment which is the effect of this, to any - to the existing TLD registries and itself over every other entity out there that's going to be in a position to have to be watching this list and objections.

Kurt Pritz: So, I don't quite understand preferential treatment. Preferential treatment over what?

Kristina Rosette: Well, as a practical matter, because the affect of this is that it's going to potentially eliminate the number of objections that existing TLD registries or ICANN will have to initiate because the string-review process will call those out.

Kurt Pritz: Isn't that good?

Kristina Rosette: Only - not unless you're going to do it for everyone else.

J. Scott Evans: This is Jay Scott Evans. It's great for ICANN and for the registries. It certainly isn't great for everyone else that has to pay.

Avri Doria: Okay. Thank you Jay. I'll put you in the queue.

Kurt Pritz: Well, you know, if you're an applicant then this doesn't - so we - this was selected because it is a good candidate for this.

So for example, we've developed this algorithm and now we're going to have it in many different scripts. And if the algorithm is effective it could, over time, be accepted as an objective measure of visual confusion.

And so we see that as a good, you know, we see this process as a good, you know, a good step in trying to grow the process without disturbing the efficacy of the process.

Kristina Rosette: So then why not open up the process to other candidates? I guess that's my point is that, you know, the outside world sees this as ICANN giving itself and the existing registries preferential treatment over every other category of right's owner or potential objector.

Avri Doria: Okay. Thank you.

Kurt Pritz: How is ICANN giving itself preferential treatment?

Kristina Rosette: Because it goes to the reserve name which I presume ICANNs on the reserve name list. Yes?

Jeff Neuman: This is Jeff Neuman.

Avri Doria: No, this is Avri. I think what Kurt's getting a far a fields of the talking about the specific issues of variances of these recommendations and guidelines and getting into comments about what is good and what is bad? And I'm not trying to take a position either way.

Kristina Rosette: Okay.

Avri Doria: It's just - but thank you and I think it's been said and heard and I'd like to move on to Alan if I can.

Alan: Yes, on a different tone I'll quickly say why I think what they've done is a good thing. If you start looking at other forms of potential confusion, I think there are going to be far too many false positives.

And things, which the algorithm will say, sounds like or various other confusingly similar, which in the real world a human being sitting at a keyboard would never find confusingly similar. And too many false positives, I think, would cause a very significant problem. So I'm moderately happy with what they've implemented.

Avri Doria: Your saying it's not in variance, you believe.

Olof Nordling: I believe it is not as variance.

Avri Doria: Okay. Thank you. I have Ken next.

Ken Stubbs: Yes, I wanted to support the comments that Mike Rodenbaugh made with respect to the visual similarity being over emphasized at this point in time in the process.

I think that as you look at the perception of the internet user you find that it is not at all unusual for a specific string to be imbedded in the mind of the user and I will use (Com) as an example.

And it doesn't necessarily - it isn't necessarily how it's presented visually but it's quite common, for instance, in advertising and so forth

for oral descriptions to be made and that's - which we have there is really a classic case of contextual stability problems.

And I think it's extremely important as you move into the IDN sector especially that you be aware of the fact that to someone in Chinese or who's using a different script, the perception of a specific string is maybe inconsistent with how that string is being visually presented. And I think that's extremely important.

Avri Doria: Okay. Thank you. I don't know if - I didn't have anyone else - unless you, Jay Scott, you have something new you wanted to add in terms of the value (unintelligible) ...

J. Scott Evans No, I was rude and interrupted before. Not right now. Thank you.

Avri Doria: Okay. Any new points to be added to this particular discussion? If not I'll move on as we're already past the halfway mark.

Okay, the next issue which is a relative of this issue with reserve name issues, but specifically two points have been brought up in previous conversations.

One had to do with geographic identifiers where the reserve names would be none and yet there was a process put through that basically establishes reserve names.

And then second was the two character IDN where the reserve name said there was no need to (unintelligible) two character IDN especially because it excluded many reasonable names in certain scripts and yet those do appear to be there.

Kurt. I'll turn it over to Kurt unless somebody else wants to make amplifying remarks on what I just said. Notice, I'm talking as briefly as I can. Okay, Kurt, would you like to comment on those? Did I lose Kurt?

Kurt Pritz: No, I'm here.

Avri Doria: Oh, okay.

Kurt Pritz: So with regard to geographic names, you know, we took the, you know, we understand the policy recommendations and guidelines of the GNSO and also read the work of the reserve names working group and the conclusions that group came to.

And, you know, as you know also have, you know, policy advice from the GAC and also the (CTNSO).

So we thought to find that common ground and the result is, I think, you know, we are not - even though this is the heading under reserve names, you know, we saw clearly to not create reserve names for country names and in fact found that very difficult to implement because of all the different languages.

So multiply the difficulty in how you express a country name and then multiply it across a number of languages and the nuances of different languages then it becomes really tough to implement really fast.

So the result is I think that in the GNSO recommendations, community - one of the reasons for the community based objection is for

governments, whether they be federal or city or some other, to be able to object on a community basis.

And there's been a lot of discussion, I think, on the GNSO list that these were the sorts of protections, you know, this was the area where geographic names were going to be protected.

And so in order to keep the spirit of that and match the spirit of the GNSO recommendations and the writing of the GNSO recommendations and take into account what GAC - from a relevant government is, is asking the applicant up front to satisfy one of the four elements required to demonstrate that they are a bonified community application.

So, you know, there has to be a nexus between a string and the applicant and there has to be, you know, restricted registration policies and it has to be a well-established community and it has to have community support.

So in the case of certain geographic names the process asks for that expression of community support as part of the application process upfront.

Besides taking, you know, trying to make some accommodation of the GAC advice that lives within the GNSO, you know, that's diligent within the GNSO policy recommendations and guidelines we, you know - so that was the intent of fashioning the process that way.

And then, you know, I want to talk a little bit pragmatically about the necessity of addressing risks to the process because I think the, you

know, all of the GNSO work over the years is pointed to, you know, having a, you know, creating the best policy and the best implementation of that policy so we can launch this very important work that ICANNs, you know, essentially been doing for ten years.

And ICANN, meaning the big ICANN and everybody on this call. And, you know, one of the things we want to do is eliminate risks and certainly avoid, if we can, the criticism of governments that the process doesn't take into account certain aspects.

So we think this approach, you know, matches the intent and the wording of the GNSO policy recommendation in saying that, you know, there should be some protections for community-based labels and other advice.

Avri Doria: Okay. Thanks. Did you also want to address the two character IDN before I open up the queue?

Chuck Gomes: And Avri, just to clarify, I think it's probably one and two character is the issue.

Avri Doria: Okay. Yes. Thank you.

Kurt Pritz: And then let me get a clarification on one and two character issue. Are you - is the question about, for example, Chinese scripts or Japanese scripts, or...

Avri Doria: Exactly. In other words I think, you know, the common set we've heard before and I mean going slightly further has been that well

(unintelligible) that one or two could be confusingly similar where it
(unintelligible) the GTLD's and therefore we can't have those.

But somehow or other due to the extended two, one and two character
IDN of any sort in large and when that happened in Chinese for
example or perhaps Korean- and I don't know how many languages it
doesn't create confusions and therefore - and in fact, it excludes a
whole lot of what would be optimal, you know, TLD possibilities.

Kurt Pritz: Yes, so if I can just go ahead. I think that's exactly right. The applicants
guidebook took a conservative approach because that very discussion
was ongoing and is still ongoing.

So it wasn't settled and so the applicant guidebook just took the
conservative approach of the three letter names or three character
names, I'm sorry. And - but there was a specific comment in the public
comment that a single character name should be accommodated in
different script and that's being investigated. I think that's an excellent
comment.

Avri Doria: Okay. Thank you. Can I take a queue now on either of these two
issues? I think in the second one there's probably not that much to add
as in it will be fixed. But the first one, are there any comments people
would like to speak to that issue?

Okay. Hearing none. Thank you for the answer. And I will move on to
recommendation 17.

And this perhaps - just a clear question, in recommendation 17
recommended clear compliance and sanction processes and just

heard questions basically saying, and what are the clear compliance and sanction processes? It's more of a clarification informational question.

While Kurt is preparing an answer, does anybody want to comment further on that one?

Kurt Pritz: Yes, the - you know, we certainly received a lot of comments about the agreement and, you know, there were compliance, you know - so there was quite a bit of analysis how graduated sanctions program could be included in the contract or whether writing additional terms could actually enhance our ability to create compliance.

So - but at the time that we released the agreement we were still discussing implementation difficulties with some of the graduated sanctions but they're continuing to be discussed and I hear that comment because it's a very important - our ability to have a really clear agreement and, you know, be able to enforce it is one of the cornerstones.

Avri Doria: Okay. Thank you. Would anybody like to comment in the queue for that? For 17?

Chuck Gomes: Avri, add me, Chuck, please.

Avri Doria: Okay, Chuck. Anybody else? Go ahead, Chuck.

Chuck Gomes: Just a quick question, Kurt. So if I understand you correctly, staff is still looking at the idea of a graduated sanctions approach in the agreement. Is that correct?

Kurt Pritz: That's right. You know, one of the issues is, you know, we were looking for an agreement that's uniform across all registries. And so that, you know, exploring different models and keeping one agreement, you know, is a tough - it's tough to find the area of intersection there, but that's what we're working on.

Chuck Gomes: Thank you.

Avri Doria: Would anybody else like to comment on 17? Any questions?

Okay. Thank you. I think we may have covered implementation guideline B, recommended cost-based fees with different applicants paying different fees and these fees really cost space, are some applicants subsidizing their applicants.

We don't want to open it up to all the discussions that we've had already, but since it's here in the agenda, does anybody have anything new they need to ask in terms of variance with that guideline?

Chuck Gomes: I have a comment Avri, it's Chuck.

Avri Doria: Okay, Chuck.

Chuck Gomes: I think earlier we were talking about fairness and it ties into that and it also goes into the subsidization question.

One of the things we need to keep in mind that I think would be real problematic is if applicants who are competing against one another for GTLDs, if one of those competitors had to subsidize the other to their

own detriment and I think that's why the subsidization issue was really a key issue.

Now I fully understand that all applicants are probably going to be - there's probably going to be some of this mutual subsidization is going to occur just because it would be ridiculously complex if that wasn't the case.

But for example, let's look at the community based TLDs. It's quite possible that there could be an open TLD applicant and a community based TLD applicant that are in a contention set for a TLD and we know that the community based gets an advantage there in the evaluation process under certain conditions.

I think it would be inappropriate if the applicant for the open one was subsidizing the applicant for the open one. Both of them may be very valid. It's not a question of that. But that would, I think, would be inappropriate.

And so I think that needs to be looked at in terms of fees - in particular with regard to many of the comments from community members that I think are very valid with regard to their inability maybe to pay the fees. But I don't think the solution is to subsidize those fees from other applicants.

I think the solution needs to go ahead to IGO which was one of the specific recommendations for consideration that the council put in there. Thank you.

Avri Doria: Thank you. Any other comments before I ask Kurt to comment? Go ahead, Kurt.

Kurt Pritz: So, I'm sorry. Am I commenting on the ...

Avri Doria: If you wish. I mean, otherwise, you can say, you know, no comment.

Kurt Pritz: So - I didn't hear you Avri. I'm sorry. I'm commenting on...

Avri Doria: Yes. You're commenting on what just Chuck said unless you wish to say no comment in which case, I mean, you know, that's okay, too.

Kurt Pritz: So I'm not sure - I'm - so Chuck, I agreed with the spirit of a lot of what you said, but I'm not sure that I hooked the whole thing together. But there is a balancing in - that there - if I heard you say, there might be some increase costs associated with evaluating community based applicants.

Then - and there's also an argument that community based applicants should pay less because of their financial situation or they're targeting smaller registries.

That sort of thing may or may not balance itself out, but certainly when we're thinking about (charts), you know, if there's further differentiation of fees we should take into account all costs and make sure, you know, it's not in a way that doesn't disadvantage one against the other.

Chuck Gomes: Let me try and simplify it, Kurt, and I'll be brief about this. Like I said, there are a lot of comments that are saying hey, for community based applicants, especially from developing countries, they might be

eliminated if they can't - they may not be able to afford the fees for applying and the ongoing fees as well.

The solution to that in my opinion should not be increasing the fees for everybody else in the applicant pool and reducing the fees for the community based applicants, but rather should be an approach like the GNSO recommended in IGO which is on our agenda today because of the fact that it creates a real conflict between - it can create a real conflict between competitors.

Kurt Pritz: Yes, thank you.

Chuck Gomes: Did that help?

Kurt Pritz: Well, I - so I tend to agree with that. No, I don't even tend to. I agree with that. So the issue is in trying to make those determinations over different costs associated with different types of application.

You know, what is the level of uncertainty now before we've even launched around and what is the, you know, level of administration required? What is the opportunity for gaining a certain classification of GTLD?

So that's why, at least so far for the first round, you see it kept fairly straight forward and simple. And then certainly, you know, we want to encourage all the applications that produce - that will produce viable registry models or a chance at a viable registry model.

So, you know, we'll be able to parse those cost a little bit better and make sure the allocations are accurate.

Avri Doria: Okay. Thank you. I'd like to move on now to the next category which was the implementation guidelines. Speaking of board resolution processes in - when there's several entities going for the same name.

Basically the IGF - I mean the implementation guideline F recommended a board resolution process with no specific recommendation for options, yet options does seem to be the leading contender.

So, that was a question that had been brought up by various people. I don't know if anyone wants to add more? The question before I ask Kurt to speak to it. Anyone? Okay, Kurt.

Kurt Pritz: Thank you. So the way the process tracks to the implementation guideline we think is that we - the guidebook asks parties to work out the contention for themselves first and if that fails then also take into account the implementation guideline that provides that a community TLD would be a factor in determining who is awarded top-level domain.

So that maps to the comparative evaluation process where community based TLDs can elect a comparative evaluation and then after that comparative evaluation the parties are, you know, again encouraged to settle the differences between them and then, you know, the guideline - the reading of the guideline is - and after that a process would be put in place to enable efficient resolution in the contention.

And then the guideline goes on to say that the ICANN board can be used to make a final decision.

So there'll certainly be - so I think the, you know, I just think that the implements, you know - a lot, a lot, a lot, a lot of effort went into matching this and developing a comparative evaluation process to provide that consideration for community based applicants.

And as recently as yesterday a number of us sat, you know, sat in a room for hours and tested different scoring mechanisms for community based applicants based on the comments that we received that the scoring mechanism should be changed in some way.

And so - and refinements and changes are being made to the scoring mechanism based on all that public comment.

So a lot went into - a lot has gone into creating a process in front of some efficient, you know, efficient resolution.

And then the efficient resolution, you know, is not in the applicant guidebook yet, but we have published papers on, you know, potential resolution methods which include, you know, auction or lottery or a different type of comparative evaluation or you know, who will offer us the most advantage, you know, who offers the best contract terms or, you know, or some other means.

And you know, offered papers - you know, offered papers on why auction is a preferred model but that's certainly not final. But it's certainly proposed. And to me, you know, it matches the writing of the guidelines.

Avri Doria: Okay. Thank you. Would anybody like to comment on that? The answer's fine?

Okay. In which case I'll move on to the last one which is probably a fairly quick answer. This is not necessarily one of variance, but it's one where the question has been posed several times.

In the implementation guideline O it says that ICANN may put in plans for fee reduction schedules for new TLD applicants from economies classified as least developed and so the question has been, in spite of something that they may be able to do, is there any plan or any discussion on that?

I don't know if anyone wanted to add anything more to that before Kurt answers?

Stéphane van Gelder: Avri, (Stephane) here. Could I just ask a question - point of clarification?

Avri Doria: Yes.

Stéphane van Gelder: Is that implementation guideline O or N because on my chart it's listed as N.

Avri Doria: You're right. It's N. My mistake. Thank you.

Stéphane van Gelder: No problem.

Avri Doria: Yes, IGN. Not O. Kurt can you just tell us a little bit about the way the 'name' was treated?

Kurt Pritz: I think this is a really important issue and, you know, it's a guideline here and it's also, you know, wrapped up in ICANN's mission to encourage stakeholder participation in different regions. So it's really important.

So I don't want to appear to give a short - I don't know how to, you know, augment my explanation earlier regarding how to add or create different fee structures for different entities without understanding what those entities might be or potential gaming or how the cost could be allocated to, you know - then costs would have to be allocated to other applicants.

And I think that in the second round, for example, we'll have a very clear picture for ICANN's costs. So there'll be an opportunity perhaps to reduce fees and there'll be an opportunity to establish programs for these sorts of applications.

But in the initial round the complexity around that and trying to manage it with all the other uncertainty in the program is, you know, would just add additional risk.

Avri Doria: Okay, thank you. Anyone wish to comment on that further at this point?

Alan: Alan, I have a brief comment.

Avri Doria: Okay Alan anyone else? Go ahead Alan.

Alan: Yes, I guess I was rather disappointed given that there are so many other areas as you point out that you are making estimates of what the risks are and putting your stake in the ground.

And especially given that you're predicting there will be auctions with significant revenue that this wasn't one of the ones factored in and perhaps imperfect, but nevertheless just some options presented to allow lower cost from developing countries.

Kurt Pritz: Alan, this is Kurt. So, is there somebody or anybody on the call - someone -- some entity we could work with do you think that might be, you know, be an independent provider of grants?

So that we could, you know, do their research to find out if there's maybe not a provider of grants but are, you know, somebody to direct parties to different places where they might get grants to do this.

And that ICANN would highlight that as part of the application that at least in the first round we could provide some aid in saying, you know, if you have this great idea and you want some financial assistance here are the sorts of entities that help you out.

Alam: You're looking at pointing to other people to grant and not reserving some money to do it within ICANN?

Kurt Pritz: No, I'm for - I think in subsequent rounds we'll definitely do that. I was just thinking this - one could certainly talk but to be honest I don't think there's an awful lot of opportunities there at this point.

Avri Doria: Okay but one can - yes - one would hesitate to put people's names on the record right now, but perhaps people can talk to you offline about people who might be able to do that. It would be terrible to put a grant provider's name up on the record without having talked to them first.

Kurt Pritz: And I'm not sure there'd be a lot that would be willing to have their name on this particular one at this time.

Avri Doria: Right okay. Any other comments on implementation guideline N. Okay were there any other principles, recommendations or implementation guidelines where people felt there were variances between what the GNSO put forward and what has been published in the plan?

If so now is a good time to bring them up. There's been a chance for people to send them in earlier, but I don't know if any got missed. Did any get missed? Okay none put on the list that's great. Well I guess we did capture them.

Okay. Close off that topic then unless anybody has any final comments on the issue of principles, recommendations and guidelines variance with the plans? No. Okay great.

Okay, the next item I had and Chuck I wasn't planning to do this to you but I might if you could basically - we've passed two motions in the GNSO at our last meeting.

One to do with the timing in terms of the IDN (TDLD), TDLD and the introduction of them into the root and the other one dealing with guidelines - implementation guideline E where we basically recommended that that four month period we had put into the implementation guidelines we divided differently because of the need for a further draft.

I don't know if you want to go into that portions any further, but I'm about to choke if I don't quit talking.

Chuck Gomes: You've done a very good job, Avri. My compliments. I hope you don't have repercussions after the call. The - well I'd be happy to talk about the two motions if there's interest in the group in me doing that.

Avri Doria: I just want to make sure that this cast that's doing the work on the implementation plan understands, you know, just to make sure that there's an understanding of the implications of those - perhaps there are no questions and we can just pass it by.

Chuck Gomes: Okay. Well let me give a two minute overview of the two motions. The first one that was passed and the latter one that Avri referred to basically changed the implementation recommendation that the council had submitted to the board with the regard to the communications period for the new TLD process.

Previously we had said that it shouldn't start - it should be at least four months and shouldn't start until the final RFP is out. What this one - what the motion did is it recommended that the communications period start at the - when the second RFP is posted, that it still lasts at least three months, but not end until at least thirty days after the final RFP is posted.

The purpose for that basically was that Principle A in GNSO recommendation says that new generic top level domains must be introduced in an orderly, timely and predictable way and this was the deal with the timely issue.

And there'd been a lot of people complaining about this and I understand that some people would rather it be delayed. I'm fully aware of that so that's that motion.

And the second motion was I believe consistent with GNSO statements that was submitted with regard to the CCNSO processes particular the IDNC work and the fast track IDNC CCTLDs and it basically says that neither IDN CCTLDs nor IDN GTLDs should go on the route before the other unless both SOs agree.

It went on to say that IDN CCTLDs should not be entered into the route until there's a enforceable commitment of the part of the operators to abide by security instability requirements, IDN guidelines, the IDNA protocol and would be that the IDN fast track would not be subsidized by other ICANN activities. In other words, they would be self funding. Any questions?

Avri Doria: Just like to note that in addition to forwarding these on (unintelligible) these have been forwarded on to the board for whatever consideration they might like to provide to them. I'll take a queue if anyone has a queue. Does the staff have any issues or questions on these or are they self explanatory and understandable?

Any comments to make? Anyone? In which case I'll pass on to the next issue. Okay. Thank you Chuck and thank everyone. Glad those are clear. I just wanted to make sure of that.

Okay, the next thing and we've already gotten a lot of this from Kurt as part of the discussion, but basically I'd had asked specifically asked Olof and Kurt on basically sort of a staff overview on comments

received and I'm certainly not asking them to repeat anything they said already and keeping with my guidelines for this meeting of not repeating stuff.

I don't know if there's anything that you'd like to add to the discussion of that overview and if not are there any questions about that participant on the call? So Olof or Kurt do you have anything or anyone else on staff have anything you wish to add to that? Nope?

Olof Nordling: Olof here and I see some particular parts of that route, but I think the overview is probably basically in Kurt's hands so if you need - while global overview of the (unintelligible) or whatever I'd rather suggest that Kurt respond to that.

Avri Doria: Okay thank you. Kurt you've got the ball.

Kurt Pritz: Well the information that's been posted so far, you know, just alludes to the breadth of comments and some of the key issues that have been raised during the comment period. We've sorted through the issues and categorized them.

So the communication that we're going to develop next, and I described it at the outset of the call, will essentially be to group the comments by issue and then, you know, repeat what we think the issue is raised by a certain set of comments.

And then provide, you know, a set of analysis that demonstrates, you know, first how we've heard the comment and that while listening and then, you know, we'll describe past consultations where - and discussions where the issue was considered and how the present

version of the guidebook came about and then an analysis that's a balancing of, you know, the suggestion in the public comment to determine that.

So the object is not only to, you know, print a, or deliver a redline of the guidebook, but provide the annotation that describes, you know, why the annotation was made and the thinking that went into it.

So, you know, to a real extent the document is just as important or more important, at best, than the guidebook itself, because it seeks to demonstrate that the comment was taken to account, listened to and this is how the link between the comment and a change to the guidebook was made.

And we want to, you know, attempt to communicate that the changes in the guidebook are certainly linked back to the comments we receive. So we've...

Avri Doria: Can I ask a question? Is that categorization and such coming out before the next guidebook or is this all a package at the time of the next guidebook?

Kurt Pritz: So if you think about it, we really can't do the amendment to the guidebook until the analysis is done, but the other side of that is as analyses are done and, you know, in certain cases they're done. You know, amendments to the guidebook are made.

So, the guidebook will be done after the analysis is done, but how, you know, given the practicality of, you know, then creating and posting a document, you know, they probably won't be too far apart in time.

Avri Doria: Okay, but there will be two separate events?

Kurt Pritz: Well, they'll be two separate documents and I don't know how far apart they'll be.

Avri Doria: Okay thank you. Oh, Olof were you going to add anything in terms of any specific details on the comments?

Kurt Pritz: I can go, if...

Avri Doria: No, that would be good.

Kurt Pritz: Yes. So, just hang on one second while I get that, that out.

Olof Nordling: And while Kurt is getting it out, of course there are different kinds of comments some of which are pin-pointing particular modifications that should (unintelligible), but of course there are other comments, as you well know, on the higher level that are on more fundamental level, if you like, and a more global level.

So that's one categorization in which is pretty obvious and those which address details in implementation that's - I'm swimming around for the time being, especially when it comes to the contents and such handling and comparative evaluation.

Well, there are very many and very useful comments indeed. So I think there's a split in perhaps the handling of these, as well as from a staff perspective.

Avri Doria: (Unintelligible).

Kurt Pritz: So just t, while I am going to launch into this in the last ten minutes of the call is that, you know, I'm going to cover some issues, but, you know, omit others and certainly that's not what we're doing.

We have, you know, I'm looking at a fairly straight forward list of issues right here that have sub-issues and that, you know, we have a spreadsheet of all, you know, 300 comments that are sortable by issue and sub-issue that would take some time to review.

So certainly, you know, there's a few over-arching issues that may not go directly to the applicant guidebook, but rather are, you know, important considerations for having, you know, the timing and how we go forth.

So, you know, there was a lot of comment about the, you know, how the effect of new GTLDs on the market place just from an economic standpoint and they - and how it would impact the marketplace.

There was also comment about the DNS stability effects and I think the most important analysis suggested in that regard was that, you know, we've, you know, we've looked at, you know, how many TLDs of route zone can accommodate and certain other stability implication.

I think -that we haven't looked at completely, the combined effect of say introducing new GTLDs, IDNs and DNS SEC, essentially at the same time in to the route zone.

While I think the outcome of that would be that - indicate that it can be that in a way that ensures stability of the DNS. We're going to work further on that.

You know, another over-arching issue, I think, are branding and trademark issues.

Where, you know, brand name owners and their advocates said that additional mechanism should be put in place to afford protections to brand holders and that on, also to, you know, to make a determination if there was, you know, how'd that, the process would increase cost to those brand holders and take that in to account.

So that is a question that needs to be answered fully before we go forward and there are several issues that went to, you know, changing the guidebook or the base agreement.

You know, there's comments about registry, registrar separation and the final model for that which - and ICANN is developing a, you know, we recently published the public comment compilation on that.

And we're going to publish a set of models that were proposed and consultations that were held with the idea of arriving at aspects of them that would give us one model for going forward.

So we're going to publish that in advance of this big document. There are other aspects of the registry agreement that, where in public comment the process for amending the agreement comes to mind.

The omission of certain terms that were in previous registry agreements comes to mind. So that's an important set of comments.

Registry fees, both the application fee and the registry fee, but the public comment on registry fees was more pronounced, I think, the annual registry fees than the evaluation fees themselves.

There were some comments about string similarity and how that was run and also about and whether the use of the algorithm and, you know, whether that should be modified and whether the panel criteria should be made more clear.

String - we've talked about these on string contention. There were comments made about the scoring mechanism in comparative evaluation. Some thought the scoring mechanism was too strict, I think, one thought it was too tight. No. I'm sorry, majority of the comments about the scoring too...

I've lost track of what I was saying. So I'm going to start that sentence again. I'm sorry.

So, one set of applicants thought - well one set of commenters thought that the criteria for measuring community based applications in comparative evaluations was too strict. One, I think, thought that it was too lax and probably nobody thought it was just right.

The comments about the objection based process really went to, I think, you know, flushing out more detail in the process and wanting to learn more detail and not - there was not so much critical comment about what was posted to date.

And NGA, you know, there was comment about geographic names, you know, on both sides of that issue whether there should be a heightened reservation of geographic names.

And those that, you know, accommodated it just through the geographic - just through the objection process and not having those applicants furnish some demonstration of community support with their applications.

So, you know, its kind of a choice between taking five minutes to provide an overview of all the comments or a couple hours so, you know, that was a way too terse overview.

But I'll say that, the other thing I'm looking at here is a spreadsheet that I just removed from my desktop, but a spreadsheet that's hundreds of lines long that has all the comments and categories by, you know, module categories and sub-category and whether it's a question, a suggestion or a comment, you know, who made it.

How, you know, what form they made it and then, you know, we're beginning to flush out. So, you know, how do we analyze it and what do we do with it?

So in some cases that analysis is straight forward and - or it's a simple comment that can improve the clarity of the guidebook and in other cases significant analysis is ongoing. Outside consultants are hired in that light.

Avri Doria: Okay, thank you. I'd like to open up the queue for any few questions that people may have. We're almost out of time, but just in case anybody had a quick question? Okay, I'm hearing no quick question. I'll thank Kurt for all that, last thing I have...

Kristina Rosette: Actually Avri.

Avri Doria: Oh, yes.

Kristina Rosette: It's Kristina. Kurt, if I understood you correctly just given the timing and the process of going through the comments and working on a new draft. Does staff still think it's likely that the second draft will come out of - before the Mexico City meeting?

Kurt Pritz: Well I think a second draft is, was a commitment that was made, you know, whether that fully answers all the issues or, you know, part of the draft or part of the associated documentation says in these issues analysis, you know, is ongoing for the next version of the guidebook and, you know, that analysis won't wait for the next version of the guidebook.

You know, it will be ongoing in a very public way. So, I think, the answer is kind of yes - well the answer is yes or no, right? Yes, there's going to be another iteration of the guidebook.

Kristina Rosette: You anticipate then that there'll be a third draft?

Kurt Pritz: Well the plan has been to publish a final version of the guidebook. You know, there's been no decision made to deviate from that at this point.

Kristina Rosette: Okay.

Avri Doria: Okay, thank you. Anyone else? Oh we've got three minutes left to discuss a following process to this meeting, which we're obviously not going to get further. (Unintelligible).

So I'm suggesting we take back the list and the real question that needs to be explored is do we feel that this dialogue is accountable and such feel that this dialogue was sufficient to make sure that the issues where there was possibly variance and possibly not variance are on the table, are being looked at and then it's sufficient until we receive the next draft or do we feel we need to do something quickly and before that.

And I don't know if anybody has a quick comment on that in the last two minutes, that's definitely a discussion we'll have to continue on the next call. Anyone wish to comment on that quickly now?

Okay, hearing no comment, as I say I'll repeat the question on the GNSO list so that, you know, people can answer it and discuss it there and then we'll cover it.

Obviously we need a drafting team if we are going to write anything, but the fact that we haven't done so, up to now, should be some sort of indicator.

And if there's nothing else, at this point I'd like to thank everyone for attending, everyone for their manner of attendance.

I'd really like to thank Kurt and the rest of the staff for all they're doing and the constantly coming and being open to talk to us about this and we'll be back at you again for sure, one way or another, and thank you all for putting up with me.

Chuck Gomes: Hey, thanks Avri.

Man: Thanks Avri.

Man: Thank you. Bye-bye.

((Crosstalk))

END

Participants present on the call
Council

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Avri Doria - GNSO Council chair
Chuck Gomes - Registries GNSO Council vice chair
Edmon Chung - Registries
Jordi Iparraguirre - Registries
Kristina Rosette - IPC
Ute Decker - IPC
Stéphane van Gelder - Registrar
Olga Cavalli - NCA
Zahid Jamil - CBUC
Tony Holmes - ISP
Tony Harris - ISP
Greg Ruth - ISP
Mary Wong - NCUC
William Drake - NCUC
Carlos Souza - NCUC
Terry Davis - NCA
Olga Cavalli - NCA
Alan Greenberg - ALAC liaison
Pierre Bonis - ccNSO observer

Absent apologies
Adrian Kinderis
Tim Ruiz

Observers

=====

Ken Stubbs - Ry
Vanda Scartizini - ALAC
Nick Wood - IPC
Danny Younger
Heike Jensen - ALS Terre des Femmes
Michael Palage
Ronald N. Andruff - RNA Partners, Inc. CBUC
Steve Delbianco - CBUC
Cheryl Langdon Orr - ALAC Chair
Mike O'Connor - CBUC
Jeff Neuman - Ryc Neustar
Dirk Krischenowski - dotBerlin
Caroline Greer - dotMobi
J. Scott Evans - IPC
Sébastien Bachollet - ALAC
Paul Diaz - Registrar
Jose Arce
Carlos Aguirre

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Denise Michel
Kurt Pritz
John Jeffrey
Dan Halloran
Olof Nordling
Patrick Jones
Marika Konings
Craig Schwartz
Liz Gasster
Karen Lentz
Karla Valente
Glen de Saint Gery