

**Cross Community WG discussing Recommendation 6 of the new gTLD process
(Rec6 CDG-WG)
TRANSCRIPTION
Thursday 06 January 2011 at 17:30 UTC**

Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG) meeting on Thursday 06 January 2011 at 1730 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-cwg-20110106-en.mp3>

ALAC

Cheryl Langdon Orr - ALAC
Alan Greenberg – ALAC
Olivier Crépin-Leblond – ALAC Chair
Evan Leibovitch – ALAC
Dave Kissoondoyal – ALAC
Carlton Samuels - ALAC

Commercial Stakeholder Group

Jon Nevett – CBUC*
Marilyn Cade – CBUC

Non Commercial Stakeholder group

Konstantinos Komaitis
Avri Doria
Robin Gross - NCSG

Registrars Stakeholder Group

Krista Papac

Registries Stakeholder Group

Chuck Gomes

Individuals

Richard Tindal

GAC

Frank March – GAC - New Zealand representative
Marc Carvell – GAC – UK representative

Bertrand de la Chapelle – ICANN Board

Staff

Marika Konings - Policy Director

Glen de Saint Géry – GNSO Secretariat
Gisella Gruber-White
Kurt Pritz

Coordinator: And this call is now being recorded, please go ahead.

Gisella Gruber-White: Thank you. Wishing everyone a very Happy New Year 2011. And on today's CWG call on Thursday the 6th of January we have Chuck Gomes, Cheryl Langdon-Orr, Carlton Samuels, Frank March, Konstantinos Komaitis, Krista Papac, Jon Nevelt, Bertrand de la Chappelle, Robin Gross, Richard Tindal, Alan Greenberg, Olivier Crepin-LeBlond, Dave Kissoondoyal, Marilyn Cade.

From staff we have Margie Milam, Kurt Pritz, Glen DeSaintgery and myself, Gisella Gruber-White. And we also have apologies today from Tony Harris, Evan Leibovitch and Philip Sheppard. I hope I haven't left anyone off the list. If I could also please remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you Cheryl and Chuck.

Cheryl Langdon-Orr: I think we're going to toss it over the wall straight to Jon aren't we Chuck?
But I'll...

Chuck Gomes: That works for me.

Cheryl Langdon-Orr: Perhaps just to preempt I think it's a great thing that we've been able to pull this together in such short order and wanted to recognize in particular the efforts that everybody has made particularly those who are still on their annual breaks as well.

But Jon seeing as you managed to get some semblance of the English language out of all the hoo-haa that was going on if you'd like to take control I think Frank and Chuck and I'd be delighted for you to do that.

Jon Nevelt: Hi. Thank you Cheryl. So essentially what we did was we looked at the resolution and some of the comments that we pulled together in the last round right before Cartagena as far as that drafting team we had together.

And then, so we drafted some responses for both (unintelligible) and there are six, looks like there are six responses.

I think we have 90 minutes so let's, you know, endeavor to keep each one to no more than 15 minutes of discussion and hopefully we can come up with some consensus and we can meet the Board's deadline of tomorrow. So I - do you have it up here on your screen everyone in Adobe? Is anyone not in Adobe?

Cheryl Langdon-Orr: Yes Carlton Samuels is not.

Carlton Samuels: Yes I'm not. I'm unfortunately at a spot where I can't get online access.

Jon Nevett: So Carlton if you want to get in the queue at any point just chime in okay?

Carlton Samuels: Sure, thanks.

Jon Nevett: Okay.

Mark Carvell: All right. I'd just like to say hello. It's Mark Carvell just joining from London. So...

Jon Nevett: Oh great, Mark how are you?

Mark Carvell: Well I'm fine thanks. Yes and I'm just trying to get my Adobe up on the screen but I will try to and that in a second.

Marilyn Cade: I'm not on yet, it's Marilyn, but I will try too.

Jon Nevett: Okay. Thanks Marilyn. So we got three Chuck Gomes.

Chuck Gomes: Yes and you may have a fourth before I'm done Jon. I'm having - every time I go to another screen I can't get back to Adobe so the only way to get in is to log in again. So...

Cheryl Langdon-Orr: Chuck has become...

Jon Nevett: This (unintelligible) I'm only going to count one.

Man: Chuck this discussion should be riveting enough that you stay with us though.

Chuck Gomes: Yes I've decided that's probably the best tactic.

Jon Nevett: Okay, moving on. So the first issue relates to the ruling of the Board, the GAC and the ALAC and the objection process. And we look at clarifying the circumstances under which the Board would vote with regard to a Rec. 6 objection and/or with gTLD applications generally.

This language came pretty much from the, our last response to the Board just formatted a little differently and massaged it a little to answer the specific question. Any comments on this first we'll call it 1A? Okay. Any objection to 1A? Okay.

So let's move on to 1B and this relates to the role of the expert panel. And again this language for the most part came from our last writing and then it was supplemented a bit based on information from the meeting in Cartagena. So any comment what I'll call 1B?

Cheryl Langdon-Orr: Just because I know Jon on the, on chat that Avri's just dialing in and we did go through in record time the 15 minute allocation for A you might just allow us to go back to A if Avri does have any comments on the first part as well Jon.

Jon Nevett: Absolutely.

Cheryl Langdon-Orr: That's all.

Jon Nevett: Avri are you on yet?

Avri Doria: Yes I just got on, sorry.

Jon Nevett: Okay great. So what we're doing is going through the draft letter. We went through 1A. There were no comments so if you have any comments now would be a great time to share them.

Avri Doria: No I did not.

Jon Nevett: Okay and now we're on 1B again role of the expert panel, tried to massage the, you know, the differing (unintelligible). Any comments on 1B?

Cheryl Langdon-Orr: Cheryl here. Not so much a comment that we need to necessarily put into the text but it was just a fleeting thought. Because this is one of the things where we did not reach consensus but the final recommendation in our report did indicate that if given time, energy and inclination we probably would have been able to reach consensus on a number of things that we did not, does that point either need to be reiterated either in a general sense in this response to the Board resolution out of Cartagena or is it something that it appropriate for this section of our response?

In other words do we believe that we could if given the time, the energy, the facilitation and the inclination reach consensus on this particular point?

Jon Nevett: Okay any comments on that?

Alan Greenberg: It's Alan.

Jon Nevett: Richard and Alan.

Marilyn Cade: I'm still working on getting onto Adobe but I guess...

Jon Nevett: Okay Marilyn you go first.

Marilyn Cade: ...maybe the question is it seemed to me that the Board was particularly challenged in the areas where we did not reach consensus if that's a fair statement. And so is it worth our examining particular areas briefly at least to see if there is further consensus to be built because we think that would be more benefit to the Board to have that guidance?

Jon Nevett: Richard?

Richard Tindal: Yes this is Richard Tindal. I think on this issue it's going to be very hard to get consensus. I think we've seen that there's a pretty broad, that very broad divergence of views on role of the...

((Crosstalk))

Man: It could be, yeah it could be.

Richard Tindal: Yes. I mean I think you captured Jon in the text here pretty well some of the issues where we do have disagreements.

((Crosstalk))

Man: It could be.

Richard Tindal: And one of them is should there be any sort of written advocacy on the part of the objector or the applicant? So I think some folks don't even want to see that. So my answer to the original question is my view is that we will be unable I think to get consensus on this.

Man: No, no (unintelligible).

Jon Nevett: All right Richard. Could everyone put their phones on mute if there's background noise?

Man: I have to talk to this.

((Crosstalk))

Man: (Unintelligible).

Richard Tindal: I think it might be misleading on this...

Man: I gotta talk to this.

Richard Tindal: ...particularly item for us to indicate that we could potential get consensus on this. I'm not saying it's impossible but I think it's very unlikely.

Jon Nevett: Okay, Alan.

Alan Greenberg: Yes. I certainly wouldn't put a comment on this one saying we might reach consensus because I agree this might be one of the more difficult ones. I do think it's a valid statement to put up in the overall introduction however.

Then if there are points where the Board would still like it and there's enough time then the group reconvening on the whole and, you know, on the whole. And I don't think this group would fight that I think we need to add the statement that given specific time and a explicit request consensus might be reached on some of the issues. So I think it's a fair statement to say at the beginning, I wouldn't put it on this one explicitly though.

Jon Nevett: So which ones would you put it on?

Alan Greenberg: I'm simply saying that if the Board would have a very, a much higher level of comfort with consensus being reached they should ask us to try to reach consensus on this point or others. I just wouldn't highlight it on this, I think it's a valid point in general.

Man: No, no, no I'm still on the call.

Jon Nevett: Bertrand.

Bertrand de la Chappelle: Yes hi. I would like to try to highlight that the formulations that Jon had put together are very interesting but it could be probably distinguished in different layers. There seemed to be a consensus in his wording and I sensed that in the discussions in the group and that would probably help the Board that there is a consensus basically on two extremes or against two extremes.

One is a consensus in the group that we are not dealing with the full DRSP thing that is completely external and that takes a decision and that's it. And I think it's correctly worded but it could be highlighted. The other extreme is that every single objection goes directly to the Board and the Board then decides whether it goes and calls expert advice. In between, so these are two elements that I think are relatively consensual.

The key question is how formal or not is the process for objections? And this is something that the current wording has not clarified. Is there something that receives the objection or does it go to the Board and then the Board decides to call experts? I think that's where the discussion on the modalities is still fuzzy. On the two other things the two extremes I think the message can be clear to the Board that the two extremes are not supported.

Jon Nevett: Okay, Richard.

Richard Tindal: Yes that's Richard again. In answer to the general question should we have some sort of introductory statement that with more time and effort we might get consensus I'm, at the moment I'm sort of opposed to that, to putting a sentence like that in there. I think that's what this call is about is to try and find on these issues do we have, you know, further consensus, is the opposition changing on them? If that happens let's put them in specific items.

But I'm opposed to putting some sort of general statement that we might find consensus in the future. We have been discussing this for a long time and we haven't reached consensus on some issues. And I think it might be misleading to the Board for them to see a statement that says, you know, if we only had another month we might get there. What worries me is that the reaction to that might be well, okay; let's spend another month on this. And I believe on many of these issues that we're not able to reach consensus.

Jon Nevett: Okay. Chuck 3.

Chuck Gomes: Yes. Thanks Jon. First of all I think we know that - you know, we don't have to ask the question would the Board prefer consensus. I think it's fair to assume that yeah, they would much rather see a consensus recommendation than one that's mixed.

So we don't even need to ask that question. The question is really, you know, is - should more time be spent in trying to reach consensus and several of you have suggested that that may or may not be possible in given cases.

And secondly, a complicating issue in this whole thing is this okay, show the CWG does reach consensus on something. How does that fit in the overall equation? Where do the SOs and the ACs who are participating in this group really come in?

So it may not just be a matter of the CWG reaching consensus. Where does it go from there? How are the SOs and the ACs involved in that process? Is it sufficient that the CWG reaches consensus without endorsement by the SOs and ACs? That itself is a very controversial question.

Jon Nevett: Indeed. Okay. Alan.

Alan Greenberg: Yes. Three points. In terms of the general statement at lead in, I was reacting to Cheryl's statement about putting one in this particular - in the particular

Section 1B I think. And I was saying I don't recommend that. I could live with it or support it in the intro. I wasn't really advocating it.

In terms of Bertrand's questions of, you know, should every objection go to the Board and the Board then send it to an external advisor? I think it was relatively clear. We are stating what we believe the Board must do and in this case it was the Board must ratify or uphold an objection that if an external provider does but not need to do it if the external provider rejects it.

If we are not specifying what the Board must do, the Board is free to delegate it to staff or do whatever they choose. So if we haven't spoken to what the exact details of the process are, we're saying - we're implicitly saying it's not all that critical to us.

And in terms of Chuck's last comment on endorsements, there's nothing we can do to cause one of the external groups to do something. In the case of the last one, the ALAC supported it. The GNSO I believe did not take any action on it. So each of those groups will do what they want to in the timeframe they choose. We have no control over that. Thank you.

Jon Nevett: Yes. Avri.

Avri Doria: Yes. I just wanted to support what Alan just said that if this group can offer what this group would do. So if - I think it's quite sufficient for the CWG to say yes, we could reach consensus; no, we couldn't; and yes we could work to see if we could further reach consensus with the subject of whomever or whatever wants to endorse or not endorse being totally separate.

Of course when we report, we report it that this is what the CWG came up with and that it has not been or it has been endorsed. But I think those are completely separate issues. And the CWG itself should not get (bagged) down in worrying about which group may be willing to endorse things versus

which group never endorses things versus which group has no process for endorsing things, et cetera. Thanks.

Jon Nevett: Thank you Avri. Bertrand.

Bertrand de la Chappelle: Yes. Just wanted to come back on the comment that Alan was making. If I look at what the - our account of this discussion is, there is a little bit of fuzziness at the moment on what is the real channel that will be contemplated for finding an objection?

If it is merely the panel that has set up (adopt) to advise the Board, then who do you file the objection to? And at the moment we are in a situation where the Applicant Guidebook has a formula where there is a (GRSB) whether we call it this way or not but there is a specific format for filing objection.

In the wording of the second part in the CWG input, it is not clear to me anymore what is the recommendation that there is a permanent body or that they are set up completely ad hoc. And so this is where the fuzziness in the recommendation lies in terms of the recipients and the Board if you see what I mean.

Jon Nevett: Wonder if Kurt or Margie could maybe take a stab at explaining what the process in the Applicant Guidebook would be that might address Bertrand...

Bertrand de la Chappelle: No. No. Actually I'm not talking about the process in the Applicant Guidebook, which I know. What I'm talking about is the formulation in the document of the CWG that we are reviewing here.

Jon Nevett: Okay.

Bertrand de la Chappelle: Which do not seem - does not seem to imply the establishment of a formal objection recipient.

Jon Nevett: Because we didn't reach consensus on that point.

Alan Greenberg: I don't think we really - we cared a lot as long as the outcome for a successful objection is as described in this document. That seems to be the critical thing unifying the group.

Jon Nevett: Okay.

Cheryl Langdon-Orr: My line's gone buzzy. You might have to mute me and I'll have to type.

Jon Nevett: Okay. Is that from before or - Avri. Okay. So there's no one in queue left. So, you know, to Cheryl's point, we're supposed to be okay with if as we go through these there's any recommendation in here or any issue that we're discussing in here where we think more time would be appropriate to actually say it there.

You know, I'm thinking (Rich)'s point that to have an overview of that point, and I guess Alan echoed that after, might send the wrong message. So, you know, if we think that we could - we're in a position that we might be able to reach consensus on a specific issue that we're discussing in here then we should put it in there but not put an overall give us more time request. (That fair)?

Hearing no objection to that. So any other comments on 1B. Any - is there any...

Cheryl Langdon-Orr: Am I muted or...

Jon Nevett: Not now you're not.

Man: We just heard you talk.

Cheryl Langdon-Orr: Oh, okay. Sorry. My line went buzzy and I just assumed I was muted because that's what they should do if my line goes buzzy. And I was, you know, typing something but who's going to type 57 pages to finish. So if I'm not muted, I'll just quickly draw your attention to the short version that I put in.

I just wondered if one of the reasons the issue in the type of expert advice at the CWG was referring to and what we were clearly not able to do was come down in one particular design criteria of what it should be. But we certainly could agree what it shouldn't be.

Is it for example, to get license mediators that can, you know, cause a problem? Do they have to be on call? Do they - I mean there's lots of (administratia) that's associated with something that we may be proposing here.

So I just wondered if perhaps Margie or Kurt could help us. Is that some of the reason that they - we're wanting more input on this particular point?

Jon Nevett: Margie, Kurt.

Margie Milam: Can you - this is Margie. Can you repeat the question? I think either Kurt or (unintelligible).

Cheryl Langdon-Orr: Sure. Basically if you've got a whole lot of people don't like which is the dispute resolution provider, this is license mediators, this is ad hoc panels that are thrown together as the need arises, this is some other form of expert advice. And each of those models would require very different types of admin and preparation.

For example, the example I was putting in the question is that if you want license mediators on a particular topic, this - you'd have to have them on call. You need them well prepared. There's a lot that goes around that. And was the Board looking for more information from us on any of that? And why we

were going against some and towards other tendencies. Not reaching for consensus I realize but why some things were less popular than others.

Kurt Pritz: This is Kurt. I don't know if this answers your question. I think the information the Board was seeking when to - the distillation of the issues that occurred in the two meetings in Cartagena. So the long time that everybody spent in meetings in Cartagena discussing these issues seems to distill down to, you know, the three issues that were listed in the Board resolution.

And, you know, they were discussing the first one, which is the role of the Board, the GAC and ALAC and the objection process. I think that - I think that in, you know, in preparation for launching a new gTLD process, well I know that regardless of the type of dispute resolution that occurs that significant work is planned upfront and it has in fact already taken place in not just identifying who - dispute resolution providers would be but onboarding them and preparing them, you know, in advance of even potential objections so that, you know, those that are resolving disputes in some manner are in place and, you know, knowledgeable of how decisions are going to be made or disputes are going to be resolved between the parties.

I don't know if that answers your question or not.

Cheryl Langdon-Orr: To some extent I suppose it does because if there's been considerable resources put into setting up the system, that obviously is going to have to be taken into consideration. So we probably shouldn't waste too much more time on it.

Jon Nevett: I've got Chuck in the queue.

Chuck Gomes: Yes. Any my comment Jon is a process one. I think it was very helpful in 1A that you ended it with the question does anybody have any objections to the wording that was there and there were no objections. So we had at least for those on the call a fairly clear understanding of where we're at to get a - I

would suggest personally that you do that for each one of these things including 1B before we move on to Number 2.

Jon Nevett: Yes. That makes sense. Okay. Any objections to the wording in 1B.

Marilyn Cade: Before you do that, can I make a comment please? It's Marilyn. I...

Jon Nevett: Sure. Go ahead.

Marilyn Cade: I just want to make a comment about practicality out of dealing with these kinds of activity. I do think that we need to recognize that there's going to have to be the build up of a certain amount of expertise. And if it's not on - if it's not through the centralization of process that's embedded with a short list of providers, then I think it would have to be embodied in some other way.

Whether it is a staff expert who is the keeper of the process and that probably goes to the question of someone's going to have to receive the complaint, et cetera. But isn't this in some way almost similar to the SSAC? The SSAC process where the SSAC is asked to convene a technical group to look at an issue to see if it is going to threaten the stability of security?

And I'm not suggesting going to a deep dive on discussing that. But I - and this may be a question more for Margie or for Kurt. But I think elsewhere in ICANN there is at least a little bit of a process identification of something that results in the convening of a group of experts.

Jon Nevett: You might be referring to the (R step).

Marilyn Cade: Actually no I'm not but...

Jon Nevett: It's another example of a good meaning of a group of experts. So you might wanted to refer to them. Okay. Margie or Kurt, do you have any input on that? Okay. So is there any objection to the language in 1B?

Margie Milam: Jon, it's Margie. Just to clarify the question. The question is whether we have a process internally at ICANN to convene expert panels. Is that the question Marilyn?

Marilyn Cade: Margie, I was just saying I think within ICANN there are at least a couple of other places where that does exist. And even though this might not be exactly the same process, it might be feasible to go look at where those processes exist and see what kind of ideas that would provide.

Margie Milam: Okay. I got the question. I guess that's really a question for Kurt on this processes.

Jon Nevett: I think the point for this call though is, you know, we didn't reach consensus on that issue. Should it be, you know, a standing expert panel? Should it be a DRSP? Should it be a mediator? You know, is that - is mediation an arm of, you know, alternative dispute resolution? You know, all those issues the form and scope of the expert advice we did not - we did not reach a consensus on.

Cheryl Langdon-Orr: But we did get the strong support for context, which is in the text.

Jon Nevett: Correct.

Marilyn Cade: And Jon, it's Marilyn again. We didn't reach consensus but that doesn't mean that the input of members cannot be a contribution to be taken into consideration.

Jon Nevett: Of course not. Point taken. Okay. So hearing no objections that changes the language to 1B, let's move on to two.

Bertrand de la Chappelle: May I - this is Bertrand. Just one quick comment. I didn't have time before you move. In the chat there's been an interesting exchange and I think it would be good probably to maintain and to get into the document the

distinction that Alan Greenberg was highlighting which is that the main recommendation of the CWG is dealing with the need to take a position when there is a recommendation by whatever panel. And that the Board must act if the panel decides that it is contrary to international law.

But that for the group, the modalities remain relatively open. This distinction is important for the Board to understand I think.

Jon Nevett: Yes. So it might be reflected in the language already where we say the Board would have to specifically approve any recommendations from third party experts to reject the TLD application based on...

Bertrand de la Chappelle: I agree it is in the text. What I want to underscore is that this discussion in the chat has highlighted the message that the core recommendation is this and that the modalities by which the panel is being established and so on is more something that is open for the Board and the staff to finalize if you see what I mean.

Jon Nevett: Yes.

Bertrand de la Chappelle: I think it's in the text at the moment. It's a question of hierarchy and priorities that I'm highlighting. It's important to understand that there is one strong message and some flexibility for the rest.

Jon Nevett: Olivier.

Olivier Crepin-LeBlond: Thank you. Thank you Jon. I don't have a problem with the language in itself but the format of it. And I know it might appear trivial. But the way that it is formatted at the moment with regards to the different paragraphs, each paragraph starts with the CWG did not reach consensus.

And the part about requiring of the experts shall be a legal interpretation of instruments of international law is just a little tag on at the end of the last

paragraph in there. And in wondered whether that could be separated as a separate paragraph so that the overall impact of the - of this paragraph could be higher. Yes.

Jon Nevelt: So just make - start a new paragraph with the word furthermore.

Olivier Crepin-LeBlond: Correct, yes.

Jon Nevelt: Yes. Okay. Any objections to that? Okay.

Olivier Crepin-LeBlond: And then another one. The paragraph right before that there is one part that says there was strong support but no consensus so the experts should be able to look at the context of the application. Make that also a separate paragraph.

Jon Nevelt: Okay.

Olivier Crepin-LeBlond: Yes because we batch some things together, which sometimes are like apples and oranges. That's all. Thank you.

Jon Nevelt: Thank you. Okay. Any objections to making this - separating those two out as separate paragraphs?

Man: No.

Jon Nevelt: Okay. Thanks. That's helpful. All right. Moving on the Number 2. And we're relatively on schedule. We'll take a queue on the issue. This is the standard which I think probably will take some time in this meeting. We're talking about the incitement and the instigation versus incitement or promotion - incitement to or promotion of. Alan.

Alan Greenberg: Thank you. It wasn't in a - I don't think it was in a formal document. But during one of the sessions, at least one Board member said something to the effect

of we don't really understand the difference between incitement and instigation. Aren't they the same thing or something to that - with that tone in it.

And my recollection from the calls we had with our legal expert or legal experts because there were a number of them was that incitement and instigation are terms that are used in both criminal law and in international law related to genocide and things like that and do have very specific meanings.

And if my recollection is not completely off base, it may be worthwhile putting that statement in because although the formal document did not make that reference, it was made by a number of people that the terms are the same, aren't they. And if indeed that's not correct, I think we need to clarify that.

I'm not saying whether - which expression to use in the text. Just that those two are - do have specific meanings and, you know, legal advice should be sought on it. Thank you.

Jon Nevett: Okay. Thank you. Any other comments? Clearly, you know, certainly in the meeting that we had downstairs in (unintelligible), it seemed like there was - there's still a lot of (unintelligible) over the issue of incitement to or promotion of versus incitement and instigation.

Alan Greenberg: And there's also a question of is either or sufficient or do we want - you know, the CWG came down - at least some people came down saying both are required. And all I'm pointing out is they do have specific meanings and that should be factored into the discussion. It's, you know, we're talking about carefully defined terms here.

Jon Nevett: That might be the case but I think we heard different interpretations of the different meanings, which created a lot of that confusion.

Woman: (That's right).

Jon Nevett: Richard.

Richard Tindal: Yes. This is Richard. So first of all I think the language we've got here is pretty good. So it seems to work for me. On the point of this incitement, promotion, instigation, I too don't truly understand the difference between these terms. And from what I've heard from various legal experts, they seem to be varying. Maybe it's jurisdictional but there seem to be varying definitions.

So if, and I'm not suggesting we do this, but if we were going to try and find some consensus on this, we would have to I think rather than just use the term, we would have to define it in the text so that everyone that is voting and everyone that reads it knows what the word for example instigation means.

Absent that sort of thing, I just think the language that you have at the moment is probably the - is the appropriate language. Certainly from seeing the staff response a month or two ago on this, it's shifted my view from when I originally voted for this. There's sort of ambiguity in my mind now as to what these various terms mean. And after multiple discussions on it, it's still not clear to me.

Alan Greenberg: Then maybe we simply need a disclaimer saying these terms may have specific meanings in specific courts of law. And that should be taken into account.

Jon Nevett: Okay. So are you suggesting adding that to the text Alan?

Alan Greenberg: Yes I was.

Jon Nevett: Okay. Any...

Alan Greenberg: Obviously not that - does that - not that exact wording but...

Jon Nevett: So actually you want to put it based on the - after the some admitted confusion of the legal impact of the word choice?

Alan Greenberg: I don't see where you are.

Jon Nevett: I'm in the - looks like the third sentence.

Cheryl Langdon-Orr: Continue to request that the standard C, is that where you're suggesting it be inserted Alan?

Alan Greenberg: Yes, sorry, I'm either not focusing right. I don't see where that is. We're talking to paragraph saying initial (course).

Jon Nevett: So - yeah, the third sentence reads based on the ICANN response, the discussions of Cartagena during which several CWG members stated that they no longer agree with the recommendation and some admitted confusion on the legal impact of the word choice.

Alan Greenberg: Okay.

Jon Nevett: CWG may no longer have consensus on this issue. If we could add - your language was something like these terms may have specific meanings in different courts.

Alan Greenberg: Yes. We note that these terms may have specific and possibly varying meanings in different courts.

Jon Nevett: So if I add a paragraph...

Alan Greenberg: That's just - in other words they have to go do some homework; not just blindly take our words.

Man: Yes.

Jon Nevett: Okay. So after the clause legal impact of the word choice, we say we know that these terms may have specific meanings in different courts.

Olivier Crepin-LeBlond: Jon, I think you might say we recognize.

Jon Nevett: Okay. We recognize that these terms may have specific meanings in different courts.

Alan Greenberg: Yes. I can live with that.

Jon Nevett: Okay. I have Bertrand and then Richard.

Alan Greenberg: Or I ask you one more thing. Or perhaps well-defined but possibly varying definitions.

Jon Nevett: They have specific meaning - so you want well-defined meaning.

Alan Greenberg: Yes. I'd say well defined but possibly varying.

Jon Nevett: Well defined but possibly varying meanings in different courts. Okay. Bertrand.

Bertrand de la Chappelle: Yes. I think - and again I'm speaking only for myself. But I think that we may be reaching at this as far as I'm concerned a level of confidence here regarding the distinction because indeed there are very big differences.

What I understood from the discussion is that basically we are going one hand incitement to a promotion of which is a relatively lower threshold and incitement to and instigation of which is a higher threshold, which is the

reason why people have aligned more or less with one option or the other depending on whether they want to raise the bar or lower the bar.

I think the main thing we need to find out is the recommendation of what else can be done not by the group because here our level of understanding is I think limited. But what can be done between now and the finalization of the document to set the cursor exactly in the right place?

What I understood is that there is a confusion about what could be covered and not covered. I don't know who could be in an appropriate advice for the Board when it makes the final determination but maybe a line that says a clarification should be made to the Board before final decision on the practical implementation of those things. Do you see what I mean?

It's not for the (CWG) to have obviously a clear position on one or the other. What I feel is that there is a cursor here and we will have collectively to find the exact place where we put it in the end. So that there's probably a slight additional step that I anticipate beyond the CWG group work.

Jon Nevett: Okay. So you're recommending something like which is a clarification should be made to the Board on these varying interpretations?

Bertrand de la Chappelle: Yes. The varying interpretation of those terms like the formulation that was before I think.

Jon Nevett: The objection to that?

((Crosstalk))

Alan Greenberg: I don't think it's really necessary. We're already giving the caution that this is a land - a minefield, that the definitions may vary and they have various meanings. That implies to me the Board better get good advice; not pick a random choice. And I would hope we don't have to tell the Board that.

((Crosstalk))

Marilyn Cade: ...in the queue. I would support what Bertrand said and I will just announce that I can't get into the Adobe room Jon because of blocked entry. So...

Jon Nevett: Okay.

Marilyn Cade: ...I'm going to have to keep - I could just press a button on the phone to let you know that I'm interesting in speaking. That might be more (decorum).

Jon Nevett: No problem. Just - you can just chime in. I've got (Mark).

(Mark): Yes thanks. I'm not perhaps familiar with the discussions that took place as to which is the term that has the most support within the working group. But it does seem a crucial issue. It's definitional. And the process of defining it should rely on some expert legal advice.

I guess I'm coming in with Bertrand that we perhaps highlight here in the text the need for the Board to take expert legal advice as to which term is preferable. I mean promotion to a sort of non-legal expert seems softer than instigation does. So what might be caught, you know, does rely very much on precise definition. That if we can't agree that within the group, then over to the Board.

Jon Nevett: Okay. Olivier, I see you're typing something on the chat with a suggestion. Do you want to articulate that or - and then (unintelligible).

Olivier Crepin-LeBlond: Thank you Jon. It's just that that whilst we're having a discussion on this, I had a look at Google and it looks as though incitement and instigation appears to be some kind of term that is widely used there with regards to racial discrimination and other strong types of discrimination. So that's all.

I think we definitely would need proper advice on that. But I will support the term. Thank you.

Jon Nevett: Cheryl.

Cheryl Langdon-Orr: Two points. First of all, I certainly want to support the insertion into text suggesting that very, very definite and very expert if not several sets of expert advice because it's probably going to be competing in sort on these terms.

I also wanted to suggest that this is another point where I think I would like to propose that we highlight the argument that is outlined in the last sentence on that paragraph Jon where you've written -where that says many members of the CWG still argue for the higher standard.

I think if those words, if we could have - discuss if those words can be in some way highlighted with the addition of - the second thing was with the addition of the text proposed by Alan earlier in the paragraph, I would suggest that we do not need to consume with a straw poll on the call.

And I just want to put it on the record that Richard you might have been convinced by staff concerns about, you know, various political parties and such and so forth and I was far from convinced. So I think that we, you know, we aren't going to fix this on this call. We just need to make sure that we have language in this response that's appropriate.

So I don't think we need to do a poll. I do think we need to add sentences as Bertrand and others have suggested. And I think with Alan's additions we don't need to do more than perhaps if you agree -- excuse me, I'm losing my voice -- highlight that some of us certainly want a higher standard than incitement or promotion.

Jon Nevett: Okay. So think we should add Alan's sentence, add Bertrand's sentence and then delete the purple and then make that last sentence its own paragraph to highlight the sentiment.

Cheryl Langdon-Orr: If it's not its own paragraph Jon, (unintelligible) the many members would argue for the higher standard. Just a (unintelligible) give a few words or (telephony), whatever works.

Alan Greenberg: That'll confuse it with the Board statements but just a separate paragraph should do it.

Cheryl Langdon-Orr: Yes. Okay. Whatever works as I said.

Jon Nevett: Thanks Cheryl. I've got Konstantinos.

Konstantinos Komaitis: Yes. Just very briefly I would like to reiterate basically what Bertrand said here. The whole issue is whether we want to raise the bar or not. And I think that it's crucial that we bring to the attention of the Board case that there is also incitement and instigation criteria, which is why we do international law. And it's mainly used for (hate) of crimes under general law. But generally speaking it's becoming even more popular for international law.

But I think that the Board needs to understand that there's also this criteria and the difference between incitement and instigation and incitement of or promotion to is exactly the bar.

So I agree with the idea that the Board needs to seek advice, expert advice, on the issue and ultimately up to the Board to decide whether they want to have a higher standard for these objections or a lower standard. And depending on which direction the answer will come naturally because if the Board opts for the higher standard then incitement and instigation is the way to go. Thank you.

Jon Nevett: Thank you Konstantinos. Okay. So we exhausted that issue and we'll - you know, what we'll do is make these three changes and circulate a new draft right after this call. With those changes, does anyone else have any objections or any comments on 2A? If not, we'll move to 2B. Okay.

Two B we have these grounds of discrimination that were discussed in both the public session and then the meeting that we had downstairs in Cartagena. And then Avri has filed a comment on this I guess it was this morning - my time this morning.

And any other comments or Avri do you have a suggestion on how to address your concerns?

Cheryl Langdon-Orr: Can we have Avri un-muted?

Jon Nevett: Which I can't un-mute.

Cheryl Langdon-Orr: And she may not be able to un-mute but...

((Crosstalk))

Avri Doria: I just put myself on mute today.

Jon Nevett: There you go.

Avri Doria: It kept telling me it was an unacceptable option. So I think I was (unintelligible). I did honestly. I bet you never heard that before. But anyway, yeah. What I was saying is basically the position I've been taking is that either we have to add a more definitive list or we need to go to and completely input the list.

And as the last sentence in this has said that people were generally comfortable with adding and any other. And I was just indicating that I was

not comfortable with that particular addition. What I'm comfortable - and the conversation was going so quick at that point that, you know, I'm afraid I didn't make myself clear.

What I'm comfortable with is deleting all the explicit references and saying, you know, discriminations that are generally recognized under international law and give no examples. But if we have a listing of examples, then I think we have to have a more complete one. And that's the position I was taking.

Jon Nevett: So the sentence reads now that suggestion Cartagena of a catch all discrimination criteria such as any other discriminations that are generally recognized under international law seems to be sensible to many of the CWG members.

Avri Doria: Right.

Jon Nevett: Should we add a sentence to say other members prefer listing all of the discriminations suggested by the CWG or only the catch all thereby avoiding a sense of prioritization among discriminations?

Avri Doria: That would work for me.

Cheryl Langdon-Orr: Works for me too.

Jon Nevett: Okay.

Man: Jon, you should be a lawyer.

Jon Nevett: Alan.

Alan Greenberg: Yes. In one of the meetings there was a discussion of saying we could name - that statements without examples of any sort are vague and often not well understood but that we could give two or four or whatever saying such

classes of discrimination might include but not be limited to and then list a few. Just so people get the flavor of what we're talking about.

Jon Nevett: A lot of beeping going on.

Cheryl Langdon-Orr: Certainly is. It's not me for once.

Jon Nevett: Okay. Any thoughts on that suggestion by Alan? That's pretty much saying what we had there was we list some of the discriminations and some folks - what we'll say is some folks, you know, want a catch all and some folks want it all or none.

Alan Greenberg: Yes. But all I'm - what I'm saying is if we list any, it should include the implicit statement that this is not the definitive list.

Jon Nevett: Because we're not listing any in this document. Okay. Frank.

Frank March: Frank March here. I just - I actually had my hand up in the - just a caution. This can cut either way and it has done in discussion with the Board in my experience already that if you give any specific examples, they automatically seem to take on a higher level of priority than others that aren't listed. I feel to not list than to list even the specificity in my view and because everything was mentioned automatically in terms of higher level priority. Thanks.

Jon Nevett: Bertrand.

Bertrand de la Chappelle: Yes. Two points. The first thing is to ask Avri, does that mean Avri that you would not support the existence of a sort of catch all if there are explicit mentions? What I understand from what you say is that if there are explicit mentions, there should not be a catchall. Is that a correct understanding?

Avri Doria: Up until that last phrase if I can go though I don't have my hand up. Up until that last phrase, I was fine. In other words, if there are explicit mentions, there should be more of them that list that we gave. I am not comfortable with some explicit mention and a catchall. I am comfortable with replacing any explicit mention with just a catchall.

Bertrand de la Chappelle: Yes. That's - I...

Avri Doria: That goes along with what Frank just said.

Bertrand de la Chappelle: Okay. The other thing is we're just talking about explicit mentions but the - if I remember correctly, the current DAG or the current Applicant Guidebook lists a limited number of topics. Would that mean that you would support removing them completely from the paragraphs - the related paragraphs?

Avri Doria: Yes. And just putting in a general catchall. Yes.

Bertrand de la Chappelle: Okay.

Jon Nevett: We heard both sides of the spectrum. You know, Alan said list a couple and put a catch all and others. So I think we capture that - both of those sentiments.

Alan Greenberg: Yes. What I said is it helps comprehension. I don't think it's mandatory.

Bertrand de la Chappelle: Yes.

Jon Nevett: Okay. Any other - Bertrand you're hand is...

Bertrand de la Chappelle: No. No. No. I'm done.

Jon Nevett: Okay. Any other comments? Any objections to the language as amended that we discussed adding that sentence? Okay. Let's move on the three where we talk about ALAC and GAC objections. Alan.

Alan Greenberg: I have two points. There was a significant discussion in Cartagena about this. And the bottom line seemed to come down to that if there was costs associated with the ALAC or the GAC making such objections that there must be funding for it.

You know, it didn't really matter whether we get an allotment and spend it on this or the price is zero or we do it through the independent objector. But the bottom line is if there's a cost associated with it, that it's not - where the funding is not provided, it's effectively saying we don't have the ability anymore. And I think that needs to come out here.

My second point is a small one but nevertheless...

Jon Nevett: Wait, wait, wait. Excuse me a second. Where would you put - where do you want to put the first point?

Alan Greenberg: Oh gees. I hadn't thought about that.

Jon Nevett: All right. Why don't you make your second point Alan and I'll...

Alan Greenberg: Yes. Okay. Probably if you put a sentence after - the first sentence of the paragraph says the full consensus of the CWG. If you follow that with a sentence saying the implication of non-zero costs or a cost without appropriate funding negates the ability of the ALAC or GAC to make such objections. Wording may not be elegant but something to that effect. I mean there is no independent source of funding to these groups.

Jon Nevett: So if I add a sentence that says ICANN should provide appropriate funding for such objections?

Alan Greenberg: If there is - if there is a cost then ICANN must provide appropriate funding.

Marilyn Cade: And I would - it's Marilyn. I would support that. I'd like to make a further comment on that.

Jon Nevett: Okay. On this point, why don't you go ahead and Alan just hold your second point.

Marilyn Cade: Yes. My comment is on this point. I - there is a public - I want to use the term broadly. But there is a public interest aspect to there being some kind of a mechanism, a reasonable mechanism to provide funding for such interventions if I could call them that.

And I personally think that there has to be such a mechanism. So I don't know if we need to spend a lot more time on this call about what that mechanism would look like but I would like to endorse the fact there needs to be such a mechanism.

And I want to give an example, the practicality of - I live in the United States of America. And in order for the government that I work on a global basis with many, many and am familiar with many, many other country situations.

In order for a ministry or a subgroup in a ministry to get financial approval for something like this, it may be an incredibly and complicated process.

Man: Yes.

Marilyn Cade: It doesn't - it can't necessarily come from the normal budget of such an entity. And I think we have to show our sophistication as a global multi stakeholder organization in recognizing that.

Jon Nevett: Alan, you want to go with - oh, (Mark) are you on this point or is it another point?

(Mark): It was a more general point regarding the GAC really.

Jon Nevett: All right. So let me get to Alan's second point and then we'll move to (Mark).

Alan Greenberg: Okay. In the paragraph straddling Page 3 and Page 4 on the detailed ALAC processes, I understand that what is there was proposed by the then chair of the ALAC. But I really think it's not appropriate to put that level of specificity and detail (since) the language has not been discussed formally by the ALAC at all. At least hadn't as of the time I left it a few weeks ago.

So, you know, and given that it mentions the concept of a super majority vote, a term which is not normally used within the ALAC, I think we need a more general statement akin to what does the GAC want as opposed to the details. If that statement does stand, however, there's a typo at the top of Page 4. They are engages I presume should be they are engaged.

Jon Nevett: Okay. Let me jump to Cheryl because she raised her hand probably - if you're addressing this point, that'd be great.

Cheryl Langdon-Orr: You mean just on this point exactly. Look, that text was put in early on in drafting to be very clear that what at least the ALAC would be doing would be in keeping with its standard operational procedures and requirements for accountability and transparency.

So you can cut the detail to we will do it properly, we will do it well and we will do it in a manner which is in keeping with the high standards of the AC that we are and I suspect GAC would be doing the same.

Alan Greenberg: Yes. And I think your expression just now of accountability and transparency is perhaps just the right tone.

Jon Nevett: So the GAC and...

Cheryl Langdon-Orr: But, you know, we were asked specifically those questions. We do have to answer them.

Jon Nevett: Okay. Let me go to (Mark).

(Mark): Yes. Thanks. Well it's just a general point that the GAC hasn't considered any of this including the issue of fees when (my sure) expectation is that the GAC would say no to any prospect of having to pay a fee since we provide advice. We're not in the business of lodging objections on the fee-paying basis.

So I wonder if we could just add a sentence in here that this is all subject to the GAC having for - undertaking for consideration of these proposals. Can we add that in just to sort of underline that we - you know, to avoid the risk of preempting the GAC discussions or if that sounds rather negative?

Jon Nevett: Yes. I mean we say...

(Mark): That's the status we're in I think.

Jon Nevett: Sorry. We say the CWG felt it was outside its scope to comment on the process for the GAC or ALAC to lodge objections. The CWG assumed that any Rec 6 objections put forth by the GAC or ALAC would be approved according to their own internal processes. And then we could add if you want taking into account transparency and accountability principles as well as consensus-based decision-making.

Cheryl Langdon-Orr: Perfect. Saves me typing what I was typing.

Jon Nevett: Good.

Man: We should hire you Jon.

Marilyn Cade: Jon, it's Marilyn. I would support the general context of what you just said. And I thank you (Mark) for your intervention. I think that was very helpful. I will just note and I leave it up to the government to comment in that it may be that since we haven't - it may be that there are governments, governmental entities outside of the GAC membership who may be affected by this as well.

At the same - I don't think we need to put that into our document but I think it's something for this - the Rec 6 group to recognize that an IGO, intergovernmental organization, that - sorry, international intergovernmental organization or a governmental entity that is not a part of the GAC would also be affected. If I'm right about that - and so whatever decision is made would have implications for how said party also would file objections.

I don't see anything wrong with that because clearly there are lots of businesses that are not a member of the business constituency, they would be affected by this as well. But I think it's just worth noting.

(Mark): Yes. It's (Mark) speaking. That's a very valid point actually. We mustn't forget that there are governments who are not on the GAC.

Jon Nevett: Okay.

Alan Greenberg: So is that impacted by this section, which is talking only about GAC and ALAC?

Marilyn Cade: Alan, I don't think it's affected but I think we need to be aware of it because, you know, we can't - I'm not saying we have to act on it. I just think we need to be aware of it.

Jon Nevett: And Bertrand.

Bertrand de la Chappelle: Yes. Just a few points. The first thing is that the (unintelligible) there was a clear message that I heard from the CWG that whatever procedure is being put in place for the GAC or ALAC to intervene in this kind of topic. The desire was that the GAC and respectively the ALAC would develop their own procedure. So maybe a clear formulation saying that there is consensus within the CWG that the GAC and ALAC would develop their respective procedure is probably important.

The second thing is that at least for the GAC there is always the capacity to use the normal advice procedure regarding anything that would be contradictory to principles of international law. If the GAC according to its own principles and procedures were to issue an advice that in the view of the GAC the - a given string is contradictory to those principles of international law, I think this would naturally trigger the positions of the bylaws.

The problem is that on the other side for the ALAC there is no such guarantee that the advice or comment by ALAC is being taken into account. I remember that during the discussion there was some thinking given to adding a sort of similar request for the Board to be - to respond to such a comment by the ALAC. I don't know if this has been pursued in the group.

And finally I think those (tails) would be debate that Robin wanted to have on the independent objector. It is clear I suppose that for the GAC and ALAC one way to avoid having to pay fees given the administrative difficulty of doing so is to go potentially through the independent objectors. So maybe that's one of the benefits of having an independent objector.

Jon Nevett: Yes Frank.

Frank March: Yes, thanks. First of all, I agree with what Bertrand was saying. I just wanted to come back to the - well two issues really. One is the GAC obviously - agreeing with (Mark). The GAC is (unintelligible) to pay fees. So that's just a - not even open to consideration really.

The - and Bertrand's point that the GAC does have (unintelligible) advice and certainly in any discussions in the GAC which as (Mark) has said (unintelligible) has not yet taken place in the GAC. My suggestion to the GAC would be that in fact the GAC would stick within its existing mechanisms of providing across the board and use that existing maintenance (unintelligible) objection.

I just wanted to comment on the creation of governments are not part of the GAC. It's impossible I think for the CWG and the CWG can simply remind the Board that they think that necessary that there are governments a part of the GAC of course. But it's not I think the role of CWG to try and propose mechanisms for governments that aren't part of the process already. We can only work within the existing processes.

Governments that are outside I think just can't be commented on within this mechanism. It just doesn't seem to me to be appropriate. Thanks.

Marilyn Cade: I have a question for Frank.

Jon Nevett: Go ahead.

Marilyn Cade: Frank, am I correct that the GAC does provide a service status to the IGOs? I believe that's the case, right? (IGU) units go (Wifo).

(Mark): (Mark) speaking. Yes. They're all...

Frank March: NGOs are...

((Crosstalk))

Frank March: Sorry.

Marilyn Cade: The IGOs, the intergovernmental (unintelligible) organizations.

Frank March: Sorry. Yes. That's what I meant. (Unintelligible). Yes. They automatically invited to be observers. And there have none that have applied that have been turned down. So - but on the other hand, there are - of all the possible ones that could be members, they're a relatively limited number.

Marilyn Cade: (Unintelligible).

Frank March: The ones with the keenest interest I think are members.

Marilyn Cade: Yes. So...

Frank March: Sorry, observers. Observers, not members.

Marilyn Cade: Right. But they would be covered - they would be covered by this process as well.

Frank March: Yes. Although...

Man: (Unintelligible).

Frank March: ...yes, certainly the GAC would be in a position to provide advice and never have in the sense that with any governmental member, absolutely.

Marilyn Cade: Okay. Good.

Jon Nevett: All right. Alan.

Alan Greenberg: Yes. I was commenting on Bertrand's statement about the ALAC's advice being treated the same as the GAC. Certainly it's an issue that's been discussed much. However, given the radical difference in the terms in the bylaws that surround advice from the GAC with respect to advice from the

ALAC, which I believe isn't mentioned, I don't see them being equivalent anytime soon. So I don't think we can assume that there will be an ALAC process equivalent or advice in the GAC.

One might also ask however even if the GAC were to give advice to the Board, what process would the Board take to get it into the dispute process? Perhaps the Board would go to the independent objector. I don't know. But so that's a Board problem that it would have to handle, not ours.

But I think we still need the process for the ALAC. It's not - and I see no reason not including the GAC whether they ever exercise it. Now that's a different matter. I don't actually foresee the ALAC exercising it all that much. But I think the existence of the process is important.

Jon Nevett: Okay. Frank, is that from before or is there another point.

Frank March: Apologies. Come down.

Jon Nevett: Okay. All right. So it sounds like we'll end the language about transparency and accountability and consensus-based decision-making in the first paragraph. Delete the second paragraph with the specifics of the - what the ALAC might be using. We essentially give the flexibility to both ALAC and GAC to come up with whatever processes they so choose.

We'll also have the language about appropriate funding. Any other comments on three?

Bertrand de la Chappelle: And just the fact - this is Bertrand. And just maybe the fact that the GAC always have the possibility to use the normal advice.

Jon Nevett: Should this group mention that you think or at least - I guess...

Alan Greenberg: We're saying that this should be a process for the GAC to raise an objection. If the GAC wants to use other vehicles, it's - that's the GAC's choice.

Jon Nevett: Okay. All right. Number 4. Taking from - mostly from Robin's note and a little from Avri's note on this issue related to the independent objector. Any comments on Number 4? Any objection to Number 4? Robin, you're fine with it I presume, right.

Robin Gross: Hi. Yes. Yes. Thanks a lot. I think - I thought that was really good. Thank you.

Jon Nevett: Okay. So I'm hearing no objections to Number 4. I think what we'll do is make these changes that we discussed on the call today. We'll get them out relatively soon. And send the draft out for final comments. And if there's any - if there are any comments, you know, please put them in redline format. Otherwise we'll hopefully meet our deadline for tomorrow.

Marilyn Cade: Jon Nevett: I have a - I have a question and it's probably for Kurt and Margie.

Jon Nevett: Okay.

Marilyn Cade: It's Marilyn speaking. My understanding is that there is also a request out to the SG/constituencies for - that was distributed through the Council for comments about our views on Rec 6. And as the (unintelligible)...

Margie Milam: Yes. This is Margie. I can comment on that.

Marilyn Cade: Yes.

Margie Milam: So there was a motion in Cartagena as the GNSO Council meeting regarding the Rec 6 report and the motion - sorry. The motion basically directs the stakeholder group and the constituencies to provide comments as appropriate to the Rec 6 reports.

Marilyn Cade: And the deadline for that?

Margie Milam: There is no deadline. The motion said as soon as possible.

Marilyn Cade: Well could you help me understand if there's no deadline but the deadline for the Rec 6 working group is tomorrow, if there's no deadline for comments from the SGs and the constituencies, how is that going to be helpful to the process?

Margie Milam: Yes. If I can clarify Marilyn. That motion came in on Wednesday in Cartagena before the Board action. So the GNSO Council did not know that the Board was going to resolve this issue the way that it did. And the Council has not had a meeting until - the first meeting's next week. So it's just a question of timing given the way that the whole process went in Cartagena.

Marilyn Cade: Okay. So, you know, as the Chair of one of the constituencies for undertaking developing comments and obviously I don't want to put my constituency through work that's not going to be useful.

Margie Milam: Yes. I mean those are very valid comments Marilyn and it's certainly something that Council can take up next week. But I don't really know what else to suggest at this point.

Marilyn Cade: Okay.

Jon Nevett: Avri.

Avri Doria: Yes. Bertrand had his hand up before me.

Jon Nevett: I see a microphone under Bertrand.

Avri Doria: Yes. That's because somebody gave him permission to speak so he got a microphone and that dropped him in the order.

Jon Nevett: Okay. We'll go to Bertrand first then.

Bertrand de la Chappelle: Okay. No, I just wanted to highlight that if I understand correctly the (unintelligible) (ref 4), it basically says that the independent objector in case of Recommendation 6 cannot initiate it on its own unless there is at least one comment in the public comments. This is a significant evolution from the Applicant Guidebook today. Is the group completely comfortable with just having the reference to just one comment in the comment - in the public comment period?

Chuck Gomes: Where did you get public comment period?

Bertrand de la Chappelle: And (unintelligible) an absolute request.

Chuck Gomes: Bertrand, where does it say public comment period?

Bertrand de la Chappelle: At many members should be at least one party to disclaim during the public comment period that would be armed by the creation of...

Chuck Gomes: I'm sorry, I missed that.

Bertrand de la Chappelle: ...a TLD before the IO can object. So I think it's an interesting evolution because we could have gone through the complete direction where - I mean the group could have gone in the complete direction of saying it has to be triggered or requested explicitly by somebody. I think that's where Robin was heading towards.

What the formulation here says is that it is neither the independent objector can do it completely on its own even if nobody has triggered it or has done it secretly. But it doesn't require that he basically triggered or activated explicitly

by someone. He can - he or she can use an explicit public comment and that's the minimal trigger. That's the clarification I get - that I understand and I would like to know if this is exactly what is meant.

And I that the opportunity to do a final note that there's one point that we have not addressed in this discussion which is the title of the paragraph in the Applicant Guidebook and the question of whether it's called public interest objections or principles of law and maybe as a closure we should deal with that very briefly.

Jon Nevett: Can you explain that?

Bertrand de la Chappelle: So is my understanding correct?

Jon Nevett: What's that - about a public interest objections verse a recommendation...

Bertrand de la Chappelle: No. No. No. No. No. On the description of the trigger for the independent objector regarding Recommendation 6 that it is an in between that request that there is at least one public comment and that it cannot initiate something on its own behalf or just by secret claim being triggered by someone. I think that was an argument that Robin was making. I just want to make sure that I understand exactly what this paragraph means.

Robin Gross: That's what it means to me Bertrand. I think I share that understanding. But...

Bertrand de la Chappelle: Okay.

Robin Gross: ...it'd be interesting to hear if there are other understandings as well.

Cheryl Langdon-Orr: It's what it means to me and it's why it...

Bertrand de la Chappelle: Okay.

Cheryl Langdon-Orr: ...has my support.

Jon Nevett: Avri.

Avri Doria: Yes. That's what it means to me. Going back to my previous point. My previous point had been related to the one about the GNSO going for - Marilyn about the GNSO going for stakeholder group and constituency viewpoints.

My impression would be that if we haven't done that by the same deadline that the CWG says, it's sort of a moot point and there's no reason to go through much effort. But of course, you know, things keep slipping so you never know when people are going to list the stuff.

Jon Nevett: Okay. Alan.

Alan Greenberg: Yes. A couple of points on that one. We don't know to what extent the Board will put weight to the fact that the GNSO as a whole has approved or not approved or rejected the CWG report. We can't read the crystal ball so we don't know what the value of the constituency stakeholder group or GNSO as a whole approval is or support is. So, you know, groups are going to have to decide what they do on their own.

As I read this particular document, it doesn't say that a public comment is required. It says that's about the lowest level of input that the independent objector should be using. And other forms certainly. You know, if the ALAC lodges an objection, it doesn't have to be done through the public comment period.

And I read the words cannot be traced back as not necessarily saying it's in the public record who made the objection but that it can be traced and under the right circumstances it will be traced back. Just slightly different from being

in the public record and may be appropriate depending on the decision of the independent objector.

Jon Nevett: Okay.

Robin Gross: This is Robin. Can I get in the queue?

Jon Nevett: Yes. Do you want to - do you want to just say one party has publicly or claimed publicly that it would be harmed as opposed to the - referring specifically to the public comment period?

Robin Gross: I would be okay with that because I think the point is that it's a public declaration. That it's not a secret one. And, you know, whether it's in the public comment period or some other public mechanism that's set up, I don't think it's particularly important. But I think the salient piece is the public part. That it is publicly known who is objecting.

Jon Nevett: For example someone sends a letter to ICANN that gets posted on their public site.

Robin Gross: Exactly.

Jon Nevett: Okay. Any objection?

Cheryl Langdon-Orr: That is a friendly - yeah.

Jon Nevett: Okay.

Cheryl Langdon-Orr: I think that's a friendly amendment for sure.

Alan Greenberg: I'm not even sure there is a public comment period for all of these things.

Jon Nevett: There is.

Alan Greenberg: Okay.

Man: There is.

Bertrand de la Chappelle: However this is - sorry, this is Bertrand. Sorry for chiming in. But this is different from what Alan was saying which left the possibility that one party not secretly but not publicly goes to the independent objector to raise the point. And if needed, this objection can be traced to that party. But it is not necessarily made public. So would Robin, will you be uncomfortable with that provided that there's a traceability?

Robin Gross: Yes. I think I would. I mean I think we're trying to be as transparent here as we can. And I think that it's important for the public to know if someone is objecting to a TLD.

Marilyn Cade: I would support that.

Jon Nevett: Okay.

Man: Support what?

Marilyn Cade: The idea that the - there has to be - there has to be a public - I think Robin's point which is if I can paraphrase it Robin. You've done it much more eloquently but that there needs to be a public - it needs to be publicly - there needs to be - there needs to be transparency that someone is objecting to a TLD.

Jon Nevett: And you're only talking about at least one party. It's not like the huge burden.

Marilyn Cade: That's right. I don't have - perhaps I've missed it in the discussion. I was unfortunately tied up during the discussion with the Board in Cartagena. But I

don't think we've ever - we had not contemplated anonymous complaints, right?

Alan Greenberg: Some statement that someone made during one of the calls implied that however.

Marilyn Cade: Well, when I was on the President's Strategy Committee, we were - and we took comments from the public on a number of other very sensitive issues about the future of the organization, I think we wrestled to the ground the idea that comments may be private or confidential but they can't be anonymous.

Cheryl Langdon-Orr: Here, here.

Jon Nevett: Okay.

Alan Greenberg: So that's the distinction we're talking about here.

Jon Nevett: Right. I've got a queue forming and we have - we don't have (unintelligible) left. So any final comments from Bertrand and then Avri?

Bertrand de la Chappelle: Yes. Just very briefly. The reason why I highlight those elements is that the current Application Guidebook allows for the independent objector to try something on his own. So what I understand is that the recommendation of the working group is to move significantly away from the notion of being completely acting on its own.

That the minimal - the best situation is where it is triggered by somebody publicly either by the lowest denominator which is just public comment made in the - on the public comment forum.

And the independent objector picks it or it is being triggered by some (actor) publicly or, and this is where there might be ambiguity whether there is a

possibility for requesting not anonymously but not publicly the independent objector to pick up an objection provided that it is traceable.

But I understand that the message is that there should not be - as the paragraph says that the independent objector should not take initiative on its own which is different from the Applicant Guidebook. So I just wanted to highlight this to make sure that I understand it fully.

Jon Nevett: Okay. Avri, Alan and Richard.

Avri Doria: Yes. Am I on mute or off?

Jon Nevett: You're good.

Avri Doria: Okay. Thank. In terms of what Bertrand said, yes that's my understanding that the IO cannot do it on its own. I have a problem with this notion of traceability that include not anonymous but confidential, et cetera. I think whoever's making the objection must be known and that there's nothing confidential about that. It doesn't need to be traced. It is boldly stated and that's what I thought we were saying. Thanks.

Jon Nevett: Alan.

Alan Greenberg: Yes. I realize as we're talking about this that - and I understand the lineage of where this paragraph comes from and the reason for putting it in here. But I realize that we're - we are making a statement saying the CWG would like to make another recommendation without the statement that we made on all the others of the level of consensus.

And I think we really need to say this is coming from a, you know, perhaps a significant number of the members of the CWG. But it's - either it hasn't been subject to the formal consensus process or something else similar to that. I don't think we can make a statement without a measure of consensus saying

it's coming from the CWG. That's not in line with how we've handled the rest of the things.

Jon Nevett: Okay. How would you change it?

Avri Doria: In the CWG?

Alan Greenberg: I would say there's strong support but not consensus.

((Crosstalk))

Alan Greenberg: No we don't. Well...

Avri Doria: So there's strong support but consensus has not been measured.

((Crosstalk))

Marilyn Cade: Actually - it's Marilyn. Is it - we've had a discussion about it but we - this is also a subgroup of the CSG, right.

Man: No.

Marilyn Cade: No, I guess it's the full - sorry. Just looking here. Are we - would we say that this was a topic that we began to discuss on this call because we've only touched on it in previous discussions but not in any detail, right.

Alan Greenberg: Given that we have - we need to get the answer out by tomorrow, I think the best we can say is describe what the current situation is.

Marilyn Cade: Okay.

Alan Greenberg: I think Jon captured it in the last words. I don't have them in front of me.

Jon Nevett: Chuck.

Chuck Gomes: Yes. Thanks Jon. I think we have to be careful about using any of the terms that we specifically use to define the level of support in our original report. I'm not sure we can really say there's strong support.

Alan Greenberg: Significant?

Chuck Gomes: So just, you know, I'm - and I'm agreeing I think with most what everybody is saying here is that, you know, we need to just qualify this but let's avoid using any of the terms like full consensus or consensus or strong support because we haven't gone through that process of determining that.

Jon Nevett: Okay, so...

Cheryl Langdon-Orr: (Unintelligible) language.

Jon Nevett: ...there is significant support of the CWG members to make another recommendation related to the IO mentioned above.

Cheryl Langdon-Orr: Jon, why not just say - Cheryl here. The CWG would like to make another recommendation related to the IO mentioned above but this has not been subject to a consensus call of the group.

Chuck Gomes: That's good.

Cheryl Langdon-Orr: That's the facts. It's been out on the list. It's been, as Marilyn said, toyed with and it has a number of us here in agreement but it has not been subject to formal call for consensus.

Alan Greenberg: Yes. I would say it has support from a number of members, maybe even a significant number but has not been subject to a formal call.

Jon Nevett: Okay. All right. Richard.

Richard Tindal: Just at a high level here on this IO objection and whether there needs to be some sort of transparent trigger for the IO to do it. I mean I just think we should keep in mind that the standard's not changing. So in order for any objection to be successful, it still has to reach the standard of reaching international principles of law.

And so what we're saying is for it to be successful it's going to have to be inciting or promoting or instigating, whatever words we end up with, things like child pornography, things like violent lawless action, things like various forms of discrimination. It just seems to me as a practical matter that is going to an avalanche of public comment or strings of that nature.

So this is a practical matter. I'm not that worried about, you know, one or two comments triggering the IO because - but in cases where it's going to be successful, I think we're going to see hundreds if not thousands. I don't believe there's going to be those sort of strings by the way. But if it did happen, I think that they would be a large amount of public comment.

Jon Nevett: Makes sense.

Man: Good point.

Cheryl Langdon-Orr: (Unintelligible) should be in.

Alan Greenberg: Bertrand made a comment on the chat, which is relevant.

Jon Nevett: Say that again Alan.

Alan Greenberg: Bertrand made a comment that the IO can also make a community object - objection at a community criteria. And I believe we are talking only about the ones that - the kind of criteria that used to be called morality.

Man: Yes. Absolutely.

Cheryl Langdon-Orr: (Unintelligible) only.

Alan Greenberg: It should - it's in effect.

Bertrand de la Chappelle: Maybe should be mentioned somewhere.

Jon Nevett: Okay. Alan, at Recommendation 6 in here? We do mention the community objection by the IO in the prior paragraph.

Man: Yes. Okay.

Jon Nevett: Okay. All right. So I'll mark that up as Cheryl suggested and circulate it's draft shortly.

Chuck Gomes: And Jon, this is Chuck. A question. Okay. So how do we bring this to closure? We've obviously got 24 hours. So if it's going to be circulated, what does that mean? What if somebody has a comment? What if - you know, we're not going to have time to do multiple iterations here.

Jon Nevett: Yes. I guess - you know what, what we did last time was in the clarification document out of Cartagena was we sent it out and asked for objections or any changes and gave everyone, you know, a certain amount of time to file any and none came in so we sent it on.

Chuck Gomes: Okay.

Alan Greenberg: And if any come in, we could append them as a attachment, appendix, whatever.

Chuck Gomes: Just as long as we have - we know exactly how we're going to handle it and we communicate that right up front in the communication that goes out.

Jon Nevett: Yes.

Alan Greenberg: Or another call tomorrow at the same time.

Cheryl Langdon-Orr: I would suggest if following on to what Chuck said. Cheryl here. If we make clear that we would be willing to simply append such objections if it's essential. I mean if, you know, we've misspelled something, then it'll just be (unintelligible). But one of those silence equals consent issues I think.

Alan Greenberg: Sounds good.

Bertrand de la Chappelle: Just a point - this is Bertrand. I think we're reaching the stage where we're basically at a sort of rough consensus type of situation. The question that is being asked by the - to the working group generally speaking is given the timeframe and given the fact that there will be further discussions in the community including in San Francisco or in between on some of those issues, can the members of the CWG live with the current draft or do they have any very specific objections that would then be appended? I think that maybe should be the message for tomorrow.

Jon Nevett: Okay.

Cheryl Langdon-Orr: And can I ask are we going to - who's actually going to transmit it? Someone actually needs responsibility for, you know, pressing send. Chuck, are you capable of doing this now seeing that you were...

((Crosstalk))

Cheryl Langdon-Orr: ...for most of this?

Chuck Gomes: Yes. I think I can. Yes.

Jon Nevett: All right. So Chuck I'll get you the redline and a clean version of, you know, the changes that we discussed for you to get out.

Chuck Gomes: Okay. Well go ahead. You can go ahead and - because time's so short, go ahead and send that straight to the list so that there's...

Jon Nevett: Why don't I send it to the list - just the redline and then you could follow up with instructions on how we're going to get it, you know, approved.

Chuck Gomes: Okay. All right. I'll do that.

Cheryl Langdon-Orr: It's something to own the pressing that, you know, I mean up to midnight on the seventh.

Jon Nevett: Yes.

Avri Doria: (Unintelligible).

Alan Greenberg: We'll assume Chuck will do that unless we hear otherwise.

Chuck Gomes: And which Chuck should I use?

((Crosstalk))

Cheryl Langdon-Orr: ...Chuck. Use Chuck 3. I think that's good.

Bertrand de la Chappelle: Sorry to put back on the boiler the subject I raised earlier. What about the title of the whole section?

Jon Nevett: Of Section 4 or the entire thing?

Bertrand de la Chappelle: No. No. No. No. The entire thing in the Applicant Guidebook, you know. Currently it says public interest - limited public interest objection. What is the position of the group on what the title or the headline should be?

Chuck Gomes: Well I don't think that we ever reached consensus on that, did we? I mean...

((Crosstalk))

Chuck Gomes: ...used one that we had less consensus on but...

Robin Gross: This is Robin. If I could get in the queue on this.

Jon Nevett: Yes. Go ahead.

Robin Gross: I - yeah, I thought we said something along the lines of that when we did take a poll, the public interest words came out among the lowest in the poll. And so we didn't support that particular wording and that was the wording that had been included in the DAG. So we had an issue with that. But we didn't necessarily propose an alternative. We just noted that the language in the DAG was among the least popular in the poll that we took.

Jon Nevett: Alan.

Alan Greenberg: Sorry, were you calling to me?

Jon Nevett: Yes, sorry, Alan.

Alan Greenberg: Yes. Yes, I was going to say something akin to what Robin said that we could well note that it was - they picked the worst instead of the best. And I'm assuming PIR is going to file an objection and threaten to sue if they call it that, so.

Bertrand de la Chappelle: Okay. But that - the current wording is there's no better formulation that the group would like to propose like something that would be more focused like phase or principle of international law or something like that?

Alan Greenberg: I think we couldn't decide then. I don't think we should try to decide now (unintelligible)...

Bertrand de la Chappelle: Okay.

Alan Greenberg: ...the meeting has ended.

Bertrand de la Chappelle: It's just to basically take the word of the Board afterwards.

((Crosstalk))

Alan Greenberg: ...is they picked the worst one that we - of the options we had. I think it says enough.

Bertrand de la Chappelle: Okay.

Jon Nevett: Evan, last comment?

Alan Greenberg: No, sorry my hand was up by mistake.

Cheryl Langdon-Orr: Evan.

Jon Nevett: Evan.

Alan Greenberg: Oh. Okay. Maybe Evan's not here.

Jon Nevett: Okay. All right. So let's call this...

Cheryl Langdon-Orr: Yes he is. He's in the room with his hand up.

Jon Nevett: But we don't hear him.

Cheryl Langdon-Orr: Un-mute, star 6 in this system, not star 7.

Jon Nevett: Okay. Let's wrap.

Cheryl Langdon-Orr: He was muted. His line was muted in meeting view because it was beeping. So he probably can't un-mute. Meeting view was...

((Crosstalk))

Gisella Gruber-White: This is Gisella. I'm going to get him un-muted now. Just bear with me for a second.

Jon Nevett: Okay. Yes. He's in the chat room now saying he's muted.

Cheryl Langdon-Orr: What I'm trying to say.

Gisella Gruber-White: (Lori) would you be so kind as to un-mute Evan Leibovitch please?

Coordinator: Yes. He is un-muted.

Evan Leibovitch: Hi there.

Gisella Gruber-White: Thank you.

Evan Leibovitch: (At least) not much to say but I just wanted to make note that we did a poll of this sometime back and it should be why don't we just present the results of the poll? There were a couple of options. Different ones had different votes. It's possible to see which ones had more support than others. Why not just

present the results of that poll almost as an appendix? We don't need to redo it.

Alan Greenberg: Didn't we do that in the original report?

Man: Yes. We put it in an interim report.

((Crosstalk))

Cheryl Langdon-Orr: ...which of course, you know.

Evan Leibovitch: I'd just say, you know, we know what we didn't like and these are the ones that we did like. There wasn't consensus but these are the ones and you can get a clear idea of which have more support than others.

Jon Nevett: Right. I guess the problem with that is that, you know, if there's feedback now from that and we haven't discussed the issue...

Evan Leibovitch: Just a though. Rather than discussing it with this short compressed timeframe and then we just - that we just remind them that there were - that there was an opinion poll taken. There wasn't 100% consensus on anything but some clearly had more support than others.

Cheryl Langdon-Orr: Refer them back to the report.

Woman: (Unintelligible).

Cheryl Langdon-Orr: And if you want to put in the excerpt that's fine.

Evan Leibovitch: Okay.

Cheryl Langdon-Orr: I have another call.

Evan Leibovitch: That's it. You can mute me again.

Chuck Gomes: That seems like a pretty safe thing to do. Just reference back to the report. Say that there wasn't consensus but there were some options that had stronger support than others.

Jon Nevett: Okay. So I'm adding a sentence on the name.

Man: Thank you Jon for taking the lead on this.

Jon Nevett: No problem. All right. I'll circulate this right away.

Cheryl Langdon-Orr: Richard's got his hand up.

Jon Nevett: Richard.

Richard Tindal: Yes, it may be a little too late to jump in here on this. But I'm just wondering why we're picking this, you know, one issue. There's 20 things that are in our report. We were asked to comment specifically on three of them. And we're tossing in others that we weren't asked to comment on. We didn't have consensus on. But we're reiterating them.

I'm wondering why we reiterating this and not...

Cheryl Langdon-Orr: Because a Board member asked us the question.

Alan Greenberg: Our token Board member.

Cheryl Langdon-Orr: He's hardly token.

Chuck Gomes: You're a token Board member huh Bertrand?

Cheryl Langdon-Orr: Not in my view he's not.

Alan Greenberg: He's the only one on this call though.

Jon Nevett: Bertrand would be - would a sentence that I just heard provide any value to the Board?

Bertrand de la Chappelle: I think - honestly I think just reiterating the fact that the - that there was a poll is not a bad idea.

Jon Nevett: Okay.

Bertrand de la Chappelle: Doesn't got - doesn't need a lot but just to keep it in mind.

Richard Tindal: Bertrand, was this something that the Board's collectively concerned about or something that you're suggesting that would be useful?

Bertrand de la Chappelle: I think the fact that the headline is between brackets is an indication of sorts. It means that it is something that can probably be improved. If it cannot, it cannot. It's always the - the reason why I asked was to sense whether there was big discomfort with the current title sufficiently enough to say this is not an acceptable current title and we would really be worried if it were remaining which I don't feel is the case.

But the fact that it was within brackets shows that if anybody has a better idea or if the in the weeks to come there is a better formulation on the basis of all the discussion, it's still a little bit open. That's all. I just don't want to close things too quickly. And the reason shy I asked is that it's always better to ask and - than leave the things un-addressed. That's all.

Richard Tindal: Sure, (that makes sense). That makes sense to me but given that the information has already been put on the table, doesn't that mean that we should be coming up with new proposals then? Have not the existing ones already been articulated?

Bertrand de la Chappelle: Well that's a fair point. That's a fair point. It was a way for me to basically ask whether the group had a strong sense regarding the current title. Let me put it this way.

Cheryl Langdon-Orr: We're taking longer discussing should we discuss it than we are to write the sentence.

Jon Nevett: Yes. Okay. I'll draft something up and circulate it.

Chuck Gomes: And what time - what deadline specifically should I use to close this off tomorrow?

Cheryl Langdon-Orr: Can you use the UTC time Chuck, whatever is chosen? You know, those of us who don't live in America really do appreciate being able to do a simple calculation.

Chuck Gomes: Certainly.

Jon Nevett: Shall we say 24 hours from when it's circulated?

Cheryl Langdon-Orr: Perfect.

Chuck Gomes: Okay. That works for me.

Jon Nevett: All right. I better get cracking.

Alan Greenberg: Just needs to be enough time that if there are any objections to format them before the final document is submitted.

Jon Nevett: Okay. Well thank you everyone.

Chuck Gomes: Thank you Jon.

Cheryl Langdon-Orr: Thank you Jon.

((Crosstalk))

Jon Nevett: All right. Bye bye.

((Crosstalk))

Woman: Thank you (Lori).

Coordinator: You're welcome.

Woman: Happy New Year and I'll speak to you soon.

END