

**Introduction of New gTLDs: GNSO/Staff Discussion
Los Angeles
11 April 2008
Afternoon Session**

Note: The following is the output of transcribing from an audio recording of the Introduction of New gTLDs: GNSO/Staff Discussion in Los Angeles on Friday afternoon, 11 April 2008.

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://gns0.icann.org/calendar/#april>

<http://audio.icann.org/gns0/gtld-meetings-2-20080411.mp3>

Legend

Name: First name of member of group

Name?: If we think we might know who's speaking but aren't 100% sure.

Male: Unsure of who's speaking, but know it's a male.

Female: Unsure of who's speaking, but know it's a female.

[-ation] If we believe that all we missed was the beginning of a word because the audio cuts out, we will just put the end of the word that we can hear. If we are very sure from context what the whole word is, we'll just put the whole word, to make it easier for the reader. However, if the word could be a variety of different things, then we will show only the part of the word we could hear or thought we heard.

[very faint - barely audible] We will put this at the beginning of paragraphs where we are having a very difficult time hearing.

ATTENDEES:

Robin Gross
Norbert Klein – NCUC
Dirk Krischenowski - dot Berlin
Roger Castillo -.lat
Eric Brunner-Williams
Werner Staub -CORE
Dan Schindler -CentralNic
Kristina Rosette
Steve Metalitz – IPC
J. Scott Evans - IPC
Mike Rodenbaugh
Marilyn Cade – CBUC

Adrian Kinderis
Paul Stahura
James Bladel
Jon Nevett – RR
Avri Doria - NomCom GNSO Chair
Chuck Gomes - Ry GNSO Vice-Chair
Greg Ruth - ISP
Ken Stubbs
Ray Fassett – Ry
Olga Cavalli - NomCom
Richard Tindall – Demandmedia
JON BING - Nominating Committee

Afternoon: Karl Manheim, Professor of Law at Loyola Law school

STAFF:

John Jeffrey, Dan Halloran, Craig Schwartz, Olof Nordling, Karla Valente, Denise Michel, Karen Lentz, Glen de Saint Gery, Irving Sanchez.

REMOTE PARTICIPATION:

Keith Drazek – Neustar
Edward Viltz
Jeff Neumen - Ry constituency
Danny Younger
Michael Palage Ry +IP +CBU constituencies
Hal Lubsen – Afiliis
Thomas Lowenhaupt – Communisphere
Cheryl Langdon-Orr - ALAC Chair
David Maher - Ry constituency chair
Lyman Chapin - Interisle Consulting Group
Colin Strutt - Interisle Consulting Group
Amadeu Abril I Abril - .cat
Beau Brendler - Consumer reports Webwatch

Avri: Okay, we’re starting. Welcome back, I hope people had a nice lunch. Especially the people remote, I hope you guys had nice lunch, dinner, breakfast – whatever’s the appropriate thing to do. Now, we are going to change the schedule a little. We were slated to next talk about contractual conditions. We

decided to shift that to the end of the meeting, to see where we are on time, because selection criteria was seen as a very important, topical discussion that we were pretty much almost involved in already. So we're going to start with terms of reference to the selection criteria, and we've got two hours slated for that one, and starting a few minutes early, we'll actually maybe have two hours and ten for it, if we need it.

And then after that, we'll see where we are time-wise. We can get into the contractual conditions before doing the conclusion and follow-up activities, but we'll see where we are, and I know some people have early flights, or are leaving early for regular flights, so hopefully... Okay, Kurt, are you guys all set up?

Kurt: Can we get a sense of when people need to leave, Avri?

Avri: Sure. Who needs to leave before 5:30? 1, 2, 3, 4, 5. So I've got about five people that need to leave before 5:30.

Kurt: Okay. Is that 2:30, or is that 4:30?

Avri: How many people need to leave before 4:30?

Kurt: Okay, excellent. Oh, see ya Richard. Sorry. Okay, so we are going to move to slide... we're going to temporize for a second to let Karen get her computer reconnected to the Internet... not the Internet. This thing, this wire – the projector... She was just connected to the Internet, but didn't want that on the projector. So, have we sent new slides? Oh, okay, you're posting them?

So we added a couple of slides in the middle of this discussion, so when you get there, I'll identify them, and hopefully by then they'll be posted too. So for all of those of you watching at home, I'll let you know that there's some additional materials being posted. They're interesting. It's not the most important stuff, but we thought after the discussion this morning they should be included.

So now we're going to talk about the objection process, essentially, and objection standards and dispute resolution processes that are being implemented as a result of these recommendations. There they go... that a string should not cause confusion with another string, that they should not

infringe existing legal rights of others, that they must not be contrary to generally accepted legal norms relating to morality and public order, and that an application will be rejected if a panel determines there's substantial opposition to it from a portion of the community it purports to represent. Those were paraphrases. It's hard to get started up after lunch, isn't it?

So, those are the recommendations. So, there're a couple of slides on our vision for this, and some of them are really straightforward. So some of the straightforward ones are, we'll publish reserved names list, and we'll establish a procedure for amending the reserved names list. And we will essentially use the GNSO working group report, the reserved names working group. There will be some additional names added for infrastructure purposes, and I'm not, you know, I'm not the person to really describe this, but IANA and the IAB have identified such names as dot LOCAL or dot HOST, sort of Internet infrastructure names that would be left. So there's not many of those, and they'll develop a list, and it will be posted for public comment as part of the reserved name list.

So, the first discussion topic... and again, the ordering I gave to the slides is somewhat problematic, but of course I want to the dispute resolution process. But the first discussion topic is about geographical names, and specifically country names. They're not on the reserved names list, and so... and they were specifically identified by the reserved names working group as not being put on the list, so they won't, but we're also dealing with GAC principle 2.2, for the implementation of new TLDs, that ICANN should avoid country names or territory names or place names without... unless an agreement with the relevant companies. So I want to talk about that a little bit, and potential mechanisms for ICANN establishing a process for ensuring that support, or at least the non-objection, of a government is in place as part of a name that's applied for that is either a country or a territory name, or a sub-region.

Avri: So, I've started a queue. Coincidentally I've put myself in it first. I saw my hand before I saw anyone else's. [laughter] I have Chuck on here.

I guess I have a question here in terms of, certainly the GAC did put out its positions, saying that ICANN... I guess, what? "Should avoid." But what power of policy rule does a GAC statement such as that have? I mean, the policy that went through did create an objection process in which GAC was also... would have been a legitimate objector. And so it sounds almost as if they're saying,

“Well, please take a sort of a priori objection that anything that looks like a country name..” You know, you – ICANN.

Kurt: Yeah.

Avri: “You decide whether it looks like...” And I see that as actually problematic. So I don’t see why what was proposed, which is... and, in fact, the other part of what was proposed was that the ICANN staff would go to GAC and say, “By the way, somebody has applied for the following three names. We want to make sure you notice.” So why that isn’t sufficient to meet their requirement that it shouldn’t happen, because after the application, it’s certainly possible for them to say, “No, it can’t happen.”

Kurt: So, you lost me about 90 percent of the way through. I followed you right to the end. So, you said... you stated the GAC position. But then what was the part about ICANN going to the GAC?

Avri: Well, one of the things that was in the recommendations... it wasn’t in the formal recommendations, it was in the discussion, was that staff would notify GAC when something they might care of was being applied for. That it was just, you know, and everyone would have been notified because it would have been published publicly, but we know that that’s not necessarily adequate for the GAC. They actually need to be told intentionally and specifically that they should listen to something. So that’s why there was sort of the extra step that ICANN staff would take, which would be to go to the GAC and say, “Hey, you know, we put out this list of names that are applied for. There’s three of them here that you might really care about.” And that enables them then to either go to the country itself or to do it themselves, and raise the objection flag. And so I was just wondering why that wasn’t an adequate process to cover them, unless they’re asking that, “Well, we should really revisit the decision that geographic names are not reserved, but we understand that reserving geographic names is almost impossible.” They don’t even know how to do that.

Kurt: Right. It’s almost impossible.

Avri: Okay, so while I was talking I saw various hands. I saw John, I saw Olga, I saw Adrian, Eric, Werner...

Kurt: Were you asking me that, or were you asking the GAC?

Avri: I'm asking, I'm asking... I guess it starts out with asking you, because, as far as I could tell, there was no problem. [And knows 00:09:34] they put out a principle that they shouldn't, we put out an objection process that they should be able to stop it after application. So why is it a problem?

Yeah, you're next.

Chuck: So I'm jumping in here. This is Chuck, for those on line. The... I think we've already answered the question that is raised there, Kurt. When the reserve name working group, and then ultimately the committee, and then ultimately the council, approved these recommendations, we did it full... we did it in full knowledge of the GAC principles and the GAC advice. And the way to handle those kinds of applications is to alert the GAC and governments through the communication process, the publishing of the strings and stuff, that such names have been applied for, and that there is an objection process, and that is the answer to this.

Now, I'm going to add one other thing to that though, and this is totally separate from what we're talking about today, although certainly related. And that is, and this was with council participation going into the New Delhi meeting, in preparation for the joint ccNSO/GNSO meeting that was held there. We did throw out a bone there that until the ccNSO finishes its process, full PDP process in terms of IDN... call them ccTLDs, okay? We said that we would be willing to consider a temporary reservation requirement on country names and various scripts, okay? Realizing that, you know, until they finish their process for all cc's, or countries, or whatever, that there is an issue there, and that possibly they should be reserved at least until then. So we did put that on the table. We didn't get much back from them on that. The GAC who was there... they were, I think they were attracted to that. The ccNSO itself didn't get much response to that.

Avri: [Inaudible – not on mic 00:12:13]

Dirk: Yes, Dirk Krischenowski. I think we all want to have a new TLD round with really less political and objections problems coming from governments. And what good was it presenting slightly before, it was 2.2 GAC principles, but in New Delhi the GAC extended that, and they said the GAC also considers that in the event that there is any doubt regarding the status of a particular application,

ICANN should consult with the government. So any doubt, I would say, there's with every application for a geo-whatever string, if it's an abbreviation or a full name or IDN script... if there is any doubt, ICANN should have some doubt if everything runs fine. So it would be a really good idea if ICANN notifies the relevant governments or the GAC or the relevant government if it's not represented in the GAC. So I think this communiqué from Delhi guides much, much more intense way to handle geo-strings and for the GNSO and the implementation, I think it would be really good to follow these guidelines.

Male: So Dirk, are you saying... are you suggesting that the GAC and government view on this should trump the GNSO view on this? So an advisory committee or governments, their view should supersede everybody else?

Dirk: No, not necessarily, but I think it makes sense if we see the GAC as a natural partner, and not as maybe an enemy for having objections in the application. So asking the GAC is not a bad idea, in all the cases.

Kurt: I think in that GAC advisory, it said that country names should either be approved by the country or not objected to. Is that...?

Dirk: That was... unless an agreement with the relevant government or public authority.

Avri: To read the list of people that I have, I have John, Olga, Adrian, Eric, Werner, Ray, Marilyn. Did I miss anyone? Kristina. Okay, John.

John: Thank you. Reading the GAC principles 2.2, then number of names going into that group is very, very large indeed. But there's a subset there, which would represent the names of a country as recognized as official names by the country itself, spelled by a script, recognized as official script by the country itself. That would discard a large number of variations, like English spelling, like [Goretz 00:15:32], Venice, and so on. And for my own part, both ways, my own country is now outside its own borders.

As far as I understand... there are people here who are far better read in international law than me... the Paris Convention contains a prohibition from using these names as trademarks. Therefore, their use are excluded from national trademark legislation, though mention are made in national trademark legislation... perhaps only a prohibition for using that nationally. In some

countries, they have selected, I understand, to include it in criminal law or otherwise, to make sure it is clear that it is criminal, or it is not permitted, to use these names as trademarks or in similar situations. As it's not strictly trademark law, they have a prohibition which of course [some would further 00:16:34].

This has made me reflect to what extent ICANN, as a budding international organization, looks upon itself as bound by international law, though it is not, obviously, party to the Paris convention. It has a role to play on the international stage, and it is expected, I guess, to follow more or less the same rules as everybody else who is part of that stage. So it occurred to me that perhaps ICANN has a strategy or a policy to hold to what sort of attitude to take towards obligations like this in international treaties, especially international treaties with the generality of the Paris convention. And if they... the attitude is that they should respect the basic principles, then that is a [inaudible 00:17:38] also this problem, or this issue. Thank you.

Kurt: Thank you, John.

Avri: Okay. Olga.

Olga: Thank you, Avri. This is Olga Cavalli, and I would like to raise a concern about the representativeness of the countries in the GAC. The GAC does not represent the whole community of countries of the whole world, it's limited. And also, and I participated for some years representing my country in the GAC, the activity in the GAC of the countries is also more limited. It's a small group that really [rides 00:18:18] the discussion. So it doesn't matter what the gTLD GAC principles say, many countries will not want their names to be filed as gTLDs, and they don't even know that the GAC exists. So this is my concern, and I think that John is raising a good point about other international aspects of names for countries and regions. Thank you.

Kurt: Thank you. Who's next?

Avri: Adrian.

Adrian: Yeah, I think that we've talked about countries, and I'm quite comfortable... [coughs] Excuse me. Sorry about that. I'm quite comfortable... thanks, maybe the only pat on the back I get all day. I'm comfortable with the way that countries are being protected, because that seems to me to be somewhat

tangible and limited. And you can go after countries and say, "Give us your scripts," and we're away. Cities and other place names seem to me to be more problematic, and I really... I don't think you can do a reserve list on cities and names, and cities [in this way 00:19:37]. So, yeah, so because of that, I think you have to ask countries to rely on the objection process in order for new gTLDs in cities or place names. You're right [inaudible].

Kurt: So, but not reserve them, but require the approval of the country in the application, or the non-objection of a country name?

Adrian: [inaudible – not into mic 00:20:14]

Kurt: That's hard. Yeah.

Male: Can you guys use the mic, please?

Avri: Use the... and I also want to notify that we're having some problem with the phone system, in that people who didn't stay on line before lunch are having trouble dialling back in. So... okay, I've got you, Ken, on the list, but I've got... okay, Adrian, you were... you completed? Yeah, okay fine. Eric, you were next.

Eric: Thank you very much. This is Eric Brunner-Williams from CORE. I'm glad Olga made the point about the non-universality of the GAC. I'm looking at the GAC 2.2, and I see words there that are so far from the notion of the sovereign's interest that I don't know where to begin. So let me start with the moon. There are geographical features on the moon that can be named, and it's really hard to find a GAC member that is competent to have an opinion on the names of geographic features on the moon. Coming a little bit closer, there is the Abyssal Plain somewhere between various continents. And again, it's hard to find a GAC participant that has a competent opinion on how to name things in the middle of the Atlantic or Pacific or Indian Oceans. Similarly, Antarctica – it's hard to find a GAC member that has competency to speak there. So the imputation of universal competency in this statement is the issue that I have... wanted to draw attention to, is that we don't think that the GAC is either universal in its representativeness of nation state governments, but also that its competency even where it appears to be present is not unlimited. Thank you.

Werner: I just wanted to... Werner Staub. I just wanted to remind us that the... when the GAC principles were received, the recommendations were not ready yet. So

GAC wasn't sure what was going to come out of our recommendations. Moreover, at that time there were two cases of precedence, namely dot CATS and dot ASIA, and in dot CAT and dot ASIA, essentially what the GAC has described, you know, "in agreement with," was the principle. The governments were consulted. There was no... ICANN could be satisfied there was no disagreement. So it was okay. It wasn't necessarily prescriptive form. The... in agreement with form... does not say how this should be done. This is probably sufficient, because if we say a given form it could be [inaudible 00:23:19] it could cause all kinds of problems, whereas if we see the principle as, without the prescription form, it is then much easier to handle, as opposed, you know, does it have to mean... I mean, might one explain, and say, in agreement with, you can mean they did not object, so that's fine. You could also mean that they supported it. But, depending on the case, you may have to look at what this means. If there was no way for them to discover it, of course you cannot pretend that they had... were in agreement with it if they did not know, so... The GAC statement is flexible and meant to be adapted to the situation that we actually have.

Avri: Okay, I've got... I didn't quite understand that, but it doesn't matter. I've got Ray, Marilyn, Kristina, Ken, and Jeff. So, Ray.

Ray: Well, real quick...

Avri: And Robin.

Ray: ...I don't envy ICANN staff's mission here, to get 19 high level recommendations for the GNSO. Now we might as well call this one 20, because how does it get implemented? That's really what it comes down to. And, you know, I think it's reasonable position for ICANN staff to say that if somebody files for a country name that they might, in that example, be able to notify GAC that someone has filed for a country name. But we start reaching down into territory names or sub-region names, I'm not sure that that can be implemented. Where ICANN staff is pro-active in notifying the GAC that somebody filed for dot BIGAPPLE, okay, which happens to be a commonly known region name, even though it's slang, but it is. Does that fall within the... you know, so I think it can be objectively applied, and even implemented, where ICANN staff could notify the GAC on a country name, even if it's IDN country name. But then the other question I have on this is that, maybe for staff to ask

the GAC, is does the GAC have standing to object to an application for dot BIGAPPLE, which is in the United States. Is a territory name from a specific region... does the GAC even have standing?

Kurt: Right, so I think the relevant government has standing on the community objection.

Ray: And there's where I agree then with Adrian and Chuck, in that there's already a way, within the process, where they can do that.

Kurt: So, in reading the last GAC communiqué, you know, my reading of it was that they were looking... which was after the fact, that they were looking for a different step for that community-based objection process that they were asking for, as I think we discussed here, either some form of approval, or at least not objection to the application for a country name. No? That's not... that was my reading of the latest GAC... what you read.

Avri: That probably was their last request. Marilyn.

Marilyn: I think I could start my comments by asking for a show of hands in this room of how many of you are interested in seeing new gTLDs introduced in a timely manner by ICANN. Can I see a show of hands?

Avri: No. I think it's a loaded question, and I do not... I really request that we do not do shows of hands.

Marilyn: Avri, Avri... here's my problem. Fine, here's my problem. Everybody that came here is interested in one way or another, and it's a difficult process, to introduce a new gTLD. I look at this new gTLD [inaudible 00:27:09]. I understand, as all of us do, that the GAC does have a unique standing as an advisory board. They also have the right, by the by-laws, to advise the Board. We've been significantly... and, by the way, there was a by-law change that was enacted that says that if the Board does not accept the advice of the GAC, they need to give an explanation of why not. I think what we're trying to do here is to come up with a process that is reasonable, that will allow new gTLDs to be introduced, allow the governments to be notified in a manner that they can respond to, so that we don't get more roadblocks and hold up the process of the names that are not controversial.

I think actually we have four examples of where we have worked before. We have the fact that there was a list of names, in ASCII only, but there was a list of country names for dot TRAVEL and dot INFO. We had the experience that dot ASIA and dot CAT had. Why can't we devise an approach to notifying the governments, because it won't only be the GAC, so that we have agreement that it's a reasonable process. And that takes the angst out of this. It also takes some of the uncertainty out. Just because a government doesn't agree... some governments will take action to block things. Other governments, if they're consulted, may not have a legal basis to object or be able to block. But if we don't take the step of working with governments in a positive and pragmatic way, everything we're trying to do about ICANN the mega-organization, as the new private sector governor of this space, could be put at risk. And I just think that is not responsible on the part of policy [counsellors 00:29:05], where I used to be one, or is it in the interest of any of us who want ICANN to work this out.

Avri: Karla, you wanted to comment on that?

Karla: Yes.

Avri: I'll put you on the list.

Karla: Just wanted to note that, as part of our communications plan, or global communications plan, we are putting together comprehensive lists of governments around the world, and trying to identify who are the people from this government, what is the exact agency that should be notified when we have the draft RFP out, when we have the final RFP out, when we have the list of applicants. So we feel that we are giving... you know, we are trying to do the best that we can for due diligence with the communications plan at this point.

Avri: Kristina.

Kristina: I just wanted to make two observations. I think, you know, as a practical matter, I mean, I lean towards agreeing with Marilyn. But I did just want to note that the protection in the Paris convention is very narrow, it's really just emblems, flags, and the like. It's not country names. And, in fact, that limitation is carried over into U.S. law. So I think as a general matter, that is really the scope of protection that's afforded there.

And to just remind everyone that WIPO had a whole committee look at this in 2002, and ultimately they concluded that even if you say that the majority of countries thought that there should be some protection to the country name, once you get past that point, everything breaks down, because nobody can agree on how it can be implemented. Nobody can agree as to what languages you do abbreviations, and the like, and I think it's probably worth having staff go back and look at that paper, because I don't think any of those issues have been resolved since then.

Kurt: Those refer to country names, right?

Kristina: Yeah.

Avri: [inaudible – not on mic 00:31:09]

Ken: I think it's an incredibly slippery slope, when you go below... when you get below [30 month 626 names]. The reason is that in many cases, names can be use as adjectives to describe cultures, and to attribute... I mean, French toast, for God's sake. You know, I mean, at some point in time, just how far down do we go? And I worked originally, years ago, as... with IATA in developing the proposal for dot TRAVEL, and I saw situations where London, Ontario and London, England were on different sides. I mean, from a practical standpoint, if you empower the GAC in an issue like that, I think what you do is open yourself up for incredibly liberal interpretations. Some countries are going to go to extremes. I know at one time the Canton of Geneva was in a huff about the word 'Geneva' being used in the second level, so.

Avri: Thank you. Jeff.

Jeff: Yeah, so I'm going to take it from a little bit different viewpoint, and that's the viewpoint of the applicants for the TLD. I'm not going to comment on what should be on a list or how that list is developed, but I definitely think there should be a list. And the reason is, if I'm applying for a TLD, I want some predictability and certainty. I don't want to just have to throw it out there, spend all the money to apply, put together a thorough application, have contracts with all these third party providers, only to find out that I'm going to go to an objection process with a government. I think we need to look at it from that aspect.

And I also actually want to support what Marilyn said, that if we expect to launch new TLDs soon, then get the governments on board. We need to consider their viewpoints. Someone said, "Does the GAC viewpoint supersede the GNSO's?" and one could ask the reverse question – "Does the GNSO viewpoint supersede the GAC's?" I think this is something we need to work out with the GAC, and I think we do need to come up with a list, because I don't think we should subject ICANN to law suits from applicants that do apply for a country name, get all the way through the process, get approved, and then have to go through some objection process with a government.

Avri: Okay, thank you. Robin.

Robin: Yeah, thanks. I think what we need to do is we need to do is we need to rely on the rejection process for countries to state what their problems are. I'm really concerned with... we've heard a lot of talk about trademark, a lot of treaties, using that as an example. I'm really concerned about that, I think it's a really bad example, because we'd be conflating two entirely different principles. Trademark law, remember, deals with whether or not you've got a right to prevent others from using a word in a particular context, the commercial context, not whether or not somebody has the right to use the word at all. So I think that's such an important distinction that for some reason seems to get lost a lot of times in these domain name trademark disputes, is that these are meant to regulate entirely different kinds of speech, commercial speech, non-commercial speech. So if we say, "Well, trademark treaties won't let you trademark a word that's a country name, therefore ICANN shouldn't let somebody use that word in a domain name" – terrible analogy, terrible analogy.

Avri: Thank you. Chuck.

Chuck: You've heard me bring this point up several times before, but I think it applies again, and that is, is that, you know, it's natural that we look at the recommendations on a reactive basis, after the fact. But a prime motivation on why we want everything spelled out in front is so that applicants know the risks. An applicant that wants to apply for a country name is going to be fully warned that there's a dispute process where that can be challenged, and governments and the GAC have standing. And if they're smart at all, from a business point of view, they're not going to do that unless they've worked with that government. Now, I realize that city names are at a lower level, and we've talked enough

about that, I think, but you know, the dot BERLIN team. They've done their homework. They've worked with the city of Berlin and they've worked with the German government, and so forth.

You know, it's all out there, for people to evaluate the risks. Jeff, I disagree with you. I don't think there's going to be any basis for a lawsuit of ICANN, because everything's up-front with regard to the fact that there is the ability to dispute it, to challenge it, and you're taking that risk with full knowledge that that risk is there.

Avri: Thank you. Dirk.

Dirk: Yeah, I want to comment on what Marilyn said, and I perfectly agree with it, and that would be the role in which ICANN comes in as a possible objector to terms where a government which may have no GAC representative objects to ICANN. The letter, the secret letter, or whatever, and then ICANN can say, by itself, "We object to this string because it's not in agreement with the country, and the country needs more time to evaluate this, and so on." And all applicants, as Chuck said, are aware of these problems which can happen.

Avri: Thanks. Okay, I've got me, then I've got Steve. Okay, first of all, I think partially on things that Marilyn said, I guess we could recognize that there's an implicit threat from governments stopping new gTLDs if they don't get their way, which is sort of... But I think that we already included the notion that governments would be notified, and that governments had standing to object. So I don't know that... I really don't understand where more would be required. I mean, we may be in one of those processes where each time something is given, more is asked. But it seems to me that what was necessary was already put in. Yes, I think that everyone needs to be notified, and it's good, it sounds like the staff is already going beyond notifying just the GAC, but is already dealing with the problem of notifying the government. I do think I worry a little bit about... I think it's good that ICANN can, perhaps, post an objection. I don't know if you meant it with "secret letters." And that... I mean that, you know, the notion that if a government wants it to be stopped, but, you know, doesn't have the money, the process, the whatever, to send a public letter. But somehow the notion of secret letters to ICANN that cause them to raise the objection flag worries me a little.

Kurt: In the 2003 round, the ICANN actually, because we didn't have a process for it, ICANN relied on the GAC principles in order to request or require either the assent or non-objection of governments for dot CAT and dot ASIA as part of that process.

Steve: Steve Metalitz. I've heard a lot of people say that if we notify the governments, they have a channel they can use for objection. And I'm looking at this chart again. Which of these objection boxes would a government use? Would it be... it's not...

Kurt: It would be community.

Steve: It would be community objection? Well, it's clear... I can say that that is not why that objection process was developed. That was... we've talked about this a number of times, and all the dot BANK and dot LIBRARY and dot everything... we've got a lot of examples. You know, it wasn't for a country. I think if we're going to... if governments should be in a position to be able to object, maybe they need a separate mechanism for doing so, or maybe we need some other mechanism for them to be able to object to country names, such as a reserve list, which has been used in the past, at least in ASCII. But I would not want to see... I think there would be a lot of problems with shoe-horning a government objection about a country name into one of these boxes that exists here. I guess it could be morality and public order, but I don't think that that's what that's about either.

Kurt: Yeah, that's not what that's about...

[inaudible voice in background 00:40:13]

Avri: I have Adrian next, and then I'll put you in.

Adrian: Thanks. Kurt, I have a... I guess, a potential problem with ICANN staff notifying governments. I think you're on a slippery slope, especially with IDNs coming into it, where ICANN staff are making a judgment call. I'd be very careful with that, as to what is representing a country, and... You're setting yourself up for a bit of a whipping. So I don't know how you get around that. Maybe you have to post the entire list, because as soon as your staff start making assumptions or decisions, if they miss one, what happens then? So my advice would be to try and work out some mechanism by which you could give them the entire list, ask

them to review and make their own decisions as to which ones they want to object to.

Avri: I think I had Dirk.

Male: [Inaudible – not on mic 00:41:04]

Avri: Dirk, did you want to comment further? I know I cut you off because Adrian was next on the list, so... No? Okay. Mike Palage.

Mike: Yes, thank you Avri. I was unfortunately delayed in joining because of a problem with dialling back in. So I will read the transcript and, if you will, send a comment to the council, because this is, I think, a very important issue, and something that you and I both chaired on the Reserve Name working group. So it's something that I'm rather passionate about.

The one thing I would just articulate here is that one of the foundation principles upon which ICANN is based, and which was successful in the new DRP, is that it will not create any new international law. It's not about creating new international law. And what I think is important is, when you look at the recommendations that came out of the WIFO 2 process, and the supplemental work that was done in the global community, within the government, on this issue, they talked about a challenge process. What we are talking about here, by creating a list or an exemption, is we are now creating rights. And, as I think Adrian accurately mentioned, when you begin to talk about IDNs and equivalentents, and whether someone has a right to something, this is fundamentally different from what the governments have said, which is a challenge mechanism, not a fundamental right, but a challenge mechanism. This is an important legal distinction within this context as well as the IDN context. And if we don't get it right, it is going to be very problematic. So, as I said, I just want to put this placeholder here, and I will provide more detailed comments with references to the legal documents as well as the WIPO 2 documentation on this topic. Thank you.

Avri: For the moment, that's the end of my queue. So is that a move on marker, unless you had a follow-up question, but I don't have a queue.

Kurt: Okay. So I'm going to move on. We're going to synthesize these comments and feed back about what we heard. There were some on both sides, and

some kind of consensus, but we could take an hour trying to figure out what that is, so I think, you know, as part of our after-meeting report, we'll do that synthesis. Is that all right? Yeah.

So, if I can be in charge for a second, I want to skip ahead to page... to slide 48, so we make sure we hit the meaningful stuff. So what we're skipping, that we can come back to, are what I think are straight-forward criteria for ensuring DNS stability, or determining whether a name might threaten DNS stability by the nature of the very string itself. And it's just been... these criteria have been published and subjected to public comment and the like.

So I want to talk about string confusion. This is recommendation two. So there's... this is being addressed in essentially three steps. The first two are a part of the initial evaluation, where an ICANN-secured panel would make a determination if there was confusion between an applied-for string and an existing TLD, and that would be a two-step process. We intend to develop and have gone down the path of developing an algorithm for determining whether strings are visually confusing, and... but recognizing that the algorithm is just an indicator, then ICANN would have a panel look at combinations of names to look at, and given a standard to determine if this confusion existed.

And then there's also the opportunity for objection, by a third party, and that would, you know, the objection would be whether... we'll go through the standard in a minute, but whether, you know, there was a likelihood of confusion that would be raised in the minds of consumers if these two same strings were in the root. So it's kind of a two-step process. Part of the initial evaluations, have an algorithm and a staff look, and then an objection-based process afterward.

So, the next slide has some really long names in it, and we've contacted a number of algorithm providers. We received several proposals to develop algorithms. We have one fairly straightforward algorithm that's been developed for ASCII only. We have done testing with another algorithm that is available in, I think, six scripts, and can be expanded to more. So we've done some testing with that one, and we have proposals for additional algorithm developers.

Does anybody want me to read this stuff that describes the different kinds of algorithms we're looking at? These aren't the vendors, these are the guys who invented them, I guess.

Female: I have a question.

Avri: I'll start the queue after he's done, but I'll put you on it.

Kurt: Oh, good. So I'll keep going. So there're a couple of different times... Can we have the next one? Okay, good. There're a couple of different types of confusion. This is slide 50. So, an algorithm can do visual similarity checks, and it can do it in a few different ways, as we described in the previous slide. We recognize the need to develop a solution that works across scripts, so not only within the same script but across different scripts. That adds a level of complexity. If it adds a level of complexity to an algorithm, think what it adds to a panel determination if two strings are confusing.

We, of course, have the requirement that we get consistent results out of an algorithm. And, you know, to carry the conversation forward, out of a panel. So these are the issues that are associated with developing an algorithm.

So the algorithm is intended to be used as a first look tool, and then a panel look to look for false positives or false negatives after that. And, like I said before, there's considerable linguistic expertise required here. So that's sort of the initial look. And then after that, there's a dispute resolution process envisaged then, as suggested by the GNSO recommendations. So we'll talk a little bit about... I think we talk a little bit about standing and process. Let me just check.

So the points I want to make here is that there is a similarity between recommendations two and three. Three is clearly a legal right, two clearly does not invoke a legal right but is meant to prevent user confusion. But some of the tests in two are also in three. I said that really poorly. Three is a much broader test because it identifies a right that's being violated. This identifies a subset of that. So the two concepts that... you know, distilling down the pages in the final report, and the discussion amongst the GNSO... the two big concepts are that names shouldn't be confusingly similar or, you know, cause confusion, and that it would raise the likelihood of confusion in consumers. And then in the final report one of the references was to a study that said, you know, the likelihood of

confusion should be a probability and not a possibility. So the staff would give to an independent review panel or a dispute resolution provider sort of that standard.

So what causes that confusion? That confusion can be caused by a number of factors. It can be caused because the name looks the same, so you can't tell the difference. In some cases, depending on the context, it may be that they sound the same. In many cases, they may sound the same and not cause the likelihood or probability of confusion by users. So I don't... I think, after our previous meetings, and looking at this paperwork, I think one of the jobs of these dispute resolution providers is to make that determination. Are users going to be confused if there's a TLD with other... with other TLDs, or with other applications? So that's sort of the standard we would give to the dispute resolution provider, in cases where there's objections.

So, the only other thing I have to say about this is... like I said, there's two algorithms currently in development. We have a link to one of them, right, that we could share? It's a very... the link is really a simple tool where you just type in one and it compares it against the existing TLDs, so we'll provide that after this sometime. You want to go to it? Yeah, if you want.

So, if you... questions? We can start.

Avri: [Inaudible – not on mic 00:51:39]

Male: Microphone please!

Avri: Sorry. I was saying we have a queue of Marilyn, Eric, Mike Rodenbaugh, Mike Palage, Paul, Steve. And so Marilyn.

Marilyn: I would like to see the algorithm in action, so why don't I go to the back of the queue, and that may answer my question.

Avri: Okay.

Kurt: So let me caveat this with, there's a 90 percent chance that this is not the algorithm we will use. It's just an example of an algorithm that has been developed for this purpose, but it works only in ASCII and has not been tested, and uses not the best of those...

Avri: Can anybody get to this algorithm? The people remotely, is that something that if they typed in the URL...? Okay. Could you read out the URL, because my vision's not good enough?

Kurt: <http://hissa...>

Male: Can someone just send this around, please?

Kurt: Yeah.

Avri: I said that... okay. Thank you.

Kurt: Okay, good.

Avri: So, were you going to show the algorithm, or should I let the queue continue, now that you've got this up?

Male: Compare a couple.

Avri: Compare a couple of strings. Yeah.

Male: How about dot BZ and dot BIZ, since that has already been a previous legal contention involving ICANN in the first...

Kurt: So this will give a score of 29%.

Avri: What does high and low score mean?

Kurt: 100 is high.

Avri: Yeah, but that means bad or that means good?

Kurt: 100 means...

Avri: Okay...

Kurt: 100 means... 100 is always high. [laughter]

Avri: Okay, it's 100 percent similar.

Kurt: 100 means very similar.

Avri: No, it could mean 100 percent safe. But okay, it means 100 percent identical.

Marilyn: But, if you were to put like BANK and FINANCE...

Karla: Kurt?

Kurt: What?

Karla: Kurt?

Kurt: Yes, I hear you.

Karla: Kurt, I would like to make a disclaimer here.

Kurt: Okay.

Karla: This algorithm is an alpha, it is something that is being tested. If you are looking here to see clear parameters and do comparison, and discuss the comparison based on the clear parameters, this is not ready for it. This is an alpha we are testing because we are entertaining to use this algorithm as a tool. This is not a ready product at all. Besides that, we don't have IDNs factored in here. Okay?

Kurt: That's what I said.

Avri: Okay. Do we want to go back to the queue now? Eric, I had you next.

Eric: Thank you. I like the phrase "entertaining" in this, it's really quite appropriate. Kurt, I want to make sure that the stability issue that was brought up in Delhi has been safely buried, and that was the all-numerical labels issue, which is slightly out of scope for this meeting, but it is one of the instances where we have the representation of something being... causing technical instability. So, did you get my note?

Kurt: When did you send it?

Eric: While we were in Delhi. We sat next to each other...

Kurt: Oh yeah, I did. So I'm not spinning it up, though.

Eric: Okay.

Kurt: I remember reading your note, I remember not completely understanding it, and I remember talking to you afterwards.

Eric: Then we'll follow up. Okay.

Kurt: Okay, thanks.

Mike R.: Me?

Avri: [barely audible – not on mic 00:55:35] Okay, so [it's Mike].

Mike R.: Okay, I think I have a couple of questions. First of all, are you intending... you're showing this to us and the world now, are you intending to launch the production version of this algorithm in advance of the application process, so that prospective applicants can figure out whether they're going to have to overcome the results of the algorithm?

Kurt: Yes, 99 percent. Some of the providers we're working with have very powerful tools, and so far they're very... they want to keep a lot of the information confidential. So... but it's intended to make the use of the tool available.

Mike R.: Good. I think that's good. And then secondly, there's really the question of how important is the tool? I mean, I see on one of the last slides of the four here where you would finally take into account the context between the two, which is obviously really important. Look at CH and CN, which I presume are going to have a pretty high ratio of similarity, yet they've existed for a long time, and they're two of the top ten ccTLDs. So I'm just... I still, even after your presentation, I'm not really understanding how important this algorithm is going to be compared to the objection process.

Kurt: Yeah, so that's sort of a boot-strap problem. There was a time when we discussed having an algorithm and nothing else, and I think that would be based... if we were ever to get to that, that would be based on the success of an algorithm that is an excellent predictor of confusion. Confusion is something that arises in your mind, right? It's not just an arithmetic test. So if the development of a very effective algorithm in identifying strings that are in fact confusing, would be, you know, would be significant, I think, to a panel trying to decide that.

Karla: Can I just make one comment? So, the use of the algorithm is not as a deterministic tool. It's very important to stress that. You know, it helps to inform, it helps with the skill ability issues, so there are many reasons why we

are entertaining that possibility, but it's not a deterministic tool. We're not saying that we're going to use an algorithm and this algorithm is going to be perfect, and the final word on that particular evaluation.

Mike R.: I guess I'm just afraid that it'll be mistaken otherwise, that it will be viewed by some prospective applicants as, "Oh my gosh, we've got a real problem, better not apply because of that." And then, on the other hand, it could be used by people that would object, and say, look, it's a really high... algorithm said it was really high, so...

Kurt: So I think it's evidence, but not dispositive.

Avri: On the list at the moment, I've got Mike Palage, I've got Paul, I've got Steve, I've got Marilyn, I've got myself, got Chuck, got Kristina. So, Mike.

Mike P.: Thank you very much. Kurt... and I hope Kristina or J. Scott, some of the other trademark attorneys will chime in on this as well, but hearing words, "confusingly, similarity, likelihood of confusion," and a lot of these terms thrown around just makes me cringe, because I think they are really taken out of context. There are established bodies of international law upon which the UDRP was based, in coming up with these standards. And as I've articulated to you and other senior staff, the idea of a concept, I think, of this algorithm, is fundamentally flawed. To my knowledge, there is no other international trademark... national trademark office that uses an algorithm to make these nuanced legal determinations. And I think it is totally out of ICANN's scope to try to do it. Now, if you succeed, you've probably found a wonderful licensing opportunity, because all the trademark offices around the world will come to ICANN to solve their problems. I just think this is fundamentally flawed, and that this algorithm should just be, if you will, an ancillary tool. Involving it in the actual applications process is flawed. And the fact that I had just heard that you're going to have a panel review the results of the algorithm to see if there's a false... what is it? A false positive or a false negative... just interjects people back into the process.

Let the experts handle it. As WIPO has demonstrated to date, they could handle this likelihood of confusion [inaudible 01:00:19] At the second level, between ASCII and IDN, there have already been established UDRP decisions involving this subject matter. I don't understand why ICANN staff seems so

hell-bent on this algorithm. I don't understand it, and hopefully if I keep on repeating this enough, someone will listen. So... thank you.

Avri: Okay, Olof wanted to respond to that.

Olof: Yes, hello. This is Olof Nordling. Mike, I think you're partially right – it's not used for legal determination by trademark offices, but many trademark offices, and, well, case in point, the European trademark office, patent office, use it to advise those who apply that there is a certain degree of similarity, expressed in percentages, for the applicant's information only. But it is used, tools of this kind.

Mike P.: For informational purposes, but the...

Olof: For informational purposes, but not for legal determination, and that's... well, pretty close to what we're envisaging in the ICANN context as well.

Mike P.: Exactly right. You're going to make a legal determination as for the ability of someone to move forward in an application process. So what I have articulated to staff, I have... I support the concept of an algorithm as a tool which one could use in assessing their likelihood... "Do I want to go forward? Do I need to perhaps contact a professional to help me with it?" But involving this in the actual legal determination of whether someone should go forward I think is flawed, and you need to have experts making this determination. Just like the trademark offices do, they have an informed... not a panel, but they have a legal expert making that legal determination. What you're doing here is making a legal determination as to whether someone could go forward.

Avri: Thank you. I've got Paul.

Paul: It sounds like everyone agrees that if this was to be used, it wouldn't be the sole determiner of what was confusing or not, and that there are some other factors that would help to some degree, or all of the degree, or most of the degree, help determine what's confusing and what's not. So I'm curious about what the other factors are.

For example, I typed in, you know, understanding that this isn't definitive and 99 percent chance of being changed, or whatever, but I typed in NET and NOT. And it came up with a 34, I think, percent chance. But in my mind, it's... those

two are kind of like far apart, because NOT has kind of a meaning, and NET doesn't. Versus something like KOM with a K and COM with a C. KOM with a K doesn't really have a lot of meaning, so it seems like that would be closer, to me. Would that be one of... would that be an example of one of the other factors that would be used to determine... the meaning?

Kurt: It could be the meaning. I mean, COM and KOM, those two things both don't have any meaning, right? But there's a combination of sound alike and are close, in COM and KOM, and that's the C and the K, and that's why you would take into account the context of the string, too. So I think the test is, the test is, in the mind of a user, is there a likelihood of confusion raised? Is there a probability, more than a mere possibility, as was said in the final report, that there's a likelihood of confusion... that a confusion is raised.

Avri: Okay, on the list at the moment I have Steve, Marilyn, myself, Chuck, Kristina. Steve.

Steve: Steve Metalitz. My question is not about the algorithm. It's about the relationship between string confusion, which I think is the right term here rather than the other terms, and string contention. String confusion arises when an applied-for term is confusingly similar to, or has a likelihood of being confused with, an existing TLD. String... but when you have two applied-for strings, that would, if they were evaluated that way, give rise to string confusion, what... first of all, who raises that in the process? And second, how would it be resolved in the process? Because otherwise you have the possibility of approving two strings that give rise to string confusion. Or else you say, these two are close enough to each other that we're going to treat them as if they were the same, and put it into string contention. Who decides that, and how is that process laid out here?

Kurt: That would be determined in the initial evaluation, by the combination of the algorithm and the staff review. When I say staff, I just mean an ICANN-driven review that would review strings for...

Steve: But if they decided that it is not so close as to give rise to string confusion, would there be no basis for either party to say, or for anybody else to say, "What, you're considering dot KON and dot CON... those are..."

Kurt: Then they could object in the objection, in the objection round.

Steve: On the basis of what? String confusion?

Kurt: Yeah.

Steve: Okay, so string confusion is not limited to confusion with an existing TLD. It could also be confusion with another applied-for TLD?

Kurt: Right. Yeah. Where would one of the strings raise the spectre of... if both of these strings are approved, they'll be confusing.

Steve: Yeah. It just seems that there're two separate paths, then. If two people apply for dot CON, let's say, then you have a string contention situation, and you'll have talked about how that would be resolved. But if one's KON and one's CON, then it gets decided by an objection process, not by string contention, even though functionally are both the same thing?

Kurt: Well, that objection process would identify them as confusing.

Steve: The remedy would be one of them is out. Or would the remedy be, they're in string contention?

Kurt: If they pass the rest of the...

Male: So, I think the [inaudible 01:07:19] all those caveats, but ideally, if we had some great algorithm, we could run... we've got 50 applications. We could run the 50 applications through it, and it would tell us which clumps of applications are confusingly similar to each other. And therefore, those applications would be in contention with each other, and you'd have to... you couldn't give out both CHOPPER and SHOPPER, dot SHOPPER and dot CHOPPER. They would have to fight each other in the contention resolution. But I think you're asking, what if the dot SHOPPER or dot CHOPPER applicant disagreed with the algorithm, or with staff's assessment that they are confusingly similar. And I'm not sure that would be handled in the objection, which I thought the objection was just, "I object to that application, it's confusingly similar to an existing TLD or reserved name." But it sounds like we might need to have some sort of appeal or challenge or objection process to either get SHOPPER and CHOPPER split apart in separate... so that we can give them both out, or maybe lump them together. There needs to be a process to lump them or split them in the objection and appeal process.

Karla: Can I make a few comments, just...? When we say "ICANN staff" or "ICANN panel," the intent is for us to put together a panel of experts, hopefully linguists and IP experts, experts that would have the ability to deal with all of the different issues that might come up, considering IDN applications, and then, I believe that some of this issue that you just said could be addressed, via extended evaluation.

Male: I think we don't know yet, is the right answer.

Karla: Yeah.

Steve: Well, my only point is, it sounds like functionally, these two situations are the same. The only difference is that in one case, somebody already has the string. In the other case, nobody has the string yet. And I think you need to be careful that the decision processes are similar, because otherwise you are either privileging or disadvantaging the incumbent string operator, because they're being judged differently than if it were two new strings.

Avri: Okay, Marilyn.

Marilyn: I think my question is just a clarification. So, in the previous example, we had contention with an existing string. We had two applicants who were submitting either the same word or a word that could be confusingly similar. How does the algorithm apply, if at all, when what you have is an applicant for a word that is viewed by someone who is not applying as being confusingly similar to their name, and they don't want...

So let's take dot SHOPPE, spelled with two Ps and an E, and let's say that somebody owns the trademark name SHOPPE. Someone comes along and applies for dot SHOPPE, and the party who holds the trademark does not want to operate a registry, but considers that application confusingly similar to their name in the... both the virtual world, where they operate at the second level, and in the physical world. Is that... do we use the objection process? Do we use...

Kurt: Well, I think that person might be able to assert an infringement of rights objection, but I don't think that person can assert an objection that that name is confusing... you know, creates confusion with some name that is not a TLD.

Avri: Okay, I've got myself, Chuck, Kristina, Ray. Mine is really just a quick question on... being not a lawyer but closer to the technical geek side of the world, I actually like the idea of algorithms. One of the things, though, that I wonder is while studying the algorithms, are you also studying what percentage means anything. In other words, 25 percent, 50 percent, 60 percent, 75 percent, and what criteria is there for this percentage being a flag raiser? And I'm not talking about it being a legal argument or anything, but if you use these things as flag raisers to say, "Extra caution here," how do you... I don't understand what percentage raises the flag.

Kurt: Right. I think once you get something that you think is repeatable through testing. In other words, things that you think are about the same similarity, give you similar scores, or there's not a lot of obviously false negatives or positives, I think that's the next step in development. And that step could be behavioural, actually, to ask people what they think is confusing and then see what the scores are, to help you draw the line. So that... yeah, we're not to that yet, so...

Avri: Okay, I have Chuck.

Chuck: Thanks. Several related questions, Kurt. If I understand it correctly, the algorithm really just deals with visual similarity.

Kurt: Correct.

Chuck: Okay. The next question then is, is the ICANN panel strictly related to reviewing the results of the algorithm? In other words, just visually.

Kurt: No. It's visual, it's visual, but it's not just reviewing the results of the algorithm. And then other types of confusion would be investigated in the objection process.

Chuck: But it is correct to conclude, and this is what I thought was correct, that the ICANN panel would just deal with visual confusion, not restricted to the algorithm, is what you just said.

Kurt: Right.

Chuck: Thank you.

Avri: Kristina.

Kristina: I am so confused. [laughter]

Steve: I'm glad there're more trademark attorneys that are confused.

Kristina: I mean, what I'm really having a hard time getting my mind around is, why do we have the algorithm? You can't have a determination... I mean, if you are, in fact, importing into this process the likelihood of confusion determination and the test of existing trademark law, you never, ever, ever rely solely on visual similarity. And if, in order to actually make a determination and to resolve an issue of string contention based on string confusion, you're going to have to go beyond visual similarity anyway, I'm not really... I'm just not getting where this gets you. And I guess I'm just really not getting it.

Kurt: There... are you just getting in the queue, or...?

So, I think it gains you information. As Olof said, one of the firms we're working with uses their algorithm to report results to several national trademark offices, and uses that as the initial step in making a determination whether there's, you know, on trademark decisions. And I'm not the one to be talking about trademark law at all. And there is also the issue of... with potentially hundreds of applications, the number of combinations and permutations... and across IDNs, the number of combinations of strings that need to be compared becomes mind-boggling pretty fast. And if a tool can be developed to make that determination on a visual basis only, I think that would be extremely helpful for working through the thousands and thousands of combinations that need to be evaluated.

Kristina: Can I... I just have some follow-ups. I guess the first one is, I'm not really... maybe I just missed a big section of this, but I don't really understand why it's an ICANN panel that's doing it. Isn't the string contention going to be solely objection-based, and it's going to be up to whatever existing TLD believes there's going to be a problem for them to object to? And that kind of, I guess, goes back to my earlier question following up on Chuck's earlier question about the ICANN panel relies on this. And I guess what I'm not clear on, what would be helpful to me, is what exactly is the ICANN panel doing in this context?

Kurt: It's identifying strings that are going to be confusing for the applicant. Were you going to say something more?

Karla: So they'll be written, almost so it's like a report. Like when you do search for trademarks, and you receive search results to identify identical and...? Yeah. So they [inaudible 01:16:18] do that. It's a tool just for us to deal with scalability issues, and the panel, which is not, as I said, I think "ICANN panel" gets us a bit confused, so the expert panel will then look at these materials and then further analyze. So, again, it is not the algorithm that is deterministic. And the question about why do you use an algorithm if you're going to have a panel doing the work anyway, so look at it as being a tool to help streamline the process, considering the uncertainty of the volume we might face at that time.

Male: And I would say it's helpful to applicants, which can see if the string is potentially confusing to existing ones.

Karla: And also in an automated fashion. Once a string is entered into the interface, anything that is identical to an existing reserve name or TLD, etc, will be rejected. And we try to make this available up front.

Avri: Thank you. I've got Ray, Adrian and Norbert. And I'd like to ask people not to jump in, and to put themselves in the queue. Thank you.

Ray: Yeah, just for clarification, I really thought that this was an applicant's tool to kind of investigate... we don't want applicants getting harmed by applying for TLDs, so... But certainly somebody doesn't want to be [inaudible 01:17:44] Like, all of us in this room might think it might be a good idea to file for COMM. So here's a tool to say, "Well, go here, check it out, kind of get an indication of whether you really have your eyes open before you go through all this trouble." That's kind of the way I view this, versus a determination tool, or whatever. And especially true, because I thought that this only really had to do with string contention, versus infringement of rights. I didn't think that this tool in any way had anything to do with that [inaudible] of infringement of rights. Okay, it doesn't. Good.

Avri: Adrian.

Adrian: Yeah, I just wanted to take the conversation one step further, and have ICANN staff considered what happens in the event that an existing registry... there is

an application for a name that is determined to be confusingly similar to an existing registry, or an existing top-level domain? Do you envisage that that top level... that that registry would be able to manage... to be able to have that name, because it was confusingly similar, or is it a blocking mechanism? So that they can block and no one can have, or do they get?

Kurt: I don't think they get. Yeah, it's a block. The objection process is to block something, though the winning objector would never get a name in any of the objections.

Adrian: Thank you.

Avri: Norbert.

Norbert: We have been talking a lot about algorithms, and mentioning time and again the expert panel. But I just wanted to point out that the expert panel, again, is a very difficult instrument. Ken Stubbs mentioned that before lunch, that we are always talking more or less about the ASCII word, and we don't have people around here who live in a different context, and I speak from my Cambodian background. Recently I read a book by a Cambodian lawyer, who described when she immigrated as an immigrant for some time to the United States, that everybody looks the same. And I remember that you can hear the same story the other way around, time and again. People go to Japan or to China and say, "Everybody looks the same." So this expert panel, again, if it is composed mainly of people who live in an ASCII culture, will not be able to solve the problem.

Avri: Thank you.

Kurt: So that's right on. It's not a panel of people sitting in a room, it's accessibility to the right experts around in the different regions.

Avri: That's the end of... oh, okay. It was the end of that queue, but I've got Adrian.

Adrian: So, to take my last question one step further then, Kurt. So, within say transliteration of an IDN, of an existing string that was considered confusingly similar, would an existing registry get the transliteration of their existing top-level domain?

Kurt: So, if it were determined that a transliteration is confusing, causes string confusion, results in string confusion, then that TLD would be blocked.

Adrian: But they don't get them?

Kurt: So...

Adrian: Just... I know the answer.

Kurt: So in a subsequent round, so if it were to be found to result in string confusion, then it would be blocked, then there could be another round, right?

Adrian: So just because I own dot MUSIC, and someone applies for dot MUSICA, or something, that doesn't mean I get it, it means I have to apply for it next round. I mean, with everybody else. Well, actually not in with anybody else, I'd have to go for it on my own, because no one else can have it.

Avri: Can I ask a clarifying...

Kurt: Yeah, good.

Avri: In terms of the block, I didn't think really "blocked" was the notion. It's "not granted in that round," and we've even talked about at some point, and I'm not sure to what level of recommendation or guideline it rose, that a list of these things that had failed these tests would be listed, but only as a warning to people – you know, obviously, apply for this again, and unless you happen to be the one that it's confusingly similar to, then... And nothing was ever, there was never a notion, if I can remember, of something being automatically granted to someone because of their challenge. That was never the case, I think I can pretty much say. They can apply for it in a future round. It wasn't permanently blocked.

Male voices: [overtalking 01:22:51]

Male: [not on mic] It's not granted, but it's not blocked.

Avri: Right.

Male: It's available and you can put a [inaudible 01:22:55] if you want to [inaudible] another million dollars to [inaudible] for this that's... we're letting you know it's already been rejected.

Avri: Yes. Basically, that was the notion, that a list would be built. Now that was low down in the recommendations, and I'm not sure it made it to the top of the list of recommendations, that, you know, but it's something we had talked about. I think it was in the reserve names group that that notion had come out, that we were not advising there would be a reserved names list built of names that failed for various reasons, and it was not just this one, it was a name that failed for any reason, would make it to this list of names that have failed for some reason, so be careful if you apply for it again.

Yes, Paul. Sorry.

Paul: So if there's two strings that are not already TLDs, like let's say CAR and FAR, and then ICANN goes through the process and says, "Oh, these two are too similar for the public, we think it'll make confusion." Is there any way that they could separate... can they dispute that, or do they have to stick with that and... can they ever, can they say, "Oh, I'll take CAR, you take FAR"?

Kurt: Yeah, so that would be... that finding would be the result of an objection, right, and the result of a dispute resolution, which can be appealed.

Paul: So if nobody... if there's CAR and FAR and nobody objects, then they could... even though the public might be confused, they could just go on?

Karla: That's a contention.

Paul: It's the same thing as if they'd both picked CAR.

Male: [not on mic] I think it's the same question Steve was asking earlier. [That will lead to the process to sort out... You know, applicants might think they are similar to each other, or they might think they are not similar to each other. But ICANN's going to have to make that call, whether we give them both out or just one of them. And then we have to build a process [inaudible 01:25:09]].

Kurt: So if I... if the applicants think that they are not similar, so nobody puts up a dispute, but ICANN thinks they are...

Male: But we might still think they are.

Kurt: ...they're locked at the hip, then. Only one will come out.

Male: If we say they are and they lose all their appeals and requests for review and whatever...

Kurt: Yes. Then they're locked at the hip. There only can be one. All right.

Avri: I have a question that was brought up that came at dinner last night. And something that I had understood to be a recommendation... not a recommendation, but one of the thoughts that had been shot down was that if you had the CAR and the FAR, and it was judged that, you know, gee, they were too close together to be both granted. And therefore... I had thought that we had talked about, but I guess that it was shot down at some point, the notion that one of them could change to BIGCAR. And as long as BIGCAR didn't conflict with anything else that had been applied, then FAR and BIGCAR could go forward. But now I've been given to understand that that sort of substitution because of contention is not being allowed, and I just... I didn't understand why that was the case.

Kurt: Are you going to answer that? Oh, okay.

[inaudible voices in background 01:26:36]

Kristina?: Here's my follow-up question to what Paul was saying. And, if I'm understanding correctly, you're positing a situation in which you have two applicants with strings that would otherwise be considered... well, confusingly similar. But neither of them objects to the other, and what happens. And if I understood correctly, and maybe I misheard, in that scenario ICANN would be asserting an objection? I mean, I had thought that it was completely objection-driven, so that regardless of whether it could potentially create confusion, if both of the potential applicants didn't think it was a problem, they would just go forward. Is that right, or not? I mean, I'm confused.

Avri: Okay, I've got a few people in the queue now.

Kurt: Can Dan answer that?

Avri: Dan can certainly... any of you guys can jump in with an answer I think any time, was the rules we were playing on. And the rest of us get in queues.

Dan: So, I think staff's understanding was that you told us not to give out strings that were confusingly similar to each other. So that's sort of our instructions.

Whether or not the parties agree or disagree, we're not... If someone applies for dot CARS and someone else applies for dot CARES, and we, in our super-duper process think those are confusingly similar, we're not going to give out both those strings. Whether or not CARS and CARES registries make a side deal, we're going to say, "Sorry, that's [inaudible 01:27:59] You guys have to do a contest for the [inaudible]."

Avri: I may have missed some names when I was going through. I got Ray and John, and I've got Ken. Anyone else wanted to be in this queue?

Kristina?: I guess that's new to me. I had always understood that all of the objection-based rounds were going to... you know, all of those refusals, were going to be based solely on the initiation of an objection.

Kurt: So if they truly are, you know, confusing, and they make a deal with each other not to object to one another, and the object of the recommendation is to prevent user confusion, then we've failed. Because we haven't stopped these two TLDs from going into the zones that are confusing. Because they've decided to make a side deal that says, "We know we're confusing with one another, but let's not object to one another and go ahead."

Kristina?: I guess I'm just concerned that if you do it there, where don't you do it?

Avri: Okay, I've got Ray, John, Ken, Chuck.

Ray: My question is, I mean, it's kind of along these lines. We're kind of getting our hands around the fact that ICANN staff could file an objection under string confusion, in this example that we're talking about now. My question is, who are... have you guys gotten your hands around who are all the parties that have [inaudible 01:29:30] file under this specific objection? For example, I think, if I understand it right, trademark [inaudible], for example, don't have standing to file under this objection. But then my question is, who does have standing to file under this?

Kurt: Well, I think the parties that are... it's essentially anyone, because it's the people that would be confused, right? It's the party that's... it's the party that's interested. So in the case of certain objections, all our senses of morality could be offended, or you know, I'm a user, I can be confused. So if I'm a rights

holder, then... if I'm asserting an infringement of rights, then it would be the rights holder that could object.

Ray: Under string confusion, my neighbour could file an objection.

Kurt: Right, because he's the one that's going to be confused.

Male: Sorry to interrupt. Just one point. This really isn't about [four buckets 01:30:30]. This is about anybody in the world can file an objection.

Kurt: Right, that's willing to pay money and, you know, have his dispute heard.

Male: I'm a little worried we're mixing up different parts of the process, right? So there's the test early on, which has ICANN staff's review, not ICANN staff's objection. And then there's the string confusion point, and I think we're interchangeably talking about those like they're the same thing.

Avri: Okay, now I have John, Ken, Chuck and Paul. John.

John: Thank you, John speaking. As far as I understand string confusion are relevant in two aspects, and one of them is the aspect between two copyright holders or two trademark holders, or two institutions doing business. The other one is with relation to the consumer, and in several national legislations you'll find a protection against something being marketed in such a way that it's confusing to a consumer, regardless of how the relation is between those holding the marks or otherwise distinctive features of what is being marketed. And what it seems to me is that ICANN, so to say, takes on itself the role of the consumer to raise an objection if they think that two strings are confusingly similar, even though those who have interest in the strings themselves take no issue in that matter. That is as far as I understand it. I think that may be proper, and it opens up the possibility of having consultation with the body which might represent such consumer interest, if such a body exists. Thank you.

Avri: Thank you. Ken.

Ken: Yes, somebody asked a question about what would be bad about a situation where they were to take one string and decide, well that's too close, so you could do this one instead. And would that be bad, and so forth. I can take you back to the 2000 rounds, where people were actually filing applications that said, "My first choice is this, and if you don't... if you won't accept this, then I

want my second choice.” Or, it actually went down to... it was all the way down to four choices. So I would say I don’t think that’s a good idea, because if that’s the way you feel, then you should file two applications. But to suddenly, arbitrarily change a string because you decided it wasn’t... someone’s decided it wasn’t good, but they’re going to go ahead and let them have this string without having some sort of a process is just a perversion and, frankly, will open up a lot of issues that could...

Kurt: I think that’s where the council discussion got to. You know, in finally answering your question, Avri, that when we talked about having an alternate string, the council, you know, finally decided against that, and it’s on the verge of...

Avri: Yeah, I don’t remember the council actually getting to a decision on it. I remember it was an idea that was talked about, and I’d have to go back. And I don’t remember us actually making a decision. Certainly the caution that, like everything else, including all the games we haven’t thought of yet, there will always be an infinite number of games that one can play, so we have to lock the barn door after any horse that’s already escaped, and we’ll worry about the ones that escaped tomorrow tomorrow. But this was one of the ideas... it wasn’t that somebody was going to present a list. It was when there were two contending, and that they were thrown out usually by what I thought was the ICANN process. You know, that said, similar, or you both applied for the same thing, you both applied for dot CAR. You know, and obviously, those two... whatever rules we want to make, those are both confusing to people, if you have two of them that are the same. Confusing even to the DNS. But there was some way out, as opposed to just auctioning.

Dan?: We did talk about a lot, and I don’t know if we ever did... there was ever like a council vote – let’s not do that. Staff’s concern was that it would make this chart extremely complicated, because you’d have to... let’s say they got all the way down here, and [inaudible 01:35:13] the string. For that application, you’d have to jump in back at the start, start over the objection time and the objection filing for that new string they’ve applied for right there, and so it got very confusing. And so just to make it simple, repeatable, standard, [things of all this], we can’t do that. I think that’s where it got [inaudible].

Avri: Okay, so it was a process thing. Okay, thanks. And my question was answered. Chuck.

Chuck: It's okay this time. I think I've got three questions. I don't recall, and please, people, correct me if my memory's faulty, because it is, often, that we ever talked about the idea of anyone being able to file an objection with regard to confusing strings. I know we talked about the ability of existing registries to do that. We spent some time talking about that. I know we talked about the issue related to new TLDs and confusing similarity with regard to those. And I am aware that the staff idea of charging a fee to minimize the number of frivolous disputes, but not with regard to recommendation number two. Am I wrong on that? Does anybody ever recall us talking about anybody being able to file an objection, as long as they are willing to pay a fee, for number two.

Male: Chuck, my recollection, I'm very surprised to be hearing that. If that helps.

Chuck: Dan's got it.

Dan: I don't remember any [inaudible 01:37:14]. I don't remember, did we put up a slide or anything that says [inaudible]? I don't know that we've come to it.

Chuck: Well Kurt, a few minutes ago, made that statement, unless I misunderstood. In response to a question that Ray asked, I believe.

Kurt: So is your question whether we ever discussed there being an objection-based process for how to raise con... [overtalking 01:37:39]

Chuck: No, no, no. Who has standing?

Kurt: Who has standing.

Chuck: It's a standing question.

Kristina?: My recollection is we did in fact discuss this in San Juan, and that it was in fact going to be solely fee-based. I don't remember whether we specifically discussed it in the context of recommendation two, but I know that generally I came out of that meeting saying, "Okay, standing is going to be fee-based. You want to write your cheque, you can object."

Chuck: [Inaudible – not on mic] I thought it was on. I'm sorry. We did talk about types of standing with regard to number two. I do recall a discussion with regard to the fee being a screening mechanism, so to speak. But I think you get into a problem if you start on number 2... number 3, number 6... number 20 is a little

bit different, but 3 and 6, you've got some law or some things to base it on. As has already been pointed out, we don't have that for 2, and so it makes it very easy for somebody with funds to mug up the process on number 2.

Mike: So I disagree that we don't have legal reason, okay? It's actually the same as with trademark strings for whatever recommendation, the other recommendation, not number 2. Because, look at companies, Google, Yahoo, other companies that have 20 - 25,000 domain names. All of a sudden, you go and introduce a confusingly similar top-level domain, you've now created 25,000 new problems for that company. So they certainly ought to have standing to object on that basis.

Chuck: Oh, I see what you're saying. Yeah, and that standing would be fairly easy to establish, I guess. So... just, but your response, Kurt, to Ray's question was that any individual who wanted to pay a fee could object. I would agree with Mike, his point's well-taken, that they could clearly establish some standing, because they are impacted by that.

Now, let me go on to my other two questions...

Kurt: Well, no... so, I just want to try to capture how you would establish standing. So it would be the holder of the other TLD, or the competed-for TLD only, that would have standing?

Chuck: Well, no. I think Mike just raised a valid point with regard to others that might have standing. But I think it ought to be more than just paying a fee. There ought to be some justification for why you're... and he gave a good example, I thought.

Avri: I have a list. Paul, you were next on it anyway, so. Oh, you've got two more questions. You want to come in on that one? You're deferring and letting him come in on that one?

Chuck: Sure.

Paul: So, if they didn't have standing, wouldn't they just lose? So, you know, they pay the fee. Let's say it's, whatever, Yahoo or Joe Shmo off the street, wouldn't they just lose?

Chuck?: Hopefully that would be the case, Paul, but the problem of it is that it slows down the process, unnecessarily so, and increases costs.

Paul: Yeah, but they have to pay 50 grand, or whatever.

Chuck?: And increases costs.

Paul: But they're paid for by the guys who [inaudible 01:41:11]

Chuck?: But so... they're not the only ones paying for it. The existing registry or other applicant are paying for it too.

Avri: Okay. John, you had something.

John: So maybe it's two questions really, but one – the standing issue clearly isn't part of the policy, but it's clearly part of the implementation. And so that's just a sort of a question or comment about, do we really want to go deeply into the legislative history to understand whether implementation is appropriate. So that's a broader question for the whole discussion. I understand that's part of what we're doing, but I wonder where you cut it off and when it becomes relevant.

And then the second thing I would add is, if there's a consumer group, for example, that wants to raise the issue because there's an opportunity for fraud that they see or some other issue, I would hate to cut that off from... because it's the same kind of issue that Yahoo would bring up, or others might bring up. And there might be people that would not necessarily be directly affected because of a property right interest. You might have an ALAC group or someone else that would bring it because of a logical reason that we would all benefit from. So I think I'd be careful about cutting off standing too narrowly, in this case.

Avri: Get back to your other points?

Chuck: Thanks. Ken, if dot MUSEUM, Musdoma applies for a string, a Chinese version of museum... now, that could arguably be called a confusing string. Is that disallowed under the direction we're going?

Kurt: Me, I don't think so.

Chuck: Okay, that's what I want to clarify. I think it's important that that not be disallowed, but if we're being real rigid about a test for confusing similarity, that's all I really needed to know on that.

And then back to the point about the agreements of two parties to... that normally their strings would be called confusingly similar, and they come to some sort of agreement, in terms of dealing with that. There are other ways to dealing with confusion, besides a string itself. Let me give a COM example for it, and this hasn't happened, but the Welsh, we know, want a TLD, CYM. Okay, that's pronounced COM. Now, probably that could be classified as confusingly similar, all right, but if they were to work with us for some way on their site to deal with the possibility of confusion, that would seem perfectly reasonable, so that if we, as the registry for dot COM, were comfortable with a solution... and I don't know whether we would be or not, but if we were, that would seem to be okay. So I think we have to be careful about being so rigid. Anything that's confusingly similar is ruled out, so the idea of the two people coming into agreement, that doesn't seem out of order to me.

J. Scott: Just to point out quickly, this is J. Scott Evans, at the U.N., that's exactly the position that the trademark office of the United States has taken. There was a case where two hotel chains had agreed that they could co-exist, and the office said no. As the arbiter of the registry, we have a duty to the public. And the courts came back and said, "Private parties know the marketplace better than the trademark office does, and we're going to leave it to them, as long as they have mechanisms within their agreement, to take care of confusion within the marketplace. So basically, they just said, "If your agreement has these parameters, we'll let you all work it out."

Avri: Getting back to the queue, if you've gone through... Paul.

Paul: I have two things. First one is regarding Chuck's second point about MUSEUM. Let's say MUSEUM applies for MUSEUM in Chinese. And his question was, is that cool? And it sounded like Kurt said yes. So my question, then, would be, what if MUSEUM applies for [VUSEUM 01:45:46], and ICANN thought, you know, it's confusing. So is that good?

Kurt: I don't know. How the hell should I know?

Paul: Right. So, to answer Chuck's question, you have to determine whether or not MUSEUM is confusing to the Chinese version of MUSEUM. And it sounded like you made a judgement just like that.

Kurt: I said, to me.

Paul: Okay. So I guess the answer would be, ICANN would determine whether MUSEUM is confusing to the Chinese version of MUSEUM, or MUSEUM is confusing... confused with VUSEUM. It would determine that question first, and then it would decide whether... that would determine whether it could go forward or not. I don't know if that made sense.

So, I think what would happen was, if an existing registry applied for, like MUSEUM applies for VUSEUM, ICANN would figure out, "Oh, that string is... there's contention with itself." So it might not... it might go forward, or it might not go forward.

So that's my first point. My second point is similar. Where would... if, let's say we have... back to CAR and FAR. There's five applicants for CAR, and one applicant for FAR. So, would that go in the blue section on the evaluation process, under string confusion, or would ICANN determine that that is in the purple section on string contention. Would it skip to... let's say none of the CARs or FARs disagree with each other. None of them file an objection. So then ICANN would say, "Oh yeah. Those are..."

Kurt: So if CAR and FAR were determined to be... to result in string confusion, then they would go to the purple section.

Paul: Okay. So, the triangle that's in purple, that says, "Is there string contention?" ICANN determines that question, and it might not be easy, because the strings might not be the same. The strings could be different, and they could just be in contention. And ICANN determines that.

Kurt: Right, they could be similar.

Paul: Okay, just like MUSEUM or VUSEUM.

Kurt: Right, okay.

Avri: Okay, I've got Ray, Kristina, Mike, Ken, and Eric.

Ray: I just wanted to offer a clarification to John, which is... actually the guidance that came from the GNSO on this did offer some bit of implementation guidance, which was... there was some guidance that came on this recommendation, was to implement it in a way that avoids frivolous objections. Now, that isn't a lot to work with, but it is something, but that would answer your consumer group point, where the consumer group got together and filed an objection. And I wouldn't consider that a frivolous application.

Now, I'll make this point, and then we'll take it off line, Mike maybe. But I don't agree with Mike's example, where he's talking about Yahoo filing for string confusion at the second level. That, to me, is more infringement of rights, because Yahoo can't predict user behaviour. So, and that's what we're talking about here, is string confusion. User behaviour and user confusion, so that's my point.

Avri: Okay, Kristina.

Kristina: Are we going to be talking later about... are we going to get to, what is it, recommendation 9, the morality, or 6, public...

Kurt: I hope so.

Kristina: Okay. I'll save my question until then.

Avri: Mike.

Mike: Okay, I guess I just wanted to say, in response to Chuck's second question, about... you used dot MUSEUM, which I don't know is the best example, but... I have a new TLD facing, or wanting, to apply for essentially the equivalent in another language or script. I don't think that that should automatically be allowed, at least not without protections for existing registrants in that TLD against obvious cyber-squatting that could happen. You're talking, again, about a massive defensive registration scheme, essentially, there.

Avri: Thank you. Ken.

Ken: Yeah, I'm going to take this one step further, only because it does... it is troubling. Suppose that you have two applications, one for LIBRARY and another one for BIBLIOTHEQUE. Now, essentially, the two have the same meaning in the minds of the majority of the people who would look at them, but

in English, there's clearly nothing close. So I'm just wondering, how do you deal with something like that? I mean, to me, you have two strings that are, in my mind, in the eyes of the consumer and the eyes of the average person, confusingly similar, even though they're clearly different in their construct.

Kurt: So you think they are confusing?

Ken: Oh, absolutely. If I go to a Frenchman who... and we have to assume that a good part of the world does have a common understanding that there may be more than one meaning for the same thing there, I think you would argue it was confusing, yeah. I'd hate to be the library, I'd hate to be... I'm sorry, I didn't mean that... I'd just hate to be the Library of Congress or something and have to worry about it.

Kristina: Well, I would just say that most national trademark offices essentially follow that principal, which is referring to generally is the doctrine of foreign equivalents. That if a mark is in another language, you have an obligation to provide a translation of it. And then they will take that translation and do the likelihood of confusion analysis against the English word. So absolutely happens all the time.

Ken: And I've heard the concern expressed about the word "mark." I don't care whether it's "mark," it's a descriptor and it would commonly be, you know, just because you twist it slightly, it still has the same meaning in the minds of somebody, and that's what you're...

Kristina: Exactly. In the mind of somebody who's knowledgeable about language, it has the same meaning. Yeah.

Kurt: Is there any more in the queue, because I want to move on. Okay, let's go. Go ahead.

Male: I'm not getting tired. Mike, if I understood your comment with regard to the dot MUSEUM example, then you might be opposed to IDN versions of any ASCII TLD. Am I missing something there?

Mike R: No, I don't think you are missing anything there. I think they should certainly be able to have IDN versions of country code names. That makes sense, if the

country wants them. But otherwise, in the gTLD space, they should be differentiated.

Male: So our 900,000 plus second-level IDN customers should not be able to have a full IDN experience, like they've wanted all along?

Mike R: That's not what I said. They could have a full IDN experience, but... [overtalking 01:53:24]

Male: But not in a version of dot COM.

Mike R: True.

Male: That's a very narrow view. I hear it, though.

Avri: Anybody else?

Male: Okay, Eric.

Eric: Just a follow-up on that, Mike. In ASCII, the way to write these three characters is to use a C, W, and a Y. In Cherokee, very similar characters look very much like a C, W, Y. So I mention this because [Solagi 01:53:54] has the amusing property of being self-similar as an IDN, both in the Cherokee script and in ASCII. So it's your position that those two have to be differentiated, somehow.

Mike R: Yeah, let me clarify. Not necessarily. I think that they could co-exist, as long as there's protective mechanisms in place to prevent user confusion with similar second-level names, or higher.

Eric?: That's helpful, because the operator could... yeah, the operator could deal with that. In fact, I think that's one of the advantages of having the same registry do it, because you can deal with things like that, and make it actually more efficient to deal with cyber-squatting, so that's a very helpful clarification. Thank you.

Mike R: Well also, just to be even more clear, you know, what we've got today, we're just not there. Saying that the UDRP takes care of that is not a good answer.

Male: Okay, go on. What's holding you up?

Kurt: So, I'm moving to slide 64, and I'm going to run through a few. And the first slide talks about the evolution of the dispute resolution process, and the

objection-based standards. Oh, no. 54? 54. Yeah, so ICANN thinks one of the highlights of the recommendations are the identification of these high-risk areas, that if not addressed in this policy and this implementation, would be sort of taken out of ICANN's hands. So the procedure has to address strings that might infringe the rights of others. There needs to be a path for addressing this sort of objection, or else those that would object would either resort to litigation and tend to stop the process, or, alternatively, there would be severe criticism of the government, of governments, of the process, or severe criticism of the process. Or the result would be that there would be a public comment that would have to be resolved by the Board at the end if there wasn't some path. So we think the policy recommendations provide a path, and these other... we've talked about string confusion, but in these other three cases that are the most contentious of any new TLD application.

So initially I think while the policy development was going on, staff was talking about establishing independent panels, if determining of names violated morality or public order, or infringed some right. And then that thinking evolved to wanting to remove that further from ICANN, in order to insulate all of us, the big ICANN, from disputes.

And so, as part of the policy development, we also discussed the potential implementation, which would be an objection-based process, where if somebody raised a bona fide objection, that objection would be taken outside to an independent dispute resolution provider, and the dispute would be between the applicant and the objector, and so ICANN wouldn't be a party or be involved in that dispute.

So we viewed the policy recommendations as raising the key areas where ICANN needs to provide a path for people who would object to certain names. And we also think this independent dispute resolution process, to the extent possible, insulates ICANN from the fall-out of the disputes, and that... Yeah?

Kristina?: I'm just curious how that... how out-sourcing that part of it would insulate ICANN from what is ultimately the policy decisions made by ICANN, that the out-sourcing does?

Kurt: Well, one is we provide a process that's repeatable and clear, and two is that people directly retained by ICANN are not making the decisions. We are

retaining a dispute resolution provider. They in turn have panels of adjudicators who go out and retain... this panel of adjudicators, and so the entire... the process of objecting and hearing the dispute really doesn't involve ICANN or any ICANN-retained agents or contractors. So it's a degree of separation. That doesn't provide total insulation, but it provides better insulation, I think.

Kristina?: Yeah. I think sort of the caveat there is, though, that these independent evaluators would be making the decisions, but again, remember they're only implementing the policy that we give to them, that ICANN gives to them. So it is our policy, and we are responsible for it.

Kurt: That's right.

Kristina?: So I'm just not sure how this insulates us from...

Kurt: Well, also by providing a procedure. If there wasn't a procedure in place, where would those who object take their objection? They would voice it through public comment, they would voice it through their governments, they would take it to the court. And so, rather than have them do that as their avenue of first resort, we'd rather give them a path to have their objection heard through this procedure that's, you know, it's apart from ICANN, but it gives them an avenue to voice their complaint, rather than, at the end, just find fault with ICANN for not... Or, you know, there's a lot of complaints from [inaudible 02:00:03] find fault with ICANN for developing the process that would even consider that somebody might apply for a string that infringes on somebody else's rights. So, that's my best answer. I don't know. Maybe not my best answer, but my best answer right now.

So I think we've... uh...

Avri: Did you... are you... I just wanted to check whether were going to go into the queue yet, or if that...

Kurt: Well, here's what I want to do. I want to describe the dispute resolution process...

Avri: And then we go in.

Kurt: Which is almost no new news. And then we'll talk. I hope... I really want to get to the grounds for... the other three grounds for objection. Go ahead.

Adrian: This was more an observation. So, you're saying that ICANN is trying to remove itself from areas not within its mission or expertise with respect to the objection-based process, yet previously you've said that ICANN are prepared to make a decision on whether two strings are conflicting each other, in an objection-based process, even though they may not consider themselves objective. So it just seemed to me that saying one thing on one hand and acting differently on another.

Avri: I've got Dan wanting to comment.

Dan: Just... we actually did... I don't know if you were there, Adrian, but we talked through each of the grounds for objection, which ones were ICANN business, for which we would like an expert evaluation. I think the council basically told us that deciding this, whether two strings... maybe we were deluded at the time, when we did studies, but we thought this was a technical issue, whether or not two strings were identical, as opposed to morality, public order, trademark rights, or something. And this is something that ICANN should have confidence about – making sure that two visually identical strings don't get into a root together. So, that's the message, and it's from the council, when they commented on our...

Avri: Okay, yes. I'd like to go back to...

Kurt: Yes, let's go to slide 58. So we think there's a dispute resolution process that's still being developed, but the elements of that process are essentially in this flow chart. We're working with candidate dispute resolution providers now who are really well-known in this field, and we obviously have many blanks in the process. The process has many more steps than this. This is a high-level overview of it.

And so we're working to flesh out the steps in the dispute resolution process. We've developed this flow in operation with outside counsel, but we're working with the dispute resolution providers themselves in order to have a fully fleshed-out procedure. That includes, you know, when fees are charged, what the fees are, how they're paid to the dispute resolution provider, how cases might be consolidated for economy's sake, and that sort of thing. So this... so the flow will probably be different for the different types of objection. And the different types of objection might be heard by different dispute resolution providers. So

the implementation calls, for example, all the infringements of rights disputes, to be heard by one dispute resolution provider. But there might be a dispute resolution provider for that, and there might be a different dispute resolution provider for the community-based ones, based on the experience and areas of expertise of the dispute resolution providers. So if you think about who's out there, you can probably draw lines between who's expert in what, and the different objections.

So this chart, I think, we've shown before, and if not this chart, we... I had a bulleted... sort of a bulleted I guess of what the procedure was, at some other time.

Kristina: Maybe I'm misreading this, but it looks as if the infringe rights chart has got slightly different timing than the larger handout. In that at least in this hand... the big piece of paper indicates that the objection period... or maybe I'm... that happens before the initial evaluation.

Kurt: Oh, I see what you're saying. So that's... you're correct, and the other chart is correct.

Kristina: Okay.

Kurt: Yes.

Male: This chart has a... like, one of the boxes, four to the right, is negotiation, mediation... is it... this differs, say, from the UDRP in that there will be some kind of mandatory stage in which parties could try to work out their differences. Like, is it kind of like the situation J. Scott talked about, where there're two trademarks that could be conflicting, but if they can work it out, we don't care as long as they're happy [inaudible 02:05:26] some kind of review of that.

Kurt: Yeah, so this calls for, you know, a negotiation or mediation, and then an approval of the result if the parties agree.

Male: And would that apply to the other rounds as well?

Kurt: So, the answer...

Male: So...

Kurt: So I said what this chart said, and now we're talking to the potential providers themselves, and they have models for how parties might get to an agreement first. And whether that is an actual mediation, or whether that's just giving them an opportunity to work out their differences. Yeah, specifically.

So the work that's going on here, I think, is really good, and the discussions we're having with the dispute resolution providers is the most fascinating part of this implementation. And the development and implementation of these will be interesting, and, I think, well done. It's also certainly the tall pole in the tent as we work with different organizations that are internationally based and develop these procedures, in accordance with their timetables, we'll be able to publish the RFP. So this is probably the critical path, and this is what we'll probably provide updates on regarding progress and getting the initial RFP out. We don't think... the timetable comes later, but we don't think the whole process needs to be fully developed and launched before we publish them in RFP. But we think enough of it has to be fleshed out so we can provide enough information in the RFP so that the applicants are cognizant of the process.

So I think I just said what is in the next slide, slide... as my vision gets blurrier, I can't see. Yeah, 59. Right, so we posted expressions of interest, and, like I said, we've had many discussions – you know, I wouldn't call them "negotiations," I would call them process development. And our goal, of course, and our definition of success in implementation here is that these dispute resolution procedures can be spun up in a reasonable period of time, and at a reasonable cost for the objector and applicant. And that the dispute resolution provider provides the right bandwidth, the right cultural, geographical and volume bandwidth in order to hear disputes in different regions. Yes?

Male: You're thinking that the applicant is also going to have to bear some of the cost of the objection process, or will it be solely borne by the objector?

Kurt: I think they're going to share the expense, initially, and that there's some determination to be made about whether the loser pays the cost at the end. Certainly, in the United States, that's not the custom. In a lot of other places, it is.

So, any input on that one would be helpful.

Male: I have another follow-on question, then. Is... so the real standing here to file objections is if you have some level of trademark rights on whatever string of words we file for.

Kurt: Well, let's go to that. So, in the legal rights objection, which starts with the next slide... We want to... what we have to do is, one, establish this procedure that we've just talked about. And then two is to develop a set of standards that we can hand to the dispute resolution provider, that they can use as a tool for doing that. And we discussed, I think in Delhi, a potential set of standards, which are a set of factors that are to be balanced to determine whether rights have been infringed. I mean, that's on the next slide, and so... That or these.

So we talked about these. These aren't firm yet, but it's a little different than UDRP, because UDRP you not only have the second level name, right, but we have a course of conduct, or how somebody is using the name.

In this case, we have an application that might give a hint as to the use of the name. We have the string itself, which is... might be more than the string itself, but it might give a hint as to what the string is being used for. But you don't have that, you know, that use of the string yet. So there's more factors that have been incorporated into the standard than in the three that are in UDRP, and in a case by case basis, some of these factors might be applicable and some of them not. And so we would ask the dispute resolution provider that... to use these factors as the standard in balancing whether someone's rights have been infringed.

Ken?: Contrasting this with UDRP, UDRP has three things that you have to prove. These... this is a balance of factors test, more. So, for example, you wouldn't always have to prove bad faith, which you have to with the UDRP.

Kurt: Correct.

Ken?: But these are just some of the factors that we take into account.

Kurt: Right, so you may be able to divine intent of bad faith by the string itself, or by the application – but you may not.

Ken?: You can... but you can also prevail on challenge without any proof of bad faith.

Kurt: Correct.

Male: So, when somebody disputes another application, you know, starts the process. Would you publish that? Like, when they put their chip in, to say, "Hey, I have a problem with this one!" Do you guys say, "Okay, there's three people who have a problem with this?" Because if somebody puts a chip in, somebody else might not. It might be nice to know, oh, somebody's already complaining about this one. I'll let them pay for it.

Dan: We don't know yet. We're working through how to handle that. It's complicated, because you might want to have your friend put in a 1000 dollar chip on yourself, to scare away other [inaudible 02:12:26] on you. But we're looking at it. And not just whether the objection is valid, but what about an objection that received a complaint, see which party has filed it, or...

Kurt: So one of the checks we're making here is that we're implementing the policy recommendations. So this is sort of a pointed one, because it's one of the more clear implementations, we think, of engaging with an independent dispute resolution provider that can provide the right sort of bandwidth at a reasonable cost, and timeliness, and a set of standards. So this is... so we clearly think that this is what was intended in the policy recommendations. We think the policy recommendations went absolutely as far as they could, as far as policy recommendations go. And a combination of this, the implementation guidelines and the rest of the stuff from the final report on our discussions led us to the vision that was a couple of slides ago, and the sort of work product at the end.

So... yes. So morality and public order is next. And this is the slide on morality and public order. In the last meeting in Delhi, we discussed some of the factors that may evolve into standards. But they're still under discussion. We've worked with outside counsel, we've... as reported in previous meetings, we have legal memos from nine different countries about how they... you know, that there is free speech first, and how free speech is restricted in those areas. We're working toward deriving a core set of standards from those jurisdictions and balancing potential objections from governments. The possibility of strings and working to fashion a set of standards there, but we don't have candidate standards to pop in front of you at this point.

What else do I want to say about this? Only that all the research we've done has been around free speech, and that... where is free speech curtailed, or where is free speech limited? Under what limited circumstances is free speech

curtailed, and then trying to develop a set of standards. Not from the union of that, but hopefully from the... at least a minimum set of standards from the intersection of that, with some opportunity for the panel to take some other things into account.

Avri: Robin.

Robin: Yeah, I have a question about the implementation of the morality and public order issue. Is this going to be sort of a one-size-fits-all for the whole internet, or will there be regional differences or national differences taken into account on these different... what is moral, what is orderly?

Kurt: I'm not sure. I think that the panel will be given a set of standards that says, you know, here's some really bad things that we think should be excluded, that is very narrowly drawn. And then provide some discretion for them to define the policy recommendation exactly as it's written, no more broadly than that.

So the answer... but whether that's regionally based, I don't know if it's regionally based, or not...

Robin: But it won't be a one-size-fits-all? It'll take into account the circumstances of the particular applicant?

Kurt: Yeah, I think it'll be one set of standards. It will be one set of standards, but it will provide discretion to the... So I'm saying I think you're... you know, it'll give discretion, some discretion, to the panel, and it will take into account the circumstance of the applicant, but it won't be a set of standards for... a different set of standards for different regions, I don't think.

Avri: Norbert.

Norbert: Norbert Klein. Also I had not expected that by today you would have a [inaudible 02:17:30] for everything, but do you have a kind of timeline or idea... it can be solved, or by when?

Kurt: Yeah, so, we are... we see this as a very, very critical issue to ICANN. If we... I think if we don't provide an avenue for this sort of objection, I think the process would come under severe criticism of governments. And force on the Board all these decisions, because those who would object would go directly to the Board. So because it's important, you know, we've sort of narrowed down our

position where we are, and so that's knocking around at the top of the company right now, where we have... you know, we have executive updates every week about progress on this stuff, on the whole implementation. And so we think we're going to get to a document that we can shop around to dispute resolution providers in the next few weeks. We have a strategic direction, but there are not words on a sheet of paper yet, so, you know, for me to try to say something that's not written would be really poor, given that it's me.

Male: Just a thought – you might want to look at... I know like in Ireland and in the United States, there's license plates that you can get personalized, and there's certain words that are ruled out. You might want to, you know, look at that, because it says, "A core set of rules or standards derived from analysis of exceptions that exist in the laws of a bunch of countries." That would be, I think, a fruitful area to look into.

Kurt: We've talked about that. Kristina, you were going to have a question for this subject. You were going to have a question for this subject that you were going to hold.

Kristina: You answered it earlier, in response to a question that Adrian raised. So I'm good.

Avri: I don't see any other comments, so it looks like we're in move-on. Oh, okay, no, I've got one.

Steve?: Though, just so I'm clear, similar to the string confusion but different from the infringement of rights one, anybody has standing to file, as far as we know today, under this [bucket]?

Kurt: Right, so... let's just have a really brief discussion about that. But let's narrow that down and try to exclude somebody. So, you know, I welcome this discussion. This is the discussion we had, because we started out not there. We started... I forgot where we started out, but it was somewhat... Do you remember where we started, Dan? With standing? Or Karen?

Karen: At one point, I think we had talked about only governments can object...

Kurt: That's right, yeah. We talked that... we said that only governments could object. So we started thinking about the purpose of objections, and the purpose

for the policy recommendation, and so... and then said who's the... the "harmed party" is probably not the right expression, but, you know, who's getting harmed here? Infringement of rights? It's the rights holder. You know, in morality or public order, who's the harmed person? So it seemed like it was a choice between governments or something broader than that, and once you start to broaden that, it's hard to start excluding people. But I would appreciate suggestions for that?

Chuck?: Well, I just... on these objections, I don't want to lose sight on trying to provide the applicants a degree of objectivity and certainty. And the first thing a business person and their legal staff are going to look at when the [inaudible 00:21:34] is, "What's my exposure?" And if... we don't want to deter applicants. That's the whole idea of having a process that's objective and offers certainty. But when I start hearing things that anybody can object, I think a reasonable person will sit back and say, "Well, I don't know if I even want to participate in that process, because there's just really no certainty." Really, and that's not what we want to accomplish. So there is a balance, and I understand...

Kurt: So, the other part of it isn't just the standing, right? It's the standards themselves. So, if the standards are written so that... to give the applicant some likelihood of outcome, and the objectors some likelihood of outcome, that's the other deterrent to that. "Well, I can object to slow this guy down, but I'm going to lose at the end of the day, and I'm going to be out five or six figures. Five figures, it's five figures. Some money.

Karl: Karl Mannheim, Loyola Law School. Just a comment from the sidelines here. The general framework was explained to me, but I think it's important that whatever standards that are developed for this have to be very certain, and not leave room for arbitrary application by whoever the decision-maker is. Because then you're going to generate the objection that these are kind of ad-hoc decisions. And then you're going to get into a vagueness problem. So whatever the standards are, they have to be clearly articulated, I think probably announced in advance, and then applied in a customary way.

Kurt: I very much agree with that sentiment, and the balancing that goes on is that with wanting to make the restrictions on TLDs as narrow as possible, and recognizing that there are differences among people. And so providing some discretion for the evaluators. And so, I personally am for the idea that the more

discretion, the more uncertain the outcome, and so I don't like that result. But I want to also really narrowly tailor the objections as much as I can.

Avri: I have Steve, and then I have Robin.

Steve M: Yeah... Steve Metalitz. Another way you might think about for this one is some type of quick look procedure. If you have clear standards and frivolous complaints, or complaints that don't meet those tough standards can be quickly disposed of, then that might be something of a disincentive.

Kurt: Before an objection is raised?

Steve M: No. I mean, the objector comes in and says I object on the grounds of morality and public order...

Kurt: Oh, I see.

Steve M: But it can be quickly disposed of without having to go through a full... That's probably not appropriate to some of the others, but it might be appropriate here.

Avri: Okay, Robin.

Robin: Yeah, I'm concerned that anyone can object on this morality and public order criteria. It was my understanding before that this was something that only governments were allowed to... would have standing to object to. And I'm particularly concerned, also when you couple that with the fact that the applicants are going to share some of the expenses for people objecting to their application, I think it's going to be really difficult for non-commercial applicants, or not well-financed applicants, who want to do something a little bit controversial to be able to get anywhere. If anyone can object, and then, you know, they're going to have to pay for that objection by somebody else. So I think that's a real concern.

Kurt: I share your concern. Two ways of addressing it that probably don't go as far as you're wanting, are the loser pays idea, and also the writing of the criteria so the criteria are narrow, and then you want to do something a little bit controversial, clearly in the criteria, you would win, and then if the loser pays, they would be satisfied. But I understand that there would be an initial burden, and the smaller players could potentially be excluded by that. So, again, we were talking about eliminating governments, and we saw that if there's some

harm to be protected from here, a government might not necessarily come to the rescue. There might not be some government overseer for or government protector of a very substantial group that might find, you know, a name... I hate using this kind of language, but, patently offensive, or something like that. I'm sure that's [inaudible 02:27:16] that's inappropriate. So that the protections that are sought by this objection will not be covered by government.

Avri: Okay, I wrote my name, okay...

Robin: But if we're talking about objections based upon public order and upon morality, it's governments that ultimately determine what that is. So it strikes me that they're really the only ones in a position to have an objection, if there is to be one to have.

Avri: Yeah, go ahead, Dan.

Dan: I guess just to think about this more, I mean, this is a tough one. We have as much trouble with this as anybody else who's thinking about it. But the kinds of strings that keep us up at night are "dot kill all the whatever minority," as a string. Which is like some call to genocide or extermination, and it might be that that's some little minority group in a country that maybe they share the opinions of whoever is applying for that string, and they wouldn't object [inaudible 02:28:22] might object to that. Yet it's clearly... would follow... against... everyone might agree, that's a horrible thing, we shouldn't put that as a TLD string. Just because some guy wants it and is willing to pay \$50,000 to have this ugly phrase as a string for a group... So we're trying to build rules to stop it. But I agree with everything you're saying. We're [struggling], so that's why we have it a little more open than just governments.

Kurt: Open?

Dan: Yeah.

Avri: Yeah, J. Scott, and then John.

J. Scott: You know, I think one of the areas that this will play in, that you need to keep in your mind, is indigenous people's rights. I think that that's one area that this is probably going to play, because on the world stage, indigenous people's rights is a very big issue. And they are very concerned about taking a term that is of

religious significance to them, or something like that, and commercializing it in some way. Or doing something that's offensive, and I'm just saying that that's something you need to be really cognizant of, and if you're going to be consulting people you need to have the consultants look into that, what's going on in that area. WIPO has been working on this for several years, and I think this is an area where this would come into play, is in indigenous people's rights.

Avri: Then it's John.

John: Thank you. John Byng. I just want to mention, out of curiosity, that limiting it to countries doesn't really help, always, because among these countries you find the [inaudible 02:29:56]. So there you have a country which is identical with a certain measure of... considerable religious movement. So I think that Steven's suggestion of having a sort of first chamber to sort out the important from the frivolous complaints in this respect is something that should be considered.

Avri: I don't see any other comments. That usually brings up one.

Kurt: Who, John? Just John brings up one.

Avri: Yes, please.

Eric: This is Eric. I may as well follow up on the remark just made, the observation [inaudible]. One of the watershed cases for us is Crazy Horse Malt Liquors. Crazy Horse was not just a war chief, he was actually a religious leader, and so to associate his name with a beverage that is actually a fortified alcoholic beverage that is more likely to cause inebriation than a 3.2 beer is, well, more than just slightly offensive. So that falls under the morality or public order. But, on the other hand, we're not ever going to see the United States pursue that as a government pursuing a public morality or morality or public order issue. Thank you.

Kurt: Good point, thank you.

Avri: Okay, I guess we're ready to move on.

Kurt: Next, we're going to talk about community-based objections. And there's new slides for this, is that correct? And they've been posted on the site. So, for those of you viewing at home and watching on your computers here, you have

to download the presentation once again, for the third time. Or you could just look at the screen.

Avri: Except, of course, the remote people.

Kurt: You could look at me. So, we've read the... you know, I think the council spent a lot of time on this at the end, this committee-based, and... so there's a wealth of... you know, the recommendation is more precisely written, and there's a number of guidelines for doing that. And so we've... we think we've captured the meaning behind there, but we want to go through some of our thoughts on the implementation of standing and standards for this, for this particular... because there's more to compare here. So what is the next slide?

So we think we... we think there's a risk in this particular objection and recommendation, that if not carefully implemented can be used more than others to defeat or object to an application. So that can be more easily used to knock one out. So we... like I said, we carefully read the materials in the final report and the recommendations, and then put more thought into potential standing and standards for this. So there's like a little bit more of a complex standing requirement for being able to object to a community standard, and... So this is the standing part... being able to make a community objection. And I'll just leave it up there for a second, and maybe get a cup of coffee or something?

Oh, so, and Karla, can you give us some caveats about where the work is on this one [laughter]? Because this is a newly developed work, with staff, by staff. We developed it after getting some advice from outside counsel about the potential risk of this particular objection and perhaps its being abused. And then... so, in a series of staff meetings, we've developed this work. We're now consulting out, with outside counsel again, to sort of test this. So it's really a work in progress, but we wanted to consult with you guys because we know there's a lot of work that went into this recommendation, and there's a lot of work that goes into this. Is that about what you were going to say, Karla? You weren't going to say that?

Steve M: Steve Metalitz. I would agree with you that it's important to come up with as clear standards here as possible. There is a risk of abuse. And, on the other hand, you want to leave the door open when there are situations that really this

wasn't intended for. My only comment, just on a quick look at this, is that in some cases it might be more than one institution, and you might actually wish to encourage that, so if three or four institutions get together and file a common objection, and cumulatively they meet these requirements, even if maybe some of the individual ones don't on its own, that's probably a good thing to show sort of the breadth of concern about. I think if you go back to the legislative history of this provision, some of it grew out of concerns about particular economic sectors. So you'd need to make sure that this... I think this fits that, but I think you need to keep that in mind. As well as, as people have given the example, indigenous peoples and communities, sub-national communities of various kinds, that you wanted something that will also fit that, kind of that [paradigm 02:36:48].

Kurt: Was your... what was your second comment about economic communities?

Steve M: Economic sectors. We had a lot of sessions about dot BANK and how that would work here. Yeah, so you do need to have a set of criteria, but they have to be useful in a couple of different settings, that maybe each of them may be a little bit different. But, again, at a first look, I think this is a very good start as to the kinds of things you'd be looking for, but just with... just those two other points.

Kurt: Any other comments on this? Avri, can you call on Ray? [laughter] I don't want to be rude.

Ray: I think this one too... and correct me if I'm wrong, anybody... is that, when we look at the first three buckets we've gone over, it was about string, string, string. But I think the genesis of this one was about the applicants. The applicant was... could be a party who was felt by the community to not be worthy of the string that is serving the community. Is that the way you approached this...

Kurt: Right, and this is just the standing slide, not the... how the... the standard slide.

Ray: So in this case, they would be objecting against the applicant, not the string, to have standing.

Kurt: Well, they're objecting against the application, but it's not just solely based on the string. This... remember, we've lumped this under string criteria, but for this one, we're focussing on the string itself, but this one's a broader examination.

Male: Yeah, I think it would be, I think he said it right, the application. It's more an objection to the application and the overall proposal than it is the applicant or the string. Is that correct? Did I interpret what you're saying right?

Kurt: Right, so if a string is... if a string is found to be violative of morality or public order, you know, it's going to be found... there's an argument that we put it on a list somewhere, and not consider it again. But in this case, you know, that same string can be applied for by a bona fide representative of the community and win the next time.

Ray: But, I think my point is that when this was being all talked about, the concept that wanted to be caught or guarded against was a bad actor comes in and gets dot BANK, and the community understands that the actor, the applicant itself, the applicant, not the application, the applicant, is a bad actor, and there needed to be a mechanism that allowed that sector to step up. That's different than if you're a good actor, but you're not even in the sector at all, you just want to apply for dot BANK to serve the banking community, then there would not be standing for a party from the site to just step up and object, because you're not a bad actor. You can still serve a sector without having to worry about being objected to. Is that correct, or am I wrong?

Kurt: Were you going to respond to that?

Steve M: I was just going to say, I don't think that's a standing issue. I think that's an issue of what standards would be applied to the objection. Do you have to... you have to show bad faith, for example, or something like that. It's not so much who can object.

Avri: Okay, I had Paul.

Paul: I'm trying to think of how to phrase this, or how to... I'm trying to think of an example. But let's say I'm a... there's an application for dot SHOE, and it has a community. Or, you know, it purports to represent a community, but it really doesn't. Because there is no community. You know, it's dot SHOE, and it purports to represent whatever, something that can...

Kurt: Shoe-wearers.

Ray: Shoe-wearers. Right. And so now, because there would be nobody that would be able to file a dispute, because there is no institution that's widely recognized about his shoe errors. There's no institution where a shoe wearer, that's been in existence for many years, or whatever. Would that stand, then. I mean, would that just... what would happen?

Avri: Yeah, because it's not harming any association of shoe people.

Ray: Then that guy would win in the...

Avri: Well, there wouldn't be an objection, because...

Ray: Correct. So then when it goes down to with the little pebble, he gets more.

Kurt: Yeah, but it's going to be a really little pebble.

Ray: Are you sure?

Kurt: I'm not sure of anything, am I?

Steve M: [overtalking] the little pebble in your shoe, though. That would be fatal.

I don't think that's the case, I think, again...

Ray: But would he get a pebble, or would he get a negative, a detriment, a pebble taken away?

Avri: Okay, Steve.

Steve M: I think, again, you have to get to the standards, and the targeting question. Because I think it certainly could be argued that dot SHOE is targeted towards shoe manufacturers, shoe distributors, shoe retailers, and if they had an institution that met these criteria, then they could go forward.

Kurt: So can you go to the next slide?

Avri: And I had... Dan wanted to make a comment.

Dan: Could you go back one slide, please? Just for a second? Then I think, to partly answer your question... it doesn't help with the pebble and how heavy the pebble is, but we think tentatively this would also be the criteria you'd need to

meet in order to be able to claim to be a community. To be a community-based applicant...

Male: [Inaudible – not on mic 02:42:25]

Dan: Yes. It's the same set of criteria, whether you have standing or whether you can apply to be a community-based applicant. So you can't just say, "Oh, I'm the shoe man's club."

Ray: I see. So if you want to...

Dan: You have to be a real community.

Ray: I get it. So, if I claim to be... if I put in a piece for SHOE, and I claim to be a community, I have to have... and my institution has to be widely recognized, blah, blah, blah. What if I just put an application, you know, and have an association... you know, like just start a non-profit yesterday. Okay, that has an association of three different shoe communities – the shoe manufacturers, the shoe wearers, and the shoe lovers, okay?

Kurt: [laughter] Stay away from the last.

Ray: That institution is not widely recognized, because I just started it yesterday. It's not very old because I just started it yesterday. So would I disqualify? Or do I have to pick...

Dan?: We had the idea that you have to be in existence at least ten years. I think maybe Steve has brought up a good point, though – that maybe a few groups could come together to create maybe a standing or a joint committee.

Ray?: So maybe one entity, one participant in the group has to be old, or something? I don't get the criteria exactly.

Karla: Maybe I'm missing something, but institution widely recognized... so when an applicant applies for a string, and the applicant says, "I represent such community," it's the community that is being represented that is widely recognized, not the applicant.

Kurt: For standing.

Karla: For standing. He was saying about the application. Did I miss that?

Ray: Dan's saying that this would be used for the application and for standing, both... so...

Karla: And what I was saying... he was saying, "Well, for the application, can I only be the applicant for a community-based application if I am widely recognized?"

Ray: That's my question.

Karla: And I said no.

Ray: Okay.

Karla: You know, you can be an applicant and say, "I represent such and such community." And the community that the applicant is claiming to represent in the application.

Dan: I think what we were looking for... what we were trying to protect here was communities that are widely recognized that have institutions that are widely recognized. This was the banks or the indigenous tribe. And this is what we were trying to protect, so I think that we'll have to tune this towards.

Karla: Yeah, I agree, but I think that there were two different questions. There are two different issues.

Avri: Okay, I have Robin and I have Steve.

Robin: I just want to make sort of a brief footnote on this point, which is that, you know, in the Internet community, we're all pretty young. There aren't a lot of Internet institutions that have been around for five or ten years. So I sort of want to caution against putting too much weight on, well, this is an institution that's been here for, you know, ten years or whatnot. Because this is the Internet, and things are happening now, and I'm concerned about, you know, I want to make sure that we leave space for innovation. And we need to be able to have a policy that can do that.

Avri: Okay, I have Steve, and then I have Paul.

Steve M: Two points. First, I would agree with Robin on this, because... and you might apply these factors differently if you're talking about SHOE and if you're talking about something that's on the Internet. You might have to apply these

somewhat differently. But Dan, I think, when you brought up that you would apply the same standards in determining whether someone was a community-based applicant. Can I just bring up that that question arises at a different point in the process, as I understand it, so that's a question on string contention. And by the time you get to string contention, either no one has challenged your status as a community-based applicant... you know, there hasn't been an objection. Or you've survived an objection as a community-based applicant, so it's a little different than at this stage of the process. So I'm not sure exactly the same standard would apply.

Kurt: You know, a comment about surviving an objection is that the standing requirement might be a defence to, you know, a community-based objection. So if you have standing, you probably survive the objection.

Avri: Olof, you had something?

Olof: I think it was pretty well clarified already.

Avri: All right. Thank you. Okay, Paul.

Paul: Yeah, but I think what Dan said was, you would... I don't know what happens. You are required to have, if you claim... I don't know how to put it. If you claim a community, you are required to have an institution. The fact that this is kind of overloaded and used twice is confusing to me, okay? So if you claim a community, you have to have an institution, obviously. You have to be an institution. You have to be rightly recognized with all these attributes. Not just if you survive... you can't just use it as a defence.

Kurt: Yeah, so when do you want to test that? You might as well test that in the string contention process, because that's where it comes into play, right? Otherwise it's just a TLD that you've applied for, and nobody objects to it, so you should have it. But if...

Paul: Not if there's two people who apply for it. That's the problem.

Kurt: Yeah! Then that's the string contention area, and that's... so then that whole issue becomes ripe, because then you're trying to attach some value to community representation in the string contention process. Then you go, "Boy,

a grain of sand or a little less for your pebble, because it's not really a community." But I don't know if it's...

Paul: It's a community but not an institution.

Kurt: Yeah, but I don't know if it's fruitful for, as part of the evaluation process, to do that right up front, where it's not going to have any effect on the outcome. For every community based TLD...

Paul: So if you were an institution, and there were two strings, you could complain... and the other guy wasn't an institution that was widely recognized. You could complain and win right there. That early.

Kurt: Right. Or, the comparative evaluation criteria that's being developed, you know, would say you don't get points for community unless you say you are one.

Ray: I see. So why pay for a dispute when you could save money, and you could win during the later phase?

Kurt: Well, I'm not giving you advice on when to... how to strategize here.

Ray: I'm back to a dot SHOE. If it's a newly-formed non-profit that has letters of support or whatever from various institutions, what happens?

Kurt: Yeah, I don't know.

Ray: Does it like get the love or the credibility or the respect from these other institutions, or do one of those institutions have to apply to get that?

Kurt: I don't know.

Ray: Okay.

Avri: I have a question on these criteria that you've got up there. I think they're rather good, but two words stand out at me, though, which is the use of "valid" in the second bullet and the whatever... "valid mechanisms" – I'm not sure how we determine that a mechanism is valid versus invalid. And then "valid purpose related to the benefit of the associated community." And, I mean, I agree with, yes, there is a certain notion of validity. But I also see them as words that allow a form of attack that is very subjective, and so... I'm not saying you should take

out the word “valid.” But you have a fairly clear set of criteria. “Has existed,” “regularly engages in,” “is associated with.” And then all of a sudden, there’s these two...

Kurt: I took out...

Avri: And all of a sudden, there’s these two.

Kurt: I wrote, “Take out the words ‘valid.’”

Avri: Oh, great.

Kurt: Yeah.

Avri: Ray.

Ray: So, community participation could be, “I have customers,” right?

Kurt: I’m sorry.

Ray: Community participation could be interpreted to mean, “I have customers.” The only reason I ask that is because this part... there was some discussion on this one, to the extent that it wasn’t to be used defensively by somebody who already has a position on the Internet in some way, some e-commerce position, for example, and then they just want to block this because it might be detrimental to their own self-interests. So just...

Kurt: Right, I understand that.

Avri: Marilyn, is that like a hand raised, I want to speak?

Marilyn: I’m not sure I do understand it, so I’d like to. What does that mean, “I have customers?” That’s not a community, right? Customers, to me, that’s not what most people, when they think of community, equate with it.

Ray: Yeah, that was my question, you know? Some... it really comes down to interpretation. What does that mean? There could be some very large institutions out there, say a credit card company. They might say, “I have all these customers. I have community participation.” They might say it that way, that’s what... you know. So really, maybe that needs to be defined – what does community participation mean?

Kurt: I thought he said something... I thought you said "customs." [laughter] So I was taken aback by that as first, but the rest of what you said made sense. So I...

Avri: Okay, Dan, yeah.

Dan: I guess this is maybe one of the things that is open. And obviously [always is still a caveat 02:52:24]. So this is the kind of thing that you need feedback on. What do you guys mean? I mean, is American Express cardholders a community? Is that the kind of community you were talking about...

Avri: I hope not.

Dan: When you said "community protections?" Or not?

Avri: Mike, and then Marilyn.

Mike R: I think in some instances, you are talking about commercial communities, trade associations, perhaps, on the one hand, something relating to the products that their members sell. EBay, which obviously says that they are the EBay community, MySpace, sure. Definitely. Why is it governmental non-profit communities, only? So we never talked about that?

Avri: But is there a difference between one company's customers, and, like you said, a trade association that has many members, that's certainly a commercial but I think was always included. The dot BANK was, you know, the banking institutions, it wasn't Commerce Bank's client list.

J. Scott: You know, I somehow feel like we've fallen into a law school discussion about things that will never happen, okay? Because, in reality, EBay is going to be able to object under three, because they have trademark rights, and if they want to claim that they're a community, who cares. Nobody is going to be able to come after them...

Male: Only if they're going for "EBay."

J. Scott: ...unless you're Joe EBay... I'm just saying, you know, I just feel like it gets to the point of being ridiculous at some point. And this was designed for the generic terms that somebody might try to encapsulate and say, "I'm talking dot BANK," or "I'm taking dot MAORI," and I represent that and deserve it because I

am representing those communities above somebody who just wants to make a lot of money.

And we say, well what if the banks have all their trading organizations line up and say, "We don't want to be associating this way." Shouldn't there be some sort of stop gap to allow them to raise their hand and say that? Or shouldn't the tribal council of the Maori people be able to raise their hands... and that was what this was designed to do.

Ray?: You can get there [by] defining things, that's all I'm saying, providing the definition. Because people are going to interpret this, you know. It's not the final version, of course, but whenever it is, people are going to make their own interpretations. So in order to get there, my... I'm just into pragmatic advice, we should define what that means, so that we'll be clear on what you can and can't do. [voice speaking over loud speakers 02:55:05]

Avri: Dan, I don't know what's going on online there. [loud coughing] Is everybody fine online, and maybe you want to mute, unless there is an emergency, but... Okay, people online are okay.

Dan: So, I sort of agree with J. Scott that hopefully this is just hypothetical law school discussions, we're just issue spotting. The thing that kind of channelling I guess, the lines that Paul and Ray were talking about, is the cases like EBay claiming, or applying for, dot AUCTION, and saying it represents the community of EBayers who sell things on auction. Therefore, they are a community of auctioneers, so they should give out dot AUCTION, and they should beat out some commercial [inaudible] dot auction. Or American Express saying they represent American Express card holders, and they want dot CREDITCARD, etc. So you're talking... it's hard to figure out exactly what we're talking about when we're talking about communities. So we're trying, we're working on it. We didn't get a whole lot... we got the idea of the legislative history core of it, which is the dot BANK, but we're working really hard to make sure that doesn't blow out into other [inaudible 02:56:17].

Avri: Mike.

Mike R: Yeah, I mean, I think maybe it has gone a little too far, because when we were talking about this, we were talking about it from an objection standpoint. But what I've been hearing today is that it actually gives... seems like it gives a

slight benefit, at least a slight benefit, to applicants to come up with a reason why they're a community-based applicant at the outset. Because if there's string contention, they're more likely to win, so... And I don't know that we ever envisioned that, actually.

Avri: [Inaudible]

Paul?: I think that's a very good point, because, you know, I looked through the recommendations and I think, if I have it right, and somebody could correct me... I'm sure somebody will correct me if it's wrong, but the recommendations say that a community can stop something, but it doesn't say that community gives you an advantage. Does it say somewhere, in one of the recommendations, that a community gives you an advantage?

Avri: Steve.

Steve: I think that was the one that was on the screen before. It was about that you have an advantage if you claim to be a community in the string contention setting, and the question is how... remember, this is where you were asking if it was a pebble or a rock. How much of an advantage?

Paul?: I know, but I don't see the recommendation that says you have...

Kurt: So let's... let us, we've got one more slide on community, and we did cut short that discussion on string contention that I thought was really important. So I'd rather talk about that next, but we can talk about anything you guys want.

Steve: I think the answer to the question was is that being a community didn't necessarily get you an advantage.

Kurt: Well, see, I think the reading of the implementation guideline is different, so that's why I want to put it back up there.

Avri: Okay, so you wanted to go on to...

Kurt: So, there's more material here, that we don't have, and especially the sort of targeting that Steve was talking about, but this would be the standard that that would be applied in a dispute resolution, with the appropriate caveats that we're now... You know, I've discussed it with an outside counsel, we're discussing with you...

So, there's... "substantial opposition" are words directly out of the recommendation. "That the community invoked," that means the community that's considered by the applicant, right Karen?

Karen: "The community invoked above." So there's a claim that the community opposition to that application is substantial. So then, "the community invoked below" is the same one mentioned above.

Kurt: Okay, and that there's a nexus between the community and the string itself.

Avri: Yes, Kristina was answering a question online.

Kristina: Yeah, I was just wondering whether those... the test, whether those three parts are intended to be sequential or not? In other words, do you go to one, and if you pass one, then you go to the next one?

Karen: I don't think we had, you know, gone into a lot of detail about how this would actually work, but I think it was, as we've talked about it so far, at least, it was the intention that you would make all three claims at once.

Kurt: Why is that?

Kristina: Well, because I'm just thinking that if you're wanting it to be sequential, you might want to flip the first two.

Kurt: I see. The result would be the same, but the second one is really more of a threshold question before you get to the other two.

Male: I think the third dash is too light. The word reasonable, I think it should be there is a strong association between, not just a little bit of an association that's reasonable. Strong association.

Werner?: By "strong association," this means the fact that the applicant explicitly targets it, or explicitly says, "This is for that," is that a strong association?

Kurt: Yeah, I think so. Yeah. Steve.

Steve: But I think the reason you have to have something here is what if it's not explicitly... I think if it's explicitly targeted, then you kind of... as long as you've defined the community in the same way, you've kind of proven this. But if, in the case where it's not explicitly targeted, then the objector has some burden to

show that they really are talking about my community here. That that's the purpose of this application, is to target my community. I don't know if "reasonable" is the right adjective or not, but you have to show some... I think you'd have to make a good showing, that it just wasn't kind of speculation, that [he really was just after 02:02:21]...

Avri: Yes, Adrian?

Adrian: I hadn't asked a question for a while, so I thought I'd get back in.

Avri: Yeah, I almost forgot you existed.

Adrian: Sorry about that. So, does number two speak to what Paul was concerned about before, with his SHOE group that just got themselves quickly banged together and really isn't an identifiable group? Is that right? The community in fact is a coherent community.

Kurt: Yeah, that's what I think.

Adrian: So that's... Paul, number two covers off on your SHOE group, right? That they're just banged together, this association, to help validate their bid?

Avri: Yes, Kristina.

Kristina: Well, I mean a lot of this is already in the implementation guideline. I mean, we made it clear when we were talking about established institutions and gave kind of a presumption that we're talking about, let's say, five years?

Adrian: If we've got a definition that we've used, why aren't we utilizing the same language?

Kristina: That was actually my next question. [laughter]

Adrian: Scary for you that you're thinking the same way I am. [background talking]

Kristina: Well, I mean, that was actually kind of where I was going. The implementation guideline, what letter did we do it? R, P, whatever... That was a very painful process to get to that language, and I would suggest that it might be more helpful to staff that to the extent that you can trade out things from the implementation guideline into this, that it would give you, I think, a little bit more clarity and avoid some big issues.

Avri: There certainly were words like “substantial” and such that we, you know, for hours... The notion of formal existence and detriment, and detriment doesn’t show up in this three-part test at all. And we spent a long time talking about detriment, large detriment, little detriment, major detriment, right? In implementation. And it was specifically P, you actually remembered.

Kristina: [inaudible – off mic 03:05:03]

Avri: Oh! [laughter] But you said, “I think it was P,” so I thought you were recalling. Any other comments?

Kurt: We done with this one? So let us go back to whatever slide that was just before lunch. We have done a lot, haven’t we? Yeah. No, it’s the... yeah, is it 27? 27. Nope, it’s the implementation guideline. Right.

Avri: Is that the right one?

Kurt: Yeah.

Avri: Okay, page 24, for those listening.

Kurt: [inaudible] So, “A claim to support a community by one party will be a reason to award a priority to that application in string contention.” That has launched the whole comparative evaluation process, and... Can Steve talk?

Avri: Sorry. Yes, Steve can talk. Thank you.

Steve: Thank you. Yeah, I mean, this isn’t to me 100 percent clear, what was intended here, but I think it’s enough to see that this is really playing a somewhat different role than in the objection process.

Kurt: Right.

Steve: So you may not have exactly the same criteria or certainly not the same outcome. I mean, I know that we’re using the same word, “community,” both as a standing issue for, and a rule of decision for, an objection, and as a factor that determines string contention. All I’m saying is they may not really be exactly the same thing.

Kurt: The definition of community might be different.

Steve: May be a little different. And the impact. I mean, I think there is a role, a value, it seems to me, when you have string contention, it really gets back to what Eric was talking about this morning. Do you just give it to the guy with more money, which is the auction route, or do you have some mechanism for giving it to the guy with less money if that applicant has this kind of community support? But it's not necessarily the same yardstick that you would use in the objection process.

Kurt: Right. I think that's a good point.

Avri: Okay, we have Mike Palage.

Mike P: Yes, I just want to echo what Steve said, and this is what I tried to articulate before lunch, when we were using the BANK and LIBRARY scenarios this time last year. What I was trying to articulate is, we needed some way of being able to get the TLD in the hands of the person who was going to, if you will, make the better use of the TLD for the broader community, using some of the principles that ICANN had used in both the 2000 and the 2004 round, as opposed to the person that was able to bid \$1 more than the other applicant. So, thanks Steve for, I think, articulating the point I had tried to make before lunch.

Avri: J. Scott.

J. Scott: How about just changing the terminology and bullet from "a claim to support" to "if one party can demonstrate it supports" something, and that goes to what Ray had said earlier, is that you can show that the community itself supports your application. If you can show that, then maybe that would weigh to the pebble on the scale, is you can demonstrate you have... the community has spoken up on your behalf. And so maybe changing whether... from a claim, because a claim doesn't have to be shown, some sort of demonstration that's objective, that they can look at, and then maybe put that in the pot.

Kurt: So I think that's an excellent point. That's just the wording of the policy recommendation, and we're talking about how to implement that and I think the better way to implement it is actually to have some demonstration of that. I think what we're talking about is, this clause really launches the comparative evaluation process in the string contention, and when that is launched. And so the staff implementation of this is that, in the case where there is a claim to

support a community, or a demonstration, but a claim to support a community, then there needs to be some evaluation about... between the strings. The community support is a reason, one of many reasons, to choose one string over another string.

J. Scott: I think implementation guideline number H says that it will be taken on trust unless there are two, or something, and then you need to demonstrate. So if you look at that, I think you're going to find your language that needs to be put in here somehow to let the objective criteria know that that's what's going to occur. And it's in H.

Avri: Chuck, you wanted to...

Chuck: Yeah, I think that we to clarify, if we're talking about a claim, when that claim was made. I'm assuming, and I guess I'm asking if I'm assuming correctly, that we're talking about a claim in their application, not some later claim. Is that correct? You might want to... that's probably a good clarification to make.

Kurt: Right. When we were talking about this earlier, we were talking about problems that almost all of us have with a comparative evaluation, and how difficult that is. And so I wanted to verify that this, you know, this was the reason for having the comparative evaluation. And we were sort of having a discussion about what could the criteria be. And I think J. Scott and others said, well, try to make it as objective as possible, like how much community support there is for this TLD, and make that a part of the evaluation. John?

Avri: John.

John: Thank you. A question about that. Are you going to factor these scenarios? Let's say you have a good faith applicant, dot BANK, dot SHOE, whatever, and then the community gets together and says, "You know what? We really want that one." Are you going to factor that in, in the string contention issue, in the application fee, and have some kind of refund or some kind of mechanism where a good faith applicant would be made whole, or at least partially whole, for that unforeseen circumstance?

Kurt: So is that a case where the applicant withdraws his application because somebody else...

John: Well, it goes through the string contention, and the panel decides, "You know what? It should go to the... there is a real community, and they want it, and they applied for it as well." Will that be... will that be factored into the application fee and any kind of refund process?

Kurt: I don't think so. It could.

John: Could it?

Kurt: It could. It could.

John: Is that something you are considering?

Kurt: By now, by now we've done the initial evaluation and gone through the objection processes, and done all the evaluation, because it doesn't make sense to do this contention stuff until you know you've got two guys that win in the end, right? So you've already spent the money on the evaluation. So to the extent that the purpose of the fee is to pay for that, then, you know, if you're a loser you shouldn't get a refund.

John: How about if you withdraw and you're still a loser, then do you factor in a refund?

Kurt: I think it would depend on when you...

John: Or if you're just a loser? [laughter]

Kurt: Yeah, then we're going to give you money. But I think that might depend on when you withdraw, so a consideration of that... you know, an early withdrawal would earn a refund. If you want to hang in there... You know, so, this is totally speculative, so Karla's giving me dirty looks, but it would depend, I think, on the timing, once you're expending effort in an evaluation.

Avri: Okay, I've got Chuck... sorry.

John: If you are... just to follow up, if I may, if you are contemplating some kind of refund process, perhaps, in this evaluation.

Male: Gotta hold out.

- Avri: Yeah, I got the impression, from facial expressions and body languages, they weren't really contemplating it.
- Kurt: No, in fact, we have.
- Karla: No, we are, we are.
- Avri: Oh, you are.
- Karla: Yes, we are making an analysis whether or not this is done, how it's done, when it should or should not be done, but this is part of the cost analysis we are doing, part of the financial analysis we are doing, and we are not really ready to tell you this is how, what.
- Kurt: But I've seen a four page financial discussion of refunds, so there's been a lot of work that's gone into it.
- Avri: I'm glad my impression was wrong. I have Chuck, Steve and Werner.
- Chuck: John, with regard to what you were saying there, it seems like it's really wise on the part of the applicant to consider possible, implied communities that might be involved when you're doing this, to see... to evaluate those risks, and maybe even consult with some of those communities, to make sure you're on safe ground.
- Avri: Okay, I've got Steve.
- Steve: Steve Metalitz. Yeah, just taking one step further from what Chuck said, I think, if this provision works, it would give incentives to applicants to enlist support of relevant communities before they file their application. I think that would be a good thing, if we can get that as a [inaudible 03:16:31].
- Werner: This is Werner. Just what I'm seeing here is one piece of text that I don't understand, that is in the implementation guidelines. We are in implementation guideline P. That is very strange, and does not appear to belong there. It says, between parentheses, "perhaps like the R step [for the panellist for a small panel 03:16:53] would be constituted for each objection." And I cannot make sense out of it, it appears to have fallen inside. But maybe if the people who worked on this text are here, they could explain why this phrase is in declaration P. Implementation guideline P, I meant.

Kurt: And that pertains to which recommendation?

Avri: Implementation guideline P, top of page 24.

Kurt: Yeah, but it refers to what of the 19 policy recommendations?

Avri: P refers to recommendation 20.

Kurt: Oh.

Avri: P is that whole discussion of community and discussions and...

Kurt: So an R step-like panel?

Male: I have phrases. "The objector must provide verifiable evidence that it is an established solution of the community." Then the parenthesis opens – "perhaps like the R step [inaudible 03:17:53] a small panel would be constituted for each objection." Parenthesis close.

Avri: Yeah, obviously some lines got lost.

Kurt: Great.

Marilyn: Avri.

Avri: Yes, please.

Marilyn: I remember we had sort of parenthetical discussions about the R step process, but it just sounds to me like that got captured, and I'm not sure it belongs any longer in that, right? Because we did talk about the R step.

Avri: We talked about it in the reserve names, and our recommendation was that the objection panels would, in some sense... and I think that this is a stray piece of paragraph that got there, and all the times we've read this and been glossed over. But, yeah, it looks like a stray parenthetical. Fortunately it's a parenthetical. But that was, if you read the reserve names, basically, and all of that, every time we talked about a panel, every time we talked about an objection panel, we said, "Kind of like the R step." And, yeah.

Kristina: I actually just found this series of e-mails that involve that, and it was intended to be just kind of a parenthetical explanation, not a part of the guideline.

Avri: Yeah. Okay, Paul.

Paul: Um, I'm not too sure I agree with Steve about incentive being a good thing. You know, this advantage, I agree that it would give an incentive for, you know, community applicants, because they get an advantage if there's two of them. But I think we need more totally open gTLDs, and, you know, if we... if somebody applies for dot WORLD, and he knows he's going to get an advantage by claiming, or, you know, demonstrating some kind of community... I don't think that that's a good thing.

Avri: Chuck.

Chuck: Of course, I don't think you picked a very good example there, because dot...

Paul: I picked that one because there is no real community.

Chuck: Yeah, but just claiming to have a community of the world is, I don't think, gonna be meaningful here. At the same time...

Paul: Okay, use dot WEB. WEB is pretty generic, there's going to be people, somebody...

Chuck: What's the community? All web users? It's not... it doesn't meet many of the criteria that were there, that were listed on a previous slide.

Paul: Does dot WEB... this is a good question... does dot WEB... WEB, by definition, does not have a community. Is that true?

Avri: [Inaudible – not on mic 03:20:38]

Chuck: Yeah, my... I think if you go through that list of the standing criteria, it's going to be hard to match very many of those. But besides...

Paul: W3C, you know, they, like we were talking last night...

Chuck: Let me say what I really was going to comment on, and that is, I think what Steve was saying is, that the incentive to work with possible communities of interest beforehand is a positive thing. Not so much that you need to say you've got a community-based application. Again, if I'm being smart from a business point of view and applying, I want to minimize those who might oppose my application.

Paul: I agree with that, but not have an advantage in some... [inaudible voice in background 03:21:31]

Chuck: What's that? What's the problem?

Paul: I agree you want to minimize the opposition, I agree with that. But do you get an advantage over somebody who doesn't?

Chuck: Well, you know, I'm not totally comfortable with the way this one came out, but what can I say? It's there, we did it, and I think that Mike Palage communicated why we did it, and others have too. Yeah, I have some discomfort there as well. You heard my earlier questions – did we really intend to give an advantage to those... I'm not sure. But whereas they might be motivated to say they're supporting a community, there's also some risk when you say you're going to support a community, because then, all of a sudden, recommendation 20 kicks in directly, because you're explicitly targeting a community. So, there's... it's not an automatic that somebody will just claim a community, because there's two sides to that. But, you know, I'm probably on the same side as you in terms of the concern.

Avri: Kristina.

Kristina: I have a completely unrelated question. What... I know that there are some legacy applications from earlier, earlier, earlier rounds. Are those all going to be dealt with before this starts? In other words, are we going to have to factor them into the equation in terms of using these similar strings, or whatever?

Avri: I believe that they were dealt with already, but I'll leave others to answer that.

Kristina: Somebody... I just remember somebody in L.A. getting up at the end of the new gTLD presentation and making a statement about them, and was just wondering what the story was.

Avri: In fact, there is a webpage on ICANN website about in what way those ICANN staff believes that those were dealt with. Whether everyone from that group believes that they were dealt with adequately is another question, but...

Dan: Yeah, so actually a lot of people missed that posting, so it's probably worth repeating here, right? So there is a posting up with the facts that we've been able to gather about that time, because most of us on staff weren't around at

the point that those applications came in. And there have been assertions about certain things that were promised, and some of that is very difficult to reconstruct.

So we reconstructed what we could find of the history and posted that, and we've asked the community to provide comments about that or provide any details or information that we don't have. So if you...

Male: [Inaudible – not on mic 03:24:15]

Dan: There was during New Delhi, but based on the feedback I've had over the last couple of weeks, when I started asking people whether they were intending to put anything in on that, we're going to put it back up again next week.

Karla: It's on the new gTLD page, too. Very easy.

Male: Can you summarize what the result was? Do they have some standing, or are they cancelled, or what? Or, you know, denied? What is it?

Dan: So, we didn't come to a conclusion. We're at the fact-gathering stage, still, and trying to determine if we have all of the information in order to make a recommendation to the Board about how to treat them going forward.

Avri: Okay, I've got an empty queue list. I'd like to point out on time check that it is 4:45. We never went through the contractual conditions, and we're well into the concluding remarks section. So I just wanted to do my bit and do the time check, so you could determine what it was you wanted us to do next.

The page, please.

Kurt: So, yeah. Well, we started with page 31, and then page 32 are the contractual condition recommendations, and page 33. And there are a number of these.

Avri: Were there questions that we were supposed to...

Kurt: So, yeah. So our vision of this, on page 34, is pretty straightforward. You know, there'll be a base contract included in the RFP. And the idea is to have one or very few numbers of contracts available, and so in the... after the evaluation process, and during the contract discussion, contract execution and delegation process, here's the contract. If you wish to sign it, you know, we're

done. If you don't wish to sign this contract, it's a different contract, requires negotiation, requires new work, for which there might be a queue, requires Board approval. Separate Board approval. So we really want to design a process that encourages signing a base agreement, and haven't determined yet how insistent we are on that.

Avri: Questions now, or let you talk through the rest of that?

Kurt: So there's very little here. So, you know, we're drafting away. John and Dan and the rest of the legal team are drafting away, and have... you know, we think, implementing all the contractual provisions that the council called for in the policy recommendations are not problematic at all. We think it's straightforward. We've talked about things earlier, to take extra steps. When you talk about contractual compliance, we've talked about using other information to inform that process, to make it even more meaningful, so we don't see that.

We haven't settled yet on fee structure. There's how many different business models are there going to be? Many, so to write a base contract with a fee structure is a little difficult, but we're pretty close on that. And another issue is the structural separation between registrars and registries, which is a very important issue. We met... we've had discussions with registrars about it, to learn their viewpoint. We've commissioned Charles River Associates to do a study about the present separation between registrars and registries, what benefits that confers on registrants, what benefits might be conferred on registrants, if that barrier is eliminated. And not just... you know, registrants we think are the most important, but what effects would it have on the marketplace too? Somewhat serendipitously, that report is supposed to be delivered today in a draft form. I've got another report from Charles River where the draft form's not quite ready for primetime. But that, you know, we commissioned that study. That's moved ahead, and will inform the next round of public discussion, we think, about whether that separation should be eliminated or not. And so that's... so that's where we are on the agreement.

Avri: That brought you up to the discussion topic six, correct?

Kurt: Yeah.

Male: Can I get in the queue as well, Avri?

Avri: Okay. So I have a queue of Dirk, Ray, Kristina, Mike Palage.

Dirk: Okay, Dirk Krischenowski. Regarding these different types of base contracts, you mentioned private companies, IGOs, governments, but I would say that especially the geoTLDs are a big, big group in their next application rounds, and they have special issues with global data protection, and [inaudible 03:30:05] policies, for example. So there might be some... or a base contract for such geoTLDs, which reflects local legal conditions there.

Kurt: Sorry, did you say “geoTLDs”?

Dirk: Yeah. Geo – geographical, or whatever city or language or other communities which are called geoTLDs.

Kurt: Our focus here has really been on the constraints faced by certain organizations. So when we’re negotiating with a treaty organization, sometimes they say, “Well, we’re not empowered to write a clause like that. We agree with it in principle, but we can’t... we’re made up of member states, and we can’t write that. We cannot write that clause.” As opposed to, say, a private company that may not want to. So the different contracts were really focussing on the limitations of governments or IGOs, or other organizations that we want to hear about. So governments have a certain choice of law requirements. I don’t think governments are going to... you know, governments outside the U.S. are going to agree to the choice of law the United States, and they might be constrained by their constitution or their own laws from doing so. So we want to limit the number of different contracts, if we can, to have those applicants... it’s based on the applicant being constrained.

Avri: The list. Okay.

Ray: Needless to say, the cross-ownership issue is complicated, and it involves a lot of assumptions and a lot of complicated assumptions. I’m wondering if the Charles River document will be made public, so that we can get an understanding of the expert group, how they arrived at some of the conclusions.

Kurt: Yeah, so I always find myself, you know, to not say yes, but we’re open and transparent, so I can’t see another outcome of that. [laughter]

Avri: I didn’t understand that answer.

Kurt: Yeah, I know. Good. [laughter]

Avri: Okay, Kristina.

Kristina: Two questions, the first being, if an applicant wants to go outside of the base contract and engage in individual negotiations, is it anticipated that there will be the charge of an additional fee for that, or are you relying on the fact that doing that will then essentially require the applicant to pay its own lawyers as a sufficient kind of disincentive.

Dan: The answer is, no, we won't do it.

Kurt: That's... I don't know if that's feasible, but that's where we'd like to go. I think there's at least going to be a substantial investment of the applicant's time in that, because it's going to be a much longer process. We haven't discussed whether there's an additional fee for that.

Kristina: And with regard... the second question is, with regard to this discussion point here, do you really anticipate that they would actually be entirely different agreements, or more that you would have standard language and then you would just switch out various paragraphs based on the relevant limitations.

Kurt: I think it's the latter.

Kristina: All right.

Avri: Okay, Mike Palage.

Mike P: Thanks, Avri. Kurt, you were saying that one of the possibilities would be for an applicant to, if you will, agree to the standard baseline contract, and not require Board approval. So my question to staff is, is it possible for an applicant, in which there is no contention, there is no objection, there's no nothing, who agrees to the base contract, is it possible for TLD to be added to the root without ICANN Board approval.

Kurt: No, I didn't... yeah, so I don't think I said that, but the process as we envision it is that the Board can approve new TLDs for delegation based on the fact that they've gone through the process, the process was followed, they signed the base agreement. So you could almost envision... so this is a Board decision, of course, what they're going to approve and what they're not going to improve.

So this would be our recommendation. So that the Board could essentially approve batches of applications, of contracts that are, you know, have been routine applications.

In the case of departure from the base agreement, I see more extensive Board discussions of that agreement because it's a departure, and that's what would require more time. So it's not that the Board won't approve the other agreements. It's that it'll be a streamlined methodology if an applicant signs the base agreement.

Mike P: Alright, thanks for that clarification, and I just want to thank ICANN staff and the council... It's... participating remotely, except for some little difficulties dialling in for the afternoon session, actually went very well, so I appreciate staff and council for making this opportunity available.

Kurt: Don't drop off yet, Mike, John wants to say something.

Avri: John has an...

John: So there's been no discussion at the Board level yet of what they would like to approve and not approve, and it's certainly staff's intent to make that as painless as possible. So if we have applications that have gone through smoothly, and they're following a form contract and it's very straight, that the Board involvement would be minimal. That's the staff recommendation, but that's not been discussed at the Board level, and there's been no decision made on that yet.

Mike P: Thanks, John.

Avri: It would be hard for them to have made a decision on that, since they haven't made a decision on the policy yet. John?

John B: Thank you, just a question out of my own ignorance. You make reference to the nation of all nations and contracts to contract with the choice of law in America. I'm concerned that the sovereignty of a nations being used to sort of [inaudible 03:36:26] in a sense the unity of the organization of ICANN. That is a side issue, but I was wondering how often that actually happens. I would have imagined that at least many countries would use organizations in the private sector, thought they may be owned by the country, it wouldn't formally be part

of the public sector. And that is the model that seems to be prevailing in the telecommunications sector. But I'm sure it's not universally accepted. So how often do you find that, you meet the country cabinet itself rather than a private party? Thank you.

Kurt: Yeah, so we have little or no experience in this. We're negotiating with UPU right now, which is a treaty organization. We haven't concluded... we've concluded MOUs with other IGOs, but not governments, so that is a speculative comment, and may prove not to be the case.

Avri: Okay, Steve.

Steve: I may have missed something here, but is it expected that national governments would apply for new gTLDs in this process, or are you talking about maybe local governments. When you say in a parenthetical, "Private company, IGO, government," are you... I hadn't thought about a sovereign national government applying to ICANN for a new gTLD. Is that anticipated?

Kurt: Well, it's possible.

Avri: Yeah, I have Marilyn and then Dirk, and you have to use a microphone. So Marilyn.

Marilyn: Yeah, I would just say that, you know, when you think about dot EU, because there was the ability to draw on the ISO [3166 list 03:38:19], we avoided the issue of the European Commission feeling that they were in a position of having to come to ICANN and apply for the allocation. But that was narrow, we barely avoided that. It think it's possible that a government could decide that they want to operate dot country name, as opposed to having it operated by someone else in their country. Localities and municipalities are kind of a different matter, but I think Dirk was probably going to speak to that, but I think there are some localities and municipalities in the United States prohibited from operating anything that has a commercial activity. But they're not prohibited from operating things that might be viewed as having a social value.

Avri: Yeah, and I think another place, just to add on to yours before I go to Dirk, that a government, for example, the tourism board of a government could decide that it wanted a "Visit Sunny Our Island" as a thing, and could come.

Yeah, okay, Dirk, you had been, and then...

Dirk: Yeah, and what we have seen in the last couple of months that in the cases of, for example, Galicia or Brittany or Wales, that the government is deeply involved in such things. And so I wouldn't wonder if not a government applies for a region, or whatever. It could happen.

Avri: Yeah, in that case it would be a regional government or a regional institution.

Dirk: Or the national government, where the government is responsible for all names of authorities and so on in the country. It depends on the country.

Avri: Eric.

Eric: Yeah, hi, this is Eric again. To respond to Steve, I'm not presently aware of, and I don't anticipate in the near future any tribal governments initiating proposals as governments, but were they to do so, then interior to the United States, there'd be the choice of jurisdiction problem. I think most tribal governments would take the advice of counsel and not consent to American jurisdiction if at all possible. And at all possible means it would never happen.

Avri: Okay, any more on that one? I'll give another time check of it being now 5:00. Said with great sadness on your part. Paul, on this issue? You had another? Oh, okay. Are we in the move on to the conclusion part? Steve, was it something on this issue, or on the conclusion part? Okay.

Steve: It's really just... there are some questions that you have listed and sent out before that we haven't talked about. [Inaudible 03:41:34]

Avri: You made an announcement related to it.

Kurt: So, as has been well-published in the papers around DNS stability, we've consulted with ISPs and browsers and the technical community around ICANN about criteria for names that should be excluded for stability reasons. And one of the slides we flipped through really fast was the list of labels that should be excluded, which essentially is numbers that are all labels, and these things. So labels must not be made up entirely of digits, and be 63 characters or less. If you said those two, you'd probably cover all of them.

And so, the question came up, what about commonly used file extensions, such as dot EXE, or dot PDF, and should those be excluded too. It's sort of a balancing – there's no technical reason for excluding them, they'll work just fine, but some people think it's silly if they are excluded. So staff has done a lot of balancing. Too much balancing, on this issue, and balanced the fact that... you know, on the one side, there's no technical reason for excluding them, and to create a list of commonly-used file extensions is somewhat problematic to maintain that list... a process for putting names on the list and taking names off of the list is another area of difficulty. The other side of that scale is, some people are going to think it's silly that ICANN is allowing these – “What are you doing that for?” So it's... the consideration really has to do with optics, and was a serious consideration. So in the last meeting we had, we decided our first position was going to be to allow the commonly used file extensions to be registered as domain names, because there's no reason for excluding it, and excluding it is hard to administer properly and effectively. But, I want to hear comments?

Mike P: There's just one question. I was actually... did you go out to Microsoft and Adobe and... you did. Okay. And they said, no problem? Hmm. I'm betting you did not talk with their trademark attorneys.

Kristina: Yeah.

Karla: Well, just... I just want to make very clear that when we talked to some of the browsers, we specifically asked if they had seen any kind of technical issue, if they could foresee some kind of technical issue if file extensions are used. And the response that we got is, No. Technical reason, no.

Mike P: Just to be clear, I'm not talking about...

Karla: So they don't get in trouble with the trademark...

Mike P: I'm not talking about the browser manufacturers, I'm talking about the people who created file extensions. Microsoft, dot DOC, Adobe, dot PDF.

Karla: That have trademarks?

Avri: Wouldn't that fall under rule... trademark rule? Okay, I've got... who did I have hands from? I've got Robin, I've got Steve, I've got... Okay, Robin.

Robin: Yeah, I think it's a really bad idea to try to exclude file extensions, per se. If there's an objection made with respect to an application that one may infringe somebody else's rights, trademark or other, great, go through the process, and if it does, then the process will bear that out. But just to assume that the file extension, you know, dot PDF, dot DOC could... would automatically cause consumer confusion is shocking.

Avri: Okay, Dan.

Dan: I think what Kurt's really asking is when somebody applies for dot HTML and dot HTM and dot EXE, and people start yelling at ICANN about it, everybody in this room is going to stand up and say, "That was a good idea. We shouldn't have reserved those." [laughter]

Avri: And if we do, that'll help. Okay, Steve. Steve, then Mike Palage, then Dan and Eric.

Steve: I was just going to say that I don't think it was... as I read those comments, I don't think that it was that ICANN would be silly to do this. I think there was a concern about consumer confusion and about, particularly with dot EXE and some of these others, interference with security measures and filters and so forth. So I'm not really in a position to evaluate that one way or the other, and I think there's no evidence that I know of that there's a technical stability issue, but it just strikes me that if there are real issues regarding consumer confidence and confusion that could be affected by allowing a dot EXE TLD, at this point there doesn't seem to be any method for dealing with that in this process.

Kurt: Right.

Avri: Mike. I don't know if you're still on, and I don't know if your request to talk was from a while back, because I did lose my Internet connection for a bit. He may have left. Okay, Marilyn.

Marilyn: I just wanted to get a point of clarification, if I could, about the third bullet there. We did discuss the issue of file extensions in the reserve name working group, and I guess I'm... my concern would be about the consumer confusion issue. I understand going out and asking Adobe and Microsoft, but it is pretty difficult to figure out who you ask. You know, do you ask the [Nogs? Do you ask Nanog

and Nenog 03:48:31] and others, which bring all the ISPs together, whether they consider this a problem. Who do you ask?

And I guess the other concern that I have is, I'm kind of wondering, who would be registering in dot... you know, dot HTTP and dot HTML? Because I kind of hear a thing, like you want to make sure that any word, if you can write the letters or numbers together, is credible to become a gTLD. But I'm not sure we fully understand the implications of things like well-known and highly used file extensions, in terms of confusion. Even if it's not a stability issue, there may still be a serious of confusion.

So my question was going to be, should we be asking for another set of comments that are more... that are clearer if there are parties that want to move ahead with this, so that you actually are able to say, "Look what we did! We asked, and then we asked again.

Avri: Chuck.

Kurt: We asked a lot of people.

Chuck: Thanks Avri. Now, forgive me if I missed something, because I'm blanking out more frequently as the afternoon goes on.

Kurt: Your name is Chuck and you're at an AA meeting. [laughter]

Chuck: Thank you! That's where I am. Now, I'm going back to, how would we use... if we wanted to use the objection process for this, we don't have a means for that. Is that correct?

Kurt: That's correct.

Chuck: Am I reading that correctly.

Kurt: That's correct.

Avri: Paul.

Paul: Why wouldn't... you know, if it's a string confusion thing, why wouldn't it come under string confusion.

Chuck: Look at recommendation two, right? That's what I did... that's why I was asking that, Paul. It says, "Strings must not be confusingly similar to an existing top-level domain or reserve name." So that channel of objection really doesn't fit. Unless it was changed.

Paul: I agree. I don't think I want to change it.

Male: So, is this open for public comment right now? I remember the paper came out, but then... so comments are closed.

Kurt: Yeah, the comments are closed.

Male: So, then one more comment. I know you asked a lot of people. Did you ask Symantec and Norton, the people who run these filters that basically screen e-mail and flag anything that has a dot EXE file in it. So that seems like it's going to be very problematic if there are a bunch of dot EXE URLs floating around the world.

[inaudible voices – not on mic 03:51:27]

Karla: I'm trying to recollect what was answered, but basically, what was explained to us is that if one typed a string, it would not automatically open a file block. So most of them said, no, from that respect, there is no technical issue.

Marilyn: But Karla that's not the question [overtalking].

Avri: One person at a time.

Marilyn: I understand, but that's not the question that Mike is asking or that I'm asking. Estimates are, and I can pull the [inaudible 03:52:13], but you know, millions and millions and millions of e-mails are sent now on a minute by minute basis. 60 to 70 percent of those e-mails have [an unsavoury load of something]. The huge amount of filters and screening that is going on often depends on identifiable things, including identifiable file names for taking action on stuff. I think that's the question where we may have to ask Symantec and others whether there may be other compromises to that.

Avri: I've got Mike, Adrian, and then Paul.

Mike P: I think Marilyn covered it fine.

Avri: Okay, I've got Adrian and Paul.

Adrian: Adrian, the counter of registries. Surely... two things – one, the onus has to be upon the applicant that if they go ahead and get this name, they're going to run into problems. And number two, that should lead to innovation. So if Symantec or whoever else is doing virus scans or whatever, then they either have to improve their product or the guy has to accept that he's not going to be able to send e-mails or do whatever he needs to do. So if he's silly enough to go for dot EXE, then that's his... well, say dot DOC, and say it's Microsoft going for it. If they do that, they should go in with their eyes wide open, and understand that it may cause some issues the way it's going to work. It could be for the same thing, if I... Well, I can't talk about what I was going to say, so yeah. that'll do.

Kurt: He was going to give away something.

Karla: Can I just make one comment? So, I hear two things. One is the issue of having something that could cause consumer confusion, and the other is the issue of having something that could cause unforeseen, or maybe foreseen for some of us, issues... technical issues. So we need to look at a mechanism to deal with the consumer confusion, and [inaudible 03:54:23] for the judges. So that is said.

Now, regarding the technical, we are looking at a mechanism in which we may have a technical organization, or we might have somebody who could come in and say, "ICANN, you made a mistake. This application indeed causes a technical issue. This is the issue that is caused, therefore you should not let this application move forward." So we do not have this complete process of stepping through the process finalized and designed, but this is a consideration on the table, and we are doing a study of that.

Adrian: Can I respond to that, please?

Avri: Sure.

Adrian: I don't know... why is that ICANN's problem, necessarily? I'm trying to say if you're... I've got to make a decision as a business if I'm going for a new TLD that I've got to understand how it's going to work, how it's going to impact. I think that ICANN should do itself a favour, and if it doesn't, if it causes some... I understand the confusion, and ICANN is there to protect end-user confusion

and that, I get that bit. But if it doesn't work in a browser or e-mail client because the e-mail... like Microsoft didn't build Outlook to do something that I want it to do, then that's my bad luck, as an applicant.

Karla: But I haven't said that we are going to check or allow anything because we didn't work on it. Also what I said is we're going to create... or we're looking into creating a mechanism that would allow, if there is some kind of technical issue, unforeseen, that goes to the root of Internet stability and everything else...

Adrian: Sure, sure, I get it.

Karla: ... and everything else that we are responsible for, we are going to create some kind of step that would allow us to address that.

Adrian: Right. So Internet stability is one thing, but not working with an application is another, and that's the clarification I wanted to make.

Avri: I've got Paul, Chuck, Marilyn, Robin. Anyone else in the queue at the moment? And another time check, it's 5:15.

Paul: I agree with Adrian.

Adrian: Thanks Paul!

Paul: I mean, if some... if I apply for a 63-letter top-level domain and it doesn't work with some programs, that's... maybe I shouldn't apply for that, or I should go in with that knowledge, or do a survey to find out that that one sucks. You know, it's the same thing. If I apply for dot EXE and there's some virus checker or spyware checker that is stupid enough to check the domain itself for EXE, you know, that should be my... if I still want to apply for that, I should be able to.

And the second point I was making is, what if... you know, if Microsoft wanted to go for DOC. So, we take all these file extensions off the table and now they can't go for it?

And then the third thing is, you know, just because some company came out with a file extension that got popular, we take that out of the name space? You know, what if I came out with dot COOL file extension, or dot WEB file extension, we take that out of the name space? I don't think we should take giant swaths of domains out of the name space for really no reason.

Avri: Chuck.

Chuck: I'm thinking back to a comment Marilyn shared, I think at the end of the morning session, in terms of just being very practical about how we approach this. Frankly, this particular issue doesn't seem so huge to me that it's worth causing any delays, and if we're not able to readily get some resolution on it, you know, personally, it's not really going to give me a lot of heartburn if at least this round we reserved those... just those certain extensions that have been identified. I am not reserving a big block of space, but I just throw that out there. This isn't something in my mind that should... we've got a lot more serious implementation issues than this one, I think.

And this isn't the topic now, so I won't go into it now, but I would before we finish like to come back to the country name issue, before we're done.

Kurt: Well then we'd better do that now. Yeah.

Avri: At this point, I think we're in pot pourri, aren't we?

Chuck: So that's okay? You know, like I shared earlier, with the ccNSO in New Delhi, we put on the table the idea of temporarily... not changing our recommendations in terms of permanent reservations of country names, but temporarily reserving various script versions of country names associated with the ISO list. You know, it might not be a bad idea for us to pursue that a little bit further in the next month or so, and see whether it would be a good idea to go ahead and do that, like we suggested. Granted, the ccNSO didn't respond to that at all. I know the GAC was very interested in us doing that, and I think that would be a move that wouldn't drastically... wouldn't totally change our long-term recommendations, but we could do that until the ccNSO finishes its full PDP process in that regard.

Kurt: I think it's really difficult to create a list, given multiple languages and...

Chuck: I'm sorry, you're absolutely right and I thank you for catching that. I really... I understand that, I just worded it incorrectly. But we could define a criterion for doing that, associating it with the English country names that are in the thing, and then associated scripts. That would not be too hard, I don't think, to deal with.

Avri: Okay, I have Marilyn and then Robin.

Kurt: What's the matter?

Avri: I was restraining myself from disagreeing with what Chuck was saying, so it was an inner conflict, so I decided to just go on with the list.

Marilyn: So I'm... let me just say that I think that actually, to respond to the question that Adrian asked earlier and I think maybe Paul was asking, is there's [bound to be 04:00:46] an alarm if ICANN allocated the extensions to someone, and then it turned out there in fact were serious problems. And let me finish what I'm saying, and then take questions, if I might? The... many people look at ICANN as being technically savvy. And think that in fact ICANN knows what it's doing on the technical front, when it comes to understanding the Internet. Lots of people don't even fully understand what ICANN's job is. But I think the issue that we might face is if we haven't done, taken the step, and I think Karla actually is proposing a step that maybe can answer the next set of questions on the extensions. Maybe the thing to do is try to quickly understand, would there be significant problems that would dramatically impact huge amounts of e-mail. That is not interfering with a single application. That has nothing to do with the risks that the applicant is taking. It is not about the applicant, it is about the rest of the users of the Internet. So maybe we can look at what Karla's proposal was of finding the technically savvy folks to add to the ICANN staff, and ask those questions, and then come back to the extension thing.

I'll just say that on Chuck's suggestion about the approach to geographic names, I don't think that we have to have a permanent answer, but I do think that taking the step of putting forward a reserve list as a temporary measure, while other things are being worked out on the geographic names, might be...

Chuck: You made the same mistake I did. "Reserved category."

Marilyn: Sorry, "reserved category." Thank you.

Avri: Okay...

Kurt: Just a brief comment.

Avri: No, I've got Robin, then I've got myself, then I've got you.

Robin: Yeah, again, on this issue of reserving file extensions, I agree with what Paul has said on this issue. I think it's a... it would be a mistake for us to create this special carve-out for a particular industry, meaning the software industry, for the products they make that are somehow exempt from the rest of this process. We've established that there isn't a technical problem. What there is some concern with is consumer confusion. So fine, put it in the consumer confusion bucket and go through the criteria that way. But the idea that this... that there's a particular industry that has a special trademark interest that somehow supersedes all of the other interests that we've been talking about is really... is coming from left field there, this isn't something that the council ever decided to do.

Avri: I've got... I wanted to comment, then I have Adrian and I have Eric, and I think we're all pretty much on the same subject, so...

I guess I tend to agree with Adrian on this. If... first of all, if these things are applied for, there'll be at least a year where the software manufacturers that may or may not have these application glitches should be able to fix them, if that's what they want to do. I think trying to exclude these names because there may be an e-mail or an application glitch is just... it's opening up yet another gigantic can of worms of reasons for something to be excluded, and I think that it then becomes very easy to create a new file type, if you're a company. Which is a trivial thing to do, and all of a sudden, by having created a new file type, you've carved out a claim for reserving names further. I also... and then why some names as opposed to others becomes a question.

On the issue of creating a reserve category or an implicit reserved names list as opposed to an explicit reserved names list, I think we still have the recommendation of the council in terms of not making lists for geographical names, including country names, and using the objection process. And I think that if we're going to create a new recommendation for a temporary – nothing is quite so permanent – as a temporary solution for an implicit set of reserved country names, I think it has to go through a major reconsideration, re-decision process in the council, and it's not something we can just sort of say, "Oh, well let's give them a bone and let's let them have this."

So, Adrian.

Adrian: Yeah, to pick up Marilyn's point where she said "serious problems," and then failed to define what those serious problems were, should those serious problems be DNS stability, to go back to my point, then of course that's within scope. If it's outside of that, which was my point earlier, and that's... if anything is outside of DNS stability, then it's bad luck. Thanks.

Avri: Eric.

Eric: Thank you. While I have a hard time imagining how dot TBL or dot [TROC 04:06:19] or dot TXT is actually going to break the Internet, I'm still not willing to pass on Robin's comment that we're doing an industry-specific carve-out and giving the software industry something that, presumably, they don't deserve. In being cautious about the possibility that suffixes don't make good top-level domain names, and without attempting to... without wanting to open old wounds, let me point out that when we had [wild-carding, that was the site finder], we had a real surprise. A lot of things broke that we did not anticipate, and I wouldn't want to have that happen again. So I wouldn't blithely assume that there was no risk in dot DOC or dot SPAM or dot TXT in the root.

Avri: Can I ask, are you saying that there might be problems in the DNS that we haven't thought of, or there might be problems elsewhere?

Eric: Well, our experience with wild card was that there was a problem in the DNS, but it was manifested in all the spam relays being essentially... you know, all the spam detection mechanisms being broken, or not all of them, but enough that it was really irritating. That said, the stability of the Internet rationale, we saw in New Delhi some overkill there, with the elimination of all numerical labels as well. So this isn't... it's just, I think we should have some degree of caution here, and not view this as some ideological or some legal principle that we're giving an industry a specific carve-out when we consider this question. Thank you.

Avri: Thank you.

Karla?: I need to leave in a few minutes. I just want to make a comment on the challenge of putting together any kind of list that has to do with file extensions, considering that there's no authoritative source out there. What we choose, what we don't choose, what we include, what we exclude, and how we maintain, and should we ever be in a position to create ourselves or be the

authority of such a list, and if yes, then this needs to be well done. So it was just from a practical implementation standpoint that I wanted to make a note.

Avri: Just include all mime types. All mime types should do it, yeah. [laughter] Okay, any other comments on that, anything in the closing in our last two minutes? Of course, we can certainly go over, but we had... yes Adrian, and then Ray. And we also had a notion of is there anything after this that we have to do.

Male: [Inaudible – not on mic 04:09:27]

Avri: I think it has been, yeah.

Kurt: Oh well. Okay, we'll go through.

Adrian: I was just going to ask, are we going to discuss timelines?

Kurt: Yeah.

Avri: Yeah.

Kurt: Okay.

Adrian: And, if we are... are we?

Kurt: Yes. So can you bring up the timeline slide, and Karla, can you talk about it?

Adrian: I'm just still reserving my spot for my question. I...

Karla: If you have a question before we start...? Oh, okay. Timelines and milestones. This is an initial assessment, and the goal here is not to talk about the exact day on which something happens, but for you to think about what needs to happen between one milestone and another, from an operation and communications standpoint.

So we have here examples of an initial assessment of what we believe are critical milestones in the upcoming months. When is the draft RFP? Draft RFP is the document that we are going to post for public comment. So if you think about the minimum time that a public comment that needs to take place, and then collecting the information from this public comment, analyzing the information from the public comment, verifying whether there are substantial

changes that need or not to take place in the final RFP. We need to give ourselves two months between the draft and the final RFP. So this is why you see minimum two months there, is between posting, analyzing, and verifying whether or not we need to do some kind of adjustments to the final RFP, we need to give ourselves reasonable time.

Then between final RFP and application period, my understanding from reading the council materials is that it was the intention that there would be four months between the posting of the information and the application period. Now I know that there's this caveat there between draft and final RFP, but between final RFP and application period starting, one of the major things that we need to do is a comprehensive global communications campaign, to allow all of the applicants to prepare for what is the final RFP. And shortening up this period of time, it is a little bit of a risk, because we don't know how many changes will happen between draft RFP and final RFP. And if the changes are significant, and people started preparing out their bids on the draft RFP, are we going to be fair in, you know, the way we introduce this to the world?

So between final RFP and application period, the starting of the application period, there is quite a significant amount of steps that we want to take. One of them is to... I mentioned the global communications campaign, making sure that everybody is aware that the final RFP is out there, and this is it. This is the comprehensive guideline of what you need to do to prepare. These are the rules of the game. And another point to that is maybe create some kind of a... I'm going to go to the customer support... some kind of mechanism in which we can answer questions or educate people about the RFP, to minimize the issues and the errors during the application period as much as possible. Especially considering that there is a good chance that the applicants come from all over the world, and the interpretation of the terminology might be quite different some places, etc. So we need to give reasonable time and give ourselves resources, give resources to these applicants to be able to ask questions during the time.

Then the application period – we're looking at a minimum of 45 calendar days. The reason why is because we give applicants, again, the ability to answer all of the questions, prepare all of the documents again, and also take into account the international wire transferring or methods of payment coming from all over the world. We need to give ourselves reasonable time.

So the application period begins and ends. After it ends, we would like to have an administrative check period of time. The administrative check is something very simple, you know. Are the applications complete? Have we received the payment? Have the documents been attached? Can we open the attached documents? And, you know, so forth. So it's a very basic administrative check. How long does it take? It really depends on how much resources we have versus how many applications we're going to get. So this is where we would like to have some kind of a table. Once we know exactly what needs to be checked, what needs to be done, and how long it takes to do it. Have some kind of a table that would say, if there's x applications then there's that many days for administrative check, and so forth. And again, have some kind of customer support or some kind of a mechanism that allows the applicant to correct or remedy something that is a bona fide error. Attachment of a document that doesn't open, things like that.

And then after this administrative check period ends, posting of all the applications to all the world, again. Global communications campaigns, so everybody, as much as possible, governments, organizations, registries, [the supporting of new positions 04:15:17] of ICANN know who applied, what was applied for, and so forth. We have not defined exactly what is the content that will be posted on the application. We're working on that. And we will also make that information available to the applicants up front, so they know what they're applying for, what becomes public and what does not become public.

So basically that's it, so the major milestones. And I'd like the council to see how we are looking at spacing the milestones and why.

Avri: I had Adrian that still had a question to be finished, Ray, and then Paul, I believe. I don't know if I had anyone else or not. I've got Werner now.

Adrian: So...

Avri: And yeah, we can talk about this, and we can bring up any issues, since it's the last pass for a queue.

Adrian: First of all, I don't want to... certainly not coming across as critical. I think the discussion we've seen today shows that, number one, we've come a long way, and number two, there's still some path to travel. But a back of envelope sort of calculation, I'm not seeing the application period starting this year. If so, just. Is

that sort of what you're intuitively thinking at this point in time? That's part A question.

Karla: So the critical path that just hit there is the DRP procedure limitations, so having the DRSP in place, the dispute resolution service providers in place, and refining what this dispute resolution looks like, and all of these little things that... you know, they're not little. But all of some of the items, open items, that we discussed today, this is on the critical path. So we working as fast as possible, but there is an external dependency of some of the things that we do.

Adrian: So just intuitively, once again, where... Are you thinking this year?

Kurt: Yeah, so I think the end of this year would be the very best, or the beginning of next year.

Adrian: Right, so there's been a little bit of slippage from what we saw in Delhi, with your presentation?

Kurt: I think so, all of it based on our discussions and moving on the dispute resolution process as the critical path.

Adrian: Granted.

Kurt: I think the time chart also does not take into account certain Board approvals. So we have a couple of slides on that. The Board is, you know, the Board is very active in this issue, is constantly soliciting staff for input, encouraging staff communications like this. So if the Board chooses to make their approval sometime between the initial and final RFP and chooses only to make one approval at that time, that would expand that time frame. It might contract some others, though. There's some ways to work with that. But, you know, I wanted to use that question as an opportunity to say, the Board approval needs to work in this. The Board is working very hard on it, considering the major risk to ICANN that can result from this project, and is taking it very seriously. And so... oh, and the last point I wanted to make, but has not retarded in any way our work on the implementation. Has encouraged staff to work harder and faster, despite the fact that they're still considering the policy recommendations.

Adrian: The second part of my question, then, is with respect to IDNs. Is there any dependency upon IDNs within this process? And if so... is that a no, already, so I don't have to do my so?

Kurt: I think it's a no. I think if IDNs are ready, then this process will include IDNs. And if IDNs are not ready, this process won't include IDNs.

Adrian: Thank you.

Avri: Ray.

Ray: I think most of my questions were answered, but just one clarification. Is Board approval required for the posting of the draft RFP?

Kurt: Well, the Board gets to say that. The Board... we will not publish a draft RFP without informing the Board, so their level of approval on that will be at their discretion.

Karla: I'm sorry. In the draft and on the final. Their discretion.

Paul?: Three questions regarding time. I still don't have a clear... can somebody just tell me when the draft RFP approximately will come out?

Kurt: So, the draft RFP is targeted to be released about mid-calendar year or slightly thereafter.

Paul?: Like June, July?

Kurt: Yeah, I would say July, but it's contingent upon us being able to provide sufficient detail on the process in that, including the dispute resolution processes that have to be worked out with those dispute resolution providers.

Paul?: I got it. Nice hedge.

Kurt: Yeah. [laughter]

Paul?: Second question...

Kurt: But we don't have to work out the whole dispute resolution process. Just enough information so we can [overtalking 04:20:24]

Paul?: That's good. So it seems likely you'll make your commitment date, or your quasi-commitment date.

Kurt: No, no.

Paul?: Regarding the prior round 2000 round, you said that, okay, you guys are still studying what the status is on that, you've got the thing up with the history, you're accepting comments. Regarding time on that, when do you think that will be decided? When is there going to be output on that?

Dan: So the goal of the staff recommendation would be to inform this process so that it would be included in the information relating to the posting of the final RFP.

Paul?: So does that mean before June?

Dan: Well, you know, I've got a couple of problems, and I think Avri pointed it out most clearly. We don't have a Board-adopted policy yet, so I think it's pretty hard to say that we'll have that part worked out and put into the implementation that hasn't happened yet. So I think it's going to happen in coordination with the posting of the final RFP, whatever that date is.

Paul?: And the only input into that process is to make comments on the history you guys put up?

Dan: Yeah, and I just sent it around to the council list so you guys could access it, and we'll post it again to the front page of the website next week.

Paul?: I'm not on the council, but I know where it is. My third question is regarding the minimum 45 day calendar application period. I assume there would not be any benefit or advantage to applying early. Is that true or not true?

Kurt: Say that again.

Paul?: If I put my application in at the beginning of that period, is there any benefit to it? Or is everything deemed to be on that last day?

Kurt: It is anticipated that the applications will all be taken, and then opened up at the end of the application period.

Male: [Inaudible – not on mic 04:22:16]

Paul?: There's no time stamp on it? I assume there wouldn't be a time stamp that's somehow used later, like, oh, you put it in first, so.

Kurt: You know, one of the ways of limiting the number of TLDs to be considered, if we're looking to limit demand, would be to use a time stamp and take them in time order. But that's a not highly favoured solution to that.

Paul?: But I just want to make sure... I'm just still not clear. I think the answer is, there is no benefit.

Kurt: I think the answer is, there's no benefit to being first, but I don't know what the plan...

Dan: I think the answer is, that there's not a final RFP, so he can't say yet.

Paul?: Good answer, I guess.

Avri: If I can put in, there had been... I believe it was in the text of the recommendations, though I'd have to go find it at the moment, that while it did not affect someone's priority in terms of contention, that if there was any serial processing, that earlier time stamps got serially processed earlier. But they had absolutely no... If there's only three people working on something, and they can handle a piece of paper post-contention. In other words, there was to be never was to be any advantage for contention. But if there were a thousand applications, that the time stamped earlier would get dealt with. But that was what we had had in the discussions and the recommendations, that that would be the only value.

Male: If there is any advantage, we might need like a small period of time when no one can put in an application after the final RFP comes out... no. Oh, okay, okay, that makes sense then.

Dan?: So I think it's probably worth noting that we're pretty sure we can't process 10,000 applications at the same time. So there's going to have to be some criteria to take some in front of others and do them in batches. Now whether that's based on time stamps or other things, I don't think has been determined yet. So I think we have to be a little bit cautious in answering that question as a known factor, before there's a done policy and an implementation plan and a posted RFP. So read the final RFP carefully. It'll say in there.

Avri: Okay, I have Werner, Steve, Dirk and Marilyn, and I probably should close the queue at that point so that we can get any concluding remarks after that. Werner.

Werner: My question's been answered.

Avri: Thank you! Steve.

Steve: I just had a question about the remark you made about IDNs. I haven't been following it as closely as most of the people in this room, I'm sure. What is it about IDNs that is not ready, in the sense that it could hold up this process?

Kurt: One is, I think we... I don't know if it's required or we strongly prefer that the IDNA protocol work by the IDF... IETF is completed before the release, before a general release of IDNs. And there are some technical script issues still being worked...

Avri: And I would contend that the IDNC being done before this is done is a really close race for second, you know?

Kurt: Yeah.

Avri: The IDF work is going slowly.

Steve: Yeah, but again, just to emphasize what you said, if IDNs are not done, this won't go forward. I mean...

Kurt: No, this would go forward.

Avri: I meant IDN [bis 04:26:09] in the IETF, not IDNC. IDN [bis] is moving relatively slowly.

Steve: Well, yeah. I'm confused now. Is there a scenario in which this... applications will be opened for new gTLDs but will not be accepted for IDNs?

Kurt: Yes.

Steve: Okay, I thought that we... I thought that the assumption always was that that would not occur, and that basically ICANN would not be in the position of saying to people who use scripts other than ASCII, "You're going to have to wait some

more so that the ASCII people can get some more gTLDs.” But I guess it’s changed.

Marilyn: I concur with Steve, that’s my understanding as well. Now I do agree that at some point I [inaudible 04:27:04].

Male: I do recall that there were certain members of the committee that did recommend that, but I don’t recall any final decision on that regard. I think it’s been all of our desires that they be done at the same time.

Avri: Okay, I lost track of the list. So Steve, Dirk, did you talk? And... cause I saw Marilyn.

Dirk: Just two short questions. If there’s today some objection filed by the American Apple Growers’ Association that they don’t like to have a dot APPLE operated by a certain company, would this be considered in the objection period if they file now the objection?

Kurt: I’m sorry, Dirk.

Avri: If they file now?

Dirk: If they file now. They can say, “We don’t like it to happen,” and they can file this objection now, if they think...

Avri: How do they file an objection now when there’s no process for filing objections?

Dirk: Yeah, they could do. We have seen this in the past rounds that that happened. Just a question.

Dan: So I’ll take that. If we received objections to a process that doesn’t exist yet, we would return it to them, with a letter explaining that there’s a process that will come up in the future, and where they can find it posted when it comes up, and go through that. We would not accept an objection at this point.

Dirk: Okay, my second question is regarding the financial business plan, or the finance plan you have to send with your application. I have the feeling that this finance plan hasn’t been a discussion point, and it should be. We have seen in the previous applications some weird, fantasy numbers brought in by the

applicants, and I'm wondering who's reviewing these business plans, if they are feasible and reasonable, and if they are not only fantasy?

Avri: Yeah, I don't know what the staff has to respond to that. I know that was part of a discussion that came up when we were talking about it. Because there are some of us, myself included, that think all business plans and financial plans are fantasies, and they are dreams of what might be if everything goes well in a world that is a perfect place. So, yeah, I mean, but I don't know if the staff has actually considered...

Kurt: Right, so that's difficult to turn into some objective criteria, right, because that's just a good business plan. So the criteria focuses more on objective criteria that are measurable. Not financial wherewithal in the form of organization. Things that are in the present.

Dirk: Okay, thanks.

Avri: Marilyn, I still had you on the list, but did you make your point before or no?

Marilyn: No, I had a question, which may not be able to be answered now that... there's no time associated on the chart with how long the applications will be posted, so I had a question about that. And then, secondly, I had a question about the application period being a minimum of 45 days. If you are a non-usual suspect who has not been sitting in the room, actively participating in the ICANN process to develop the policy, which will allow people to apply for a gTLD, and the first time you learn about it is when you read an Economist report or something suitable to your country [inaudible 04:30:54] 45 days is actually, for a complex response, is actually a short period of time. So I wanted to ask, you know, how we make sure we're not really disadvantaging the non-usual suspects, and what the posting period would be on the...

Avri: Marilyn, isn't that... I mean, that's the four months and the vast communication plan that the staff is putting together to outreach to all countries and send out the RFP for four months worth of education and communications, with an opening date for the applications four months after that communication plan. That's a third of a year.

Marilyn: I just want to ask a point of clarification. As I understood it, the four month communication plan will begin communication, but that doesn't mean that

everyone reads the communication, Avri, on day one. So I'm just asking for clarification. A communication plan can also be developed to be in cycles. I didn't read this, or understand this, to be that on April 1st... let me pick a different date... September 1st, the final RFP and world-wide communications all happen, including the [Ghanaian 04:32:17], which then brings this to everyone's attention. I assumed this was a cyclical, as is typical with marketing communication, this was a cyclical process, which was why I asked.

Male: It's a good question, but I think it is supposed to happen right at the beginning.

Avri: Dan wants to respond.

Dan: If Karla were here, she would have a better idea, or maybe Kurt knows better, but I think the four months is what we identified as the absolute minimum amount of time between when we post the final text of the RFP and when we can close the application window.

Avri: Open it.

Kurt: It's open.

Dan: Close.

Kurt: In that timeline, it's open. So...

Dan: But... Kurt, go ahead.

Kurt: So there is a large communications effort associated with the draft RFP, where we have... you know, we have this matrix of all governments, you know, 600 contacts, all the ccTLDs. Another communication here... So essentially during this period, you're preparing your application, I think. Because, well, and then on this day you can start submitting your application.

[Inaudible voices – not on mic 04:33:37]

This? Oh, before we said 30 days was too short, earlier today.

Avri: Adrian.

Adrian: So Kurt, if I can just get some clarity around this, what you just said is different from the discussion we were having here, I think. Excuse me. I mean, getting

Craig into trouble, of course. No, but my understanding, more what I was saying to Craig, rather than what he was saying... So the final RFP gets posted to the web. So, you do the draft, that gets posted, you put it up for comment. Then you publish the final RFP, right? That sits on the web, and then you go about doing your application. So I can start working on my application then.

Kurt: Correct.

Adrian: So in actual fact, I have four months and 45 days in which to work on my application?

Kurt: That's right.

Adrian: Okay, then that is exactly...

Avri: You mean you're not already working?

I think that is the end of the queue. I don't know if you wanted to do anything in terms of closing up. We had talked about future stuff, but we can talk about that elsewhere or we can do it now, but... yes Chuck.

Chuck: Again, thanks for all the work.

Avri: I was going to say that.

Chuck: It's been incredible. And I compliment all of you for that.

Kurt: So I would like to thank, before you clap, I'd like to thank Karen [applause] who...

Karen: I had a lot of help though, I must point out. [applause]

Avri: And in thanking people, I also want to thank all of us for actually coming and participating, and I want to thank the staff for helping all of us get here, or helping many of us get here to participate.

Adrian: And for the lunch.

Male: And everything else.

Avri: But is there anything else that we should plan on with follow through, and...

Kurt: There's going to be a report to the Board on what occurred here, and Olof's in charge of putting that together. So that'll be shared, certainly.

Avri: And you've got enough answers for now? And if you have other questions, you'll come at the council and ask them?

Kurt: Yeah, no, I think... so I think the spirit of this was, "So here's what we're doing." And you said... we got some reminders of what was said, we discussed... we went back into the legislative history and discussed some of the issues. Some of the potential pitfalls for what we have planned were identified, so we've written down a number of issues to take back and feed back into the implementation plan. So from that standpoint, I think, you know, we paid for the investment.

Avri: Well, then thank you. And thank you especially, for standing there all day. [applause] And I guess we're done. Yay!

[End of Audio]