

**GNSO New gTLD Question and Answer Open Teleconference
26 November, 2008 at 19:00 UTC**

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<http://audio.icann.org/gns0/gns0-newgtld-qanda-20081126.mp3>
<http://gns0.icann.org/calendar/#nov>

The list of attendees can be found at the end of the transcript.

Coordinator: Excuse me, I'd like to inform all participants today's call is being recorded. If you have any objections, you may disconnect at this time. Thank you, you may begin.

Chuck Gomes: Thank you. All right, my name is Chuck Gomes. I think most of you know me or at least know who I am. I'm the GNSO Council Vice Chair and I'm chairing this meeting in Avri's absence because she is traveling. I want to introduce and thank Glen De Saint Géry for her always excellent support in arranging the call and all the other things she does to make it happen.

I want to introduce Kurt Pritz who is ICANN's Senior Vice President of Services and I'm going to ask Kurt, are there any other staff that you're expecting to be on the call that you would like to introduce? Kurt?

Kurt Pritz: Olof are you on?

Olof Oh yes I am.

((Crosstalk))

Man: Hi (Marika). I think that's it.

Chuck Gomes: Okay, very good. Because of time limitations, I'm not going to ask all of you to identify yourself because that would take up too much of our time. But what I would ask, when you first are called on to comment or ask a question, please give your full name and what organization you're representing or if you're just representing yourself, that's fine too. And then after that, each time that you speak, please identify yourself.

Let me quickly go over and some of you may have received these as Glen sent them out this morning a few...

((Crosstalk))

Chuck Gomes: Thank you. A few ground rules that I would appreciate everyone following. We'd like to at least at first restrict comments and questions, in other words active participation in the call, to those who had submitted questions and comments to the ICANN public comment site. Now what I will try to do, assuming we have some time at the end, is open it up to others if you want to add something. I can't guarantee that there will be time because we've got a lot of ground to cover but I will do that if we have time.

Please -- comments and questions should relate to the issues of the draft New gTLD Applicant Guidebook and the associated

supplementary documents posted on the ICANN site. This is not the time to rehash issues regarding the GNSO recommendation the amount of the PDP process. It's OK that you submit comments like that obviously on the public forum, but let's not use the time to rehash those issues now even if you disagreed with one of the recommendations.

The Q&A session is going to be organized by module. Questions and comments should be restricted to the module that we're talking about at a given point in time. When asking a question or making a comment, it would be very much appreciated by, I think, everyone on the call and especially Kurt and Olof that you site the guidebook section number and page number and, if possible, the paragraph or something - some other identifier so that it can be easily identified.

We're going to start out with Module 3, but it's important to note that we spent quite a bit of time on Sunday in Cairo talking about Module 3 so we would appreciate it, especially those that were involved there, if you try not to repeat questions or comments that were made there because those are already in the record -- unless you think further explanation is needed.

To ensure that there's plenty of time to cover all modules, I'm going to limit each module to no more than 30 minutes. In the case of Module 3, because we have already spent quite a bit of time on that one, I'm going to cut that off at 30 minutes into the call, so we'll have less than 30 minutes for Module 3.

If there is time left over at the end, we can come back if we run short on any of the modules. I'm going to assume that everyone has reviewed all of the relevant documents so, if Kurt wants to do a one or

two minute introduction for a module, that's okay but we're not going to use time for him doing an overview of the modules in each case, but rather focus on the questions and comments.

I'm going to be managing the queue. Wish me luck in that regard -- and I'll try to periodically ask for those who will be added to the queue. If I'm not very good at that, just try to find a convenient place to interrupt me and I'll get you down. I'll also try to allow follow-up questions if it works out okay to a particular point. In other words, let somebody jump into the queue if it's specifically related to what we're talking about at the time. We'll see if that works effectively, I'll try to do that.

The meeting, as you already heard, is being recorded. It may be transcribed, but I wouldn't count on a transcription because we don't have the transcribers that were used in Cairo that do a great job and so it's - using the telephone company transcription is pretty time consuming. So, unless there's a huge demand by people, count on the MP3 in terms of this and that will be available some time not too long after the call ends.

Any questions? (No response) Thanks for your cooperation. Kurt, we're going to start off on Module 3. I don't know if you want to make any initial comments regarding Module 3. If you do, do so right now and then I'll take a queue.

Kurt Pritz: Okay, thanks a lot Chuck. One of my assumptions is that the people on the call participated in the Cairo meeting or tried to participate remotely or read the output from that, so they've followed along... As you know, Module 3 covers the dispute resolution processes where *bona fide* objectors withstanding can object to applied four strings on

104 grounds that were indicated in the policy development recommendation, so this is actually the embodiment of recommendations two, three, six and 20, I think. And there is another one about dispute resolution processes being implemented. This part of the evaluation maps to that.

My last comment is just to provide an overview ... so the Applicant Guidebook is comprised of six modules that sort of map the whole evaluation process. So you apply for a TLD...

Module 1 gives you an overview of the whole process, tells you how to apply, what the fees are ... will provide the link eventually to the online application system.

Module 2 is how the applicant and the string will be evaluated, so that the policy recommendations indicated that the applicant should meet certain criteria and that the strings themselves, the TLDs label, should meet certain criteria, so that those evaluations are at Module 2. And that embodies, you know, most of how each application will be evaluated.

Then Module 3 applies to whether there's, as I said, a *bona fide* objection.

Module 4 applies to how to deal with any issues of string contention so, for example, if two identical strings are applied for, how that's resolved.

Module 5 then is the steps to delegation after getting through the evaluation process that includes the base agreement and Section 6 is just the terms and conditions associated with applying.

So that's my introduction.

Chuck Gomes: Thanks Kurt. And keep in mind that we covered Modules 1 and 2 and spent quite a bit of time on 3 in Cairo, so unless there is time at the end, we're not going to go back to those. Again, we will if there is time. We'll see how things go. Now I'm going to ask for people who would like to initially get in the queue for Module 3. Understand that you don't necessarily have to get in right now. Time permitting, you'll be able to jump in later, so you don't necessarily have to get in the queue right now. This ought to be fun with this many people on the call, but so bear with me. Speak up please with your name if you would like to get in the queue.

(Eric Brunner Williams): Chuck this is (Eric). We took...

Chuck Gomes: Okay (Eric), okay hang on. I'm going to write down names. Who else would like to get in the queue to start with?

(Steve Metalitz): (Steve Metalitz) please.

Chuck Gomes: Okay (Steve).

(Tony Harris): (Tony Harris).

Chuck Gomes: (Tony), gotcha. Anybody else for Module 3? Okay...

((Crosstalk))

Chuck Gomes: I'm sorry, who was that?

(Cheryl Langdon Orr): (Cheryl Langdon Orr).

Chuck Gomes: Oh (Cheryl). Okay, thanks. Got it. Anybody else? Okay ... and again you can jump in later as long as we're on this one. Remember -- first time in, probably after that, unless there's duplicate of first names, you can just give your first name. But first time in, give your full name and who you're representing. That can be just yourself in this particular case. So, (Eric), would you start off please?

(Eric): Sure (Eric Brunner Williams). I sent my question in writing and I'm struggling to actually find it so I can read it. You have it there?

Chuck Gomes: It's going to be hard probably for Kurt and I to jump around and find the questions. (Eric) is it okay to come back to you once you find it?

(Eric): Yeah, that's fine.

Chuck Gomes: Okay, let's do that. I would love to be able to jump around, but managing the meeting, I'm not as good at that as (Avri) is on those sorts of things so. All right, so let's go with (Steve Metalitz).

(Steve): Thank you. (Steve Metallitz) on behalf of the Coalition for Online Accountability. Kurt, on Page 3-1 in paragraph 3.1, it says "an objector accepts the GTLD dispute resolution process by filing its objection." I just wanted to know, does that mean that the objector will be required to, in some way, agree not to challenge the outcome of the dispute resolution process such as in court?

Kurt Pritz: My best understanding is that's outlined in the terms and conditions, so I think that, you know, people that want to pursue a remedy outside the dispute resolution process can do that. So, you're reading under 3.1?

(Steve Metallitz): Yeah, it's the last sentence in 3.1 and it has to do with an objector not an applicant. I thought that the terms and conditions were mostly about what the applicant agreed to, but I may be wrong.

Kurt Pritz: Right. Yeah. So, you know, I think that's the hard wiring of that is in the terms and conditions. What's it say down in Module 6? (Pause) I think it says that, you know, the waiver there goes to the ability to sue ICANN, but that's I think that's the only waiver.

Chuck Gomes: By the way, let me remind everybody that if you haven't already done so, make sure, even if you get to ask your questions on this call, that you submit your written questions and comments to the comment site either for the particular module or you can also submit all of them in response to the total guidebook, whichever way you prefer. Please do that even if you get the answer you're - ask a question on this call or make a comment on this call. That will make sure it gets into the record and if something is not answered adequately, that gives staff the opportunity to incorporate your question and comment into future revisions of the guidebook.

Kurt Pritz: I don't think that means the objector waives all rights.

(Steve): Okay. Thank you.

Chuck Gomes: So it would be good Kurt, I think, if that was made more clear in the materials, that would be my choice. Let's go to (Tony Harris).

(Tony Harris): Yeah, Chuck. Actually I didn't submit this in writing. It's a very short question. Can I make it?

Kurt Pritz: Sure. Oh, sorry.

Chuck Gomes: Go ahead, but make sure you submit it in writing.

(Tony Harris): Yeah, I will later. Going to 3.1.1 on Page 3-1, the paragraph which is titled "Grounds for Objection" and if we turn over the page to the last ground for objection it is titled "Community Objection." You'll find that on Page 3-2.

Kurt Pritz: Yep, I see it.

(Tony Harris): I have a confusion here because ... my question is, since we have two types of application, one can be an open application or it can be community-based. When you say "community objection," is this applied to both types of applications, open or community-based, or only to those applications that are community based?

Kurt Pritz: You can make a community-based objection on an open application.

(Tony Harris): Okay, thank you.

Chuck Gomes: Thanks Kurt and thanks (Tony). (Cheryl).

(Cheryl Langdon Orr): Hi. (Cheryl Langdon Orr). I'm representing in my role as a Chair, the At Large Advisory Committee, and I also have my Vice Chair, (Sebastien Bachollet), one of my Vice Chairs, on the call today.

There will be no surprises about the questions that the At Large community wants to raise on Module 3. We have provided our questions on each module in writing and it comes to Section 3.1.2 on Page 3.2, the "Standing to Object," and --- you can take a deep breath Kurt -- it is really a place holder. I don't expect answers today. It is a matter of our serious concern about morality and public order and the noting here by us that 3.5.3, as listed, mentions this section is still under construction.

What we're seeking is further -- not now -- specific discussion and input on this matter and we certainly would like to engage in establishing how community end users, which is our particular part of the world, may be able to effectively learn how they can be involved in such an application (crosstalk) or community or objection to either type of application. This is probably going to be via the ALS's at the ground level within the particular country, but it may involve RALOs and, of course, it may involve the At Large Advisory Committee itself. Thank you.

Chuck Gomes: Thanks (Cheryl) and Kurt, she obviously isn't necessarily expecting an answer right now, but did you want to say anything in regard to that?

Kurt Pritz: No, thanks very much (Cheryl).

Chuck Gomes: Okay (Eric), are you ready to go?

(Eric): Yes, I am Chuck. Thank you very much. I actually found my question. So how does the legal right, DRP, subsequently differ from the community objections DRP? That's the question.

Kurt Pritz: Could you ask it again (Eric)?

(Eric): Sure. How does the legal right, DRP, differ in substance from the community objections DRP?

Kurt Pritz: Well, let's see if I can explain it. If you read the standards associated with one of those, then that would help indicate the differences so ... ((interruption)) ... infringing the legal rights -- there has to be a legal right in place that is being violated and so, you know, it's not too too different from other processes, but the community-based TLD really goes to the ... I would put determined as a misappropriation of a community label which causes that community to object.

(Eric): That's fine. Intellectual property or traditional knowledge...

Chuck Gomes: (Eric), just to chime in there, having been very actively involved in the PDP, the GNSO PDP team really recognized that the community-based objection is much more subjective than the legal rights protection.

(Eric): But when you sense the purpose of the question, because it is a difference of almost 200 (unintelligible) in the cost of the DRP... So, you both have informed judgments about the financial issue or about the likelihood that is, if they're both forming judgments on questions of substance or likelihood of detriments, how is this that they cost so dramatically different?

Chuck Gomes: Are you talking about the application fees and the -

Kurt Pritz: Oh, how do they cost different? Well, we have some experience in infringement of rights in that it's not a UDRP process, but there is some similarity there and it's been indicated that LIPO will be the - you know - there is an agreement in principal with LIPO to inform those services and they've performed similar services in the past and are working with, essentially, what I would think is settled decisions and settled law even though it's sort of a new area. And for the community-based objections, the ICC will be providing those services. They think that the hours per case will - might -vary considerably and, so far, we have an hourly rate for that -- a single panelist. So our work in the next couple months, that we've taken away from Cairo, is to hone those numbers so, in fact, we have staff going to Europe the week after next, I think, to work with each of those firms to give applicants a better idea of what the costs would be for that dispute resolution.

(Eric): Thank you very much Kurt.

Chuck Gomes: Thanks (Eric). Thanks Kurt. Would anybody else like to be in the queue for Module 3?

(Edgar Watson): Yes this is (Edgar Watson) with Bank of America Corporation.

Chuck Gomes: Okay, anybody else besides (Edgar)?

(Mike Rodenbaugh): (Mike Rodenbaugh).

Chuck Gomes: Okay (Mike). Anyone else? We have about four or five minutes on this module so (Edgar), go ahead.

(Edgar Watson): Okay this goes - my question goes both to 3.1.1 "Grounds for Objection" and to 3.1.2 "Standing to Object." I am very specifically thinking in reference to any string that might incorporate or consist of the English word 'bank.' There are significant regulatory restrictions in the United States over entities that can call themselves a bank. My question is: how would an objection to a string, that contained a phrase that was illegal under U.S. law, be raised? Particularly, if say, it was a federal regulatory agency or it was a bank that was not yet actually an applicant. Where do they have standing to bring the fact that this is an illegal string to the attention of ICANN?

Kurt Pritz: The objection process would allow for objections in two areas and so the question there is what would be the outcome of that dispute and that objection in the dispute resolution process. So one would be that, there would be a community-based sort of objection, and the other is that a bank saying that it's rights are being infringed, but it's going to sort of bring an objection on that matter. Also, if it's an illegal string then, the objection process doesn't preclude a bank from pursuing remedies under different names, but what the objection and dispute resolution process is intended to do is provide the paths within the process for hearing objections to name in determining whether those objections should be upheld or not.

(Edgar Watson): Well it wouldn't be a legal right because no bank could claim intellectual property rights simply in the word 'bank' or 'banking.' It would be, you know, the controller of the currency perhaps that would say under our regulation, no entity may call itself a bank ... and there are similar regulations in Europe and other major financial centers that no entity may call itself a bank unless it is a bank.

Kurt Pritz: Right.

Chuck Gomes: Kurt, let me do a follow-up question there, because I think (Edgar) is raising a really good question that would be great to have clarified and you might need to get this from the General Counsel's office; but, if there was a law in a country that limited the use of the term 'bank,' to use that example, do you think that - could the legal rights objection category be used to defend that or is it specifically referring to a legal right with regard to the string itself? And I don't necessarily, Kurt, expect you to answer that, but I think it's a very good question to get clarified.

Kurt Pritz: Yes, it really goes to whether a company or individual's rights are infringed. And so it could be by the string itself or it could be from the use of the string. Now one of the problems is, in the application process, we're usually left with little other than the string itself and so we've asked in the application for the purpose of the string. But, that is also why there is a place holder in the process for post delegation dispute resolution process on the infringement of rights too. I kind of think ... so the question would be is: if somebody applies for dot bank, whether they are calling themselves a bank or not?

(Eric): Yes, that's part of the question. Now, let's something that calls (itself) or applies for dot bank, but they're not a bank. They don't meet the requirements for a bank and, in fact, it could even be an organization, a community-based organization, such as -- I'll just pick something out because I'm not suggesting they are intending or thinking of doing this -- but the American Banking Association. It's a trade group. It represents the community in many ways, according to the ICANN

criteria, and yet the American Banking Association, under U.S. law, cannot call itself 'dot bank.'

(Paul Stahura): Kurt, it's (Paul Stahura). I have a question that's related to this...

Chuck Gomes: Go ahead (Paul).

(Paul): I just wanted to note that -- I understand the gentleman. I'm not a lawyer and I understand that there are these regulations in the U.S., but that there are companies that are allowed to use the word 'bank.' For example, there's a registrar domain bank. I know that they are allowed to use the word 'bank.' There are sperm banks that can use the word 'bank.' It's not illegal for a company that has - or for the string itself - to be illegal just because it has 'bank' in it.

Chuck Gomes: My suggestion here is that (Kurt) go back to legal counsel and see if we can get a little clarification on this and maybe that can be included in the next iteration of the document or maybe even provided separately.

((Crosstalk))

Chuck Gomes: Just one second. There is also the issue if, in fact, there's an implicit connection to a community, and that word has been brought up several times in discussing this; then, of course, there is the ability to object from a community basis like the community of banks or whatever, but that's just another thing. Somebody else, was that (Cheryl)?

(Joyce Lin): No this is (Joyce). I just want to say... If somebody -- one of my friends -- his last name is 'bank' -- if some individual wanted to file that and it's very legal because 'bank' is his last name.

(Kristina): Chuck, it's (Kristina).

Chuck Gomes: Hey (Kristina).

(Kristina): (Kristina Rosette). I represent IPTN Council, but I'm speaking for myself and this is really just something that I struggle with... It's an earlier module, but this may be an opportunity to flush it out -- the concern that has been raised about where you have kind of a problem that doesn't fit neatly into any of the objection categories that, perhaps, one use for the public comment mechanism would be almost the equivalent of a letter of protest. In other words, bringing information to the attention of the evaluators that they may not otherwise have and, obviously, you need to have that very tightly defined so that you don't get into the objection areas. But that may be one opportunity for this type of situation to be resolved or, at least, addressed.

Chuck Gomes: Thanks (Kristina).

(George Kirikos): (George) here. Can I join the queue?

Chuck Gomes: (George) did you want to join - we're going to have to cut Module 3 off here very quickly. (George) did you want to get in on this same topic or at the bottom of the queue?

(George): Same topic.

Chuck Gomes: Okay, go ahead (George).

(George): (George Kirikos), Leap of Faith Financial Services, Inc. Going back to the gentleman's question about dot bank, he brought up U.S. law. I was wondering what jurisdiction ICANN will respect in terms of challenges to strings? Things that might be legal in the United States might be illegal elsewhere.

Kurt Pritz: I think ICANN follows rulings of courts of competent jurisdiction. Our agreements state that, generally, we have arbitration following the laws of California in the United States; but, we have followed in the past rulings of courts all over the world of competent jurisdiction. The problem is, of course, that can lead to forum shopping. So that's the issue that needs to be addressed.

Chuck Gomes: Okay let's move on to (Mike Rodenbaugh). (Mike), please.

(Mike): Thanks Chuck. Just curious as to when, in the process between now and the date we have the DRP or the guidebook finalized, will we expect to see the dispute resolution process rules completed?

Kurt Pritz: The timeline is to publish an interim guidebook in February, a final guidebook at the end of May, and then have a communications period after that. So, the final rules would have to be in the final guidebook. What you read in the guidebook now are the procedures that are going to be followed, but there will be some more detail to them provided by each of the dispute resolution providers. So, we've negotiated that set of procedures that you see in the guidebook now with each of the dispute resolution providers so they will all follow that. We'll also have some particularized rules about how to send in fees, what form to fill

out, that sort of thing. So, in the worst case, that would be in the final version of the guidebook, but like I said, we've got some people working with them in the next couple of weeks to try to finalize all these things.

Chuck Gomes: Kurt, I want to clarify some things you said there. I heard you say that there will be another version of the guidebook in February followed by a comment period and then you said the final guidebook in May, but then you indicated that there might be a comment period after the final guidebook?

Kurt Pritz: Oh no, a communications period, I'm sorry.

Chuck Gomes: Ah, thank you. Very good. I'm sure there are a lot of people interested in that. Thanks for clarifying. Okay.

Kurt Pritz: I'm not sure if that last answer was helpful, Michael.

(Mike): It was. Thanks, Kurt.

(Amadeu Abril): This is Amadeu. I have not submitted a written question on this. May I still be on the queue?

Chuck Gomes: As long as you're brief because we're out of time for Module 3 and moving on to Module 4. Go ahead.

(Amadeu): I'll try to be brief. It's just to see whether this is the understanding. Kurt, in the community-based objections, there is an absolute defense for the TLD applicant and, that is, fulfilling the same criteria or having the standing to object that is being an established institution in having

some level of support. This means that, in this procedure, a (unintelligible) community is not a reason to stop the application or even submission by the minority but there is still significant minority of a given community with the formal position of majority, but not all of the community is still not something that would be considered a valid objection?

Kurt Pritz: Let me take a look at that.

(Amadeu): I can't point to the page because you were (unintelligible) enough to send me a text version of (unintelligible) that could reformat and was unable to work with the PDF. Sorry. Well, I see that it is not that fast; perhaps it is better if we handle that in the public comment forum.

Kurt Pritz: Yes, because my knee jerk reaction to your question is it was more than a split to meet the standing requirement. But that's a good question and...

(Amadeu): The complete formulation is, if the defendant, which is the TLD applicant, meets the same criteria which means, you know, anything, the same criteria means even right? Then that's an absolute defense which means, in my book, having a completely half and half split community going along, which perhaps is not a good idea or perhaps it is. I just wanted to understand the position in the guidebook.

Kurt Pritz: Right.

Chuck Gomes: (Amadeu) please submit that in writing to the comment forum so that it gets documented and less likely to get dropped on the way, Okay?

(Amadeo): Okay.

Kurt Pritz: So I, yeah, so I said it was more than just a split so (unintelligible) refer to paragraph 3.1.2.4. I know I'm taking up too much time here Chuck ... 3.1.2.4.

Chuck Gomes: Yeah, let's move on, but note the section there and if there is time at the end, which I doubt, we can come back to that. Okay. Let's go to Module 4.

Kurt Pritz: Oh wait. I'm sorry Chuck.

Chuck Gomes: Go ahead. That's all right Kurt.

Kurt Pritz: I'm kind of screwing this up here so, (Steve Metalitz), I got an IM that said that last sentence you asked about as far as agreeing to abide by the procedures means that they agreed to abide by the procedures of that process and if they fail to abide by those processes, the objection could be rejected or denied. So, it's depending on the failure. So, it really goes to intra-process indecision.

(Steve): Thank you very much for that clarification.

Kurt Pritz: If that makes sense.

(Steve): Yes. It does. Thank you.

Chuck Gomes: Thanks Kurt. Okay. Module 4. Kurt I think you've kind of given an introduction of all the modules, so let's just jump right into queue. Who would like to be in queue for Module 4?

(George Kirikos): (George) here.

Chuck Gomes: (George). Okay, who else?

(Cheryl Langdon Orr): (Cheryl).

Chuck Gomes: (Cheryl). Okay. Next?

(David Maher): (David).

Chuck Gomes: (David). Anybody else? Okay, and again, you can jump in later...

(Adrian Kinderis): (Adrian).

Chuck Gomes: (Adrian) okay.

(Eric Brunner Williams): (Eric) as well.

Chuck Gomes: (Eric).

(Kristina Rosette): And (Kristina) please.

Chuck Gomes: (Kristina) okay.

Chuck Gomes: (Amadeu) and I heard somebody else I think.

(Jason ???): (Jason).

Chuck Gomes: (Jason)?

Chuck Gomes: Oh okay. And I'm going to add myself in the queue there. I have a few questions in this one as well. So, let's start off with (George).

(George): Yes, on the string contention sub-document or commentary document, Page 4, it says string confusion is deemed to occur if the string so nearly resembles another, visually, that is likely to deceive or cause confusion. I'm concerned about the comparison only being visual instead of oral, you know, sound or other forms of input especially as we move towards a voice Internet and other input schemes. Is there a contingency for any other means of measuring confusing similarity?

Kurt Pritz: Yes, there is. The way the guidebook is written now, there is a preliminary determination made by an independent panel to determine if the strings are visually similar or so similar that they are likely to result in user confusion; but, in the objection-based process that follows that, an objection can be made that strings are similar, you know, confusingly similar. I hate that term. On any ground whether they sound alike or look alike or they have the same meaning or some other way.

(George): Plus an example where the sword tool seems to fail because you can get a load number on the sword tool below the 30%. I don't know if that's going to be the cutoff or what will be, but it's a very weak tool.

Kurt Pritz: Well, it's applicable for visual and alphabetic similarity only. And it does do similarity checks across different scripts, but like you pointed out, it is for visual similarity only.

(George): My second question had to do with...

Chuck Gomes: Just a second (George). Kurt isn't it correct also -- sorry for jumping in -- but I just want to make sure this is clear -- the sword tool is also just one tool that's being used for visual similarity. It is not being used alone for visual similarity. Is that correct Kurt?

Kurt Pritz: Yes, so thank you Chuck. Yeah visual similarity or confusion is a human reaction, so it will be a decision made by a panel of examiners and the algorithm will provide some objective measure of how visually similar the strings are so there's no cutoff and there will be no requirements for examiners to disqualify pairs above a certain score or allow them below a certain score, but will provide some sort of objective guidance for them in making their decision.

Chuck Gomes: Just a second. (George) is yours on the same topic that you want to continue or on a different topic?

(George): Same topic. I just wanted to add one more thing.

Chuck Gomes: Go ahead (George).

(George): Just to stay on this topic, are we able to get the route zone DNS error traffic that would allow us to add to the reserve list obvious typo so that we don't have to rely on the tool because the tool is going to miss a whole bunch. Like, for example, dot XIN, which is just dot com then moving your fingers to the left. It's probably not visually similar, but is a typo? If we can get that route zone DNS error traffic in advance, those names could be all reserved and save people, you know, \$185,000 application fees?

Kurt Pritz: That's an interesting point and I know it's been a subject of discussion in the single name/letter discussion where you can miss one. It would be an interesting study to do. I guess the balancing against that is we'd be drawing great big circles around domains so that we'd be excluding too many. I think it's something that should be explored.

Chuck Gomes: I'm Okay with that big circle, Kurt.

((Laughter))

Chuck Gomes: Okay, we won't go there... (Adrian)?

(Adrian Kinderis): Thanks Chuck. In your response to one of the questions, you stated that on the first objection it's visually and then, if you objected through the process further, you could object on any grounds. Is it your opinion at least that you could object on the grounds that it means the same as another TLD or an existing TLD?

Kurt Pritz: Yes, so you could object if you think that user confusion would result and that's a bit and that's something we're supposed to try to avoid, so if you think allowing a string into the root would cause user confusion with another, you could object ... people can object on any ground.

(Adrian): Thanks. Appreciate it.

Chuck Gomes: Thank you. Thanks (George) for the questions there. Now did you have - did that cover your questions (George)?

(George Kirikos): I had actually one more.

Chuck Gomes: Go ahead.

(George): The auction proceeds under 4.3 of the main document? Is that already decided that ICANN is going to spend it or can it eventually be used to reduce registration fees for detailed deregistrants in general?

Kurt Pritz: The auction issue is really interesting. The purpose of an auction would be that, if contending names aren't resolved through comparative evaluation and the parties can't settle the contention amongst themselves, we need some sort of last result mechanism for resolving that and auction seems to be the one clearly allowable under the law -- clearly objective process. We kind of think that, if you're in contention with another string, it's much more economical for you to settle it with the other party than go to auction...

(George): Things acquire on auctions I believe at 100%. I just worry about where the funds are going to go.

Kurt Pritz: Yeah so, you know, so I guess it's being recorded right? As far as I'm concerned, we could give it all to charity so we can diffuse the discussion about where the money is sent; but, I think that if we use it to reduce fees, then that means it kind of goes to ICANN to spend as part of the general budget and that's not what the goal of auction is. (It) isn't to raise revenue in any way. It's just to resolve this contention. So I think that the money and, you know, ICANN will publish something about this about where the money could go for comment. Maybe it would go to a fund to rescue failed registries and just be stuck in an account to provide for that or stuck in some other stability fund or stuck in some fund for others to spend.

So, I think that's something that we need to post for public comment so that people are satisfied that the purpose of the auction isn't to raise revenue. It's just to resolve this contention and, essentially, the way we think is left; but, that's not decided yet either and there is still discussion to be had about the method we use at the end of the day whether it's auction or something else.

Chuck Gomes: And Kurt didn't I see somewhere in the document, and I can't cite it right now, but it said that there would be a community consultation after to decide how the funds would be used? That it wouldn't just be unilaterally done by ICANN staff.

Kurt Pritz: That's right and it might be some other mechanism for spending the funds. Yes.

Chuck Gomes: Okay good. Let's go ahead to (Cheryl).

(Cheryl Langdon Orr): Thank you and it's a perfect segue because there are two questions we've sent in on Module 4. The first one goes very much to a placeholder again, Kurt, so another deep sigh of relief from you, I'm sure; and the second one goes to the discussion you were just having about auction proceeds.

With reference to 4.2.1 "Eligibility for Comparative Evaluation," the ALAC, on behalf of its ALSs -- please note the separation between church and state here -- we are asking this question on behalf of the user communities within country -- not ourselves. Is there any role for them, in other words, the community groups established by ICANN as an At-Large structure on the ground probably, we think, in the community-based applications, but we are not sure of that -- for them

to assist in the establishment of *bona fide* or other claims in support or otherwise with these applications?

There is a Part B to that question and it goes as follows: and to what, if any, extent in the phases of proof of claim in the community establishment or community endorsements part of this process, can we interject, make modifications, or comments?

Kurt Pritz: So if I were to draw a parallel with your comment, would it be like a friends of the court brief? Or...

(Cheryl Langdon Orr): We suspect that may be a useful role that our already established communities could play, so it's actually an offer, but we need to know if there is interjection point or not.

Kurt Pritz: I think if we look at the dispute resolution process -- well it is sort of a dispute resolution process, but that process is to determine the level of community support for the application and so the expressions of community support could come from the sorts of organizations that you're talking about. So if I captured that correctly...

(Cheryl): Or it may be checking the accuracy and integrity of such a claim.

(Tony Harris): All right Chuck? (Tony Harris). Could I get in queue about this issue?

Chuck Gomes: Yeah go ahead (Tony).

Kurt Pritz: Well I don't think (Cheryl) is done. Didn't she have two...

Chuck Gomes: (Tony) I'm assuming you're following up on this same issue?

(Tony Harris): Yes.

Chuck Gomes: Yes? Okay. Go ahead (Tony) and I'll come back to (Cheryl).

(Tony Harris): My comment is very quick about this. I mean community does not necessarily mean community of individual users.

Chuck Gomes: Okay, good point. Now (Cheryl), back to you.

(Cheryl): Absolutely and we certainly see that is - we're not saying everything is going to be geographically based either.

The second one was the question to do with auction proceeds and that while we understand that the community consultation on distribution of the funds will occur, the ALAC does wish to have a place holder here that - what views of the end users and here we see registrants and non-registrants be taken into account on the matter. Two reasons:

First of all, the more expensive any profit becomes we assume unless people have some very interesting business models, we will eventually come back to the registrants because the registrants have certain motivation to be interested in the outcome of where such auction funds are spent and that goes to some of the discussion we've had before; but, secondly, non-registrants, who may be those who will be confused or misled or have trade practices issues or have cross-jurisdictional confusion with the use of bank. It might be that some of the community consultation on the distribution of these funds -- comments may come in from non-registrants about education or (unintelligible) processes. I just wanted to flag on behalf of our community that,

again, we've had structures that may be able to help make sense of these unrelated requests and discussions.

Chuck Gomes: Thank you (Cheryl). Let's go ahead to (David).

(David Maher): I'll pass. My question was answered.

Chuck Gomes: Thanks (David). (Adrian)?

(Adrian): Thanks Chuck. Hopefully mine is a quick one. Kurt, I'm just looking at Figure 4.2 and that's on Page 4-4. Actually, the page beforehand gives a little bit of an explanation of 4.3, the last paragraph stops with in contention Step 3. It's merely just a quick one. I think the contention set 3 diagram is wrong. I don't know if anyone else has picked it up or whether I'm just misunderstanding it. Very quickly, it just says that E&J are in direct contention and that J&K are in direct contention. If F drops out, I think the two diagrams, as it moves to the right of the diagram, should be perhaps in E&I and K&L on their own. No need to respond to it now rather than maybe just go and have a look at and check to see whether I'm right or it's just far too early in the morning and I'm wrong.

(Olaf Nordling): I'll take that one, Kurt, because I think I'm the culprit here.

Kurt Pritz: Well if (Adrian) is wrong, we'll post it on the Web site and if we're wrong, we'll quietly amend it.

((Laughter))

Chuck Gomes: Okay good and again make sure that all of these get documented in the comment period. (Eric)?

(Eric): Yes, Section 4.2.3 on Page 4-7. We have in the first test of the 11 point or the 12.4 from which the community needs to get 11 points to continue. The string name is a well-known abbreviation of a community institution. Now, as the caller from the Bank of America pointed out earlier, the ABA actually doesn't have bank in its - may have troubles with that. More generally, institutions (unintelligible) communities.

I think we don't have this one quite right is my comment, but my suggestion other than changing it, of course, is that we keep track of how many objections fail to achieve standing because they're brought by - they don't meet the community institution test and, similarly, how many applications don't make a core of three but make a core of two because of the position of the institution or abbreviation rather than the community's actual name.

Kurt Pritz: Right, so I have a - that's a good question. I have a host of comments that I hope I can keep straight for you all. One is that this scoring goes to comparative evaluation so you don't have to achieve this scoring in order to successfully object to another string. That would be a separate ... that's the objection-based process in the comparative evaluation process.

A second point is that, what we heard during the consultations with the GNSO and others during the policy development process, and then as we work together through the implementation; so, two of the comments there were that it was thought that the STLD process had too broad a

definition of a sponsored or community-based TLD and that should really be tightened up and second that, when the council members and others contributing to the policy discussion described a vision for a community-based TLD, the first thing that sprang to mind was like an indigenous people or something where you said, you know, dot and the name of a people you say that is our label and others should not have it or that should be ours and we should always win the contention for that.

So we started with that but then, as you can probably guess, in developing the scoring and consulting with others we did a lot of scenario testing and what ifs. So, what if there was a dot bank or another name that's sort of generic, that's not the precise community label, then you would not get the full score there. But if that community though had strong community backing and the other things it can still score 11 so the scoring was intended to find that balance where, you know, if that was your string then I know it's clear, well that was one of the big purposes of the process, but if you - if it was a more generic term but you really had strong community backing, you could still carry the day -- anyway that's the balancing that's kind of struck.

And then the last comment I want to make really is sort of the arbitrariness of scoring. So, what do we have here? One, two, and three, you know, it could easily be a set of different numbers going up to five or one, three, and five or something like that where you didn't have to score 11 out of 12.

The test would be essentially the same, but the scoring would be different so use of a number like 92% or something like that's all somewhat arbitrary and can be changed without really affecting the

balance and I think with the discussion here, we -- ICANN wants to hear different scenarios or why this model might fall short or especially why another model might be more suitable is not really about the 92% number, it's really about the balancing that needs to take place between what is a community-based TLD and how tight does that have to be to meet what the policy recommendations implied and suggested schemes for that in addition to the one that's adjusted here. So I hope that was clear.

Chuck Gomes: Thanks Kurt. Let's go to (Kristina).

(Kristina): Thanks Chuck. I have two questions regarding sections in Module 4. In 4.2.1 is the applicant's identification of its application as either open or community-based positive and if not, under what circumstances will ICANN substantively examine that self identification and potentially change it?

Kurt Pritz: So could you start - could you say the first part of your question again (Kristina)?

(Kristina): Sure. Is the applicant's self identification of its application as either open or community-based is positive?

Kurt Pritz: It is until this contention resolution has to occur. So the only time, in this model, the only time that comes into play is during the contention resolution.

(Kristina): Okay.

Kurt Pritz: If you self proclaim to be a community-based application, then you're signing up to restrictions in yourr agreement to follow the restriction.

(Kristina): Right. Okay. And then the next question in Section 4.3 and I don't have the page number in front of me. What is the rationale for not allowing contending parties to combine to form a new application?

Kurt Pritz: This isn't probably the complete answer, but it's that we've just done a financial and technical evaluation of an entity that has put together this effort, an existing entity probably or a new entity that was put together for the purpose of creating this top level domain and it meets the financial criteria by demonstrating certain facts through publication of its certificate of good standing and its existing balance sheets and also has a certain technical plan.

So then a combination of entities after that, to me, really restarts that evaluation process. The intent was that there are other ways for entities to combine their efforts without creating a new organization that has to be reevaluated.

Chuck Gomes: Kurt, a follow-up question on that is one I had jotted down. I'm guessing that the same rationale applies to why, in Section 4.1.3 second paragraph on Page 4-5, you eliminated the possibility of them forming a joint venture.

Kurt Pritz: Yes, because it's thought that that would trigger a new evaluation. A joint venture could be a weaker version of the two individual entities that applied or...

Chuck Gomes: What if they were to do a joint venture or some other mechanism where one of the proposals was kept intact? In other words, the joint venture is committing to everything that was in one of the proposals so that there's no compromise of that and yet they solve their differences in that way. Would that then be different?

Kurt Pritz: You know, I'm sure there is a lot of ways to skin that cat - where a new evaluation needn't be triggered and the parties can figure out how to combine in order to have some sort of joint way of moving forward, but there are so many different scenarios of combining entities that...

(George Kirikos): (George) here. I think I've got a solution.

Chuck Gomes: Go ahead (George).

(George): All you have to is, if you have two contending applications that want to combine, for one of them to kill itself off in exchange for 50% of the shares and the shareholder agreement can happen after the TLD goes to the root or something so you just delay it until after the application process is over.

((Crosstalk))

Kurt Pritz: I'm happy to hear the comments. I also want to hear (Kristina)'s reaction to what I said.

Chuck Gomes: Thanks, go ahead.

(Kristina): I understand the rationale but on the same token, if A was qualified sufficiently to get past the initial evaluation phase and D was qualified

sufficiently to get past the initial evaluation, to me this is kind of a form over substance approach. That it seems to me that, if you are combining the two, then of course they would be qualified.

Kurt Pritz: But..I know two companies that merge and the stock price goes down or the market cap goes down because somehow it's perceived those two -- the combination of those two things -- are less stable or less valuable than the first. And there's also scenarios where they combine to form a joint venture that's not funded as well as they were individually, so there are so many different scenarios that I don't see ... I don't know. I want to talk about it some more because evidently, like I said, it wasn't probably a complete answer. And I think I'm probably missing the boat on something because you talk about...

(Kristina): I think the appeal of it, in terms of the interest that I've seen, is that it frankly avoids what many perceive to be the whole auction scenario.

Kurt Pritz: Yes, that's why so we're encouraging entities to settle their differences and get rid of the contention. I want to talk about it some more because this idea is really planted firmly in my mind. So, obviously my mind is not going down the right path because there are more people that think I'm wrong. I want to understand it more fully, so let's continue to talk about it.

Chuck Gomes: Okay (Paul).

(Paul Stahura): Okay. I thought that the reason that was there was because if two companies formed a joint venture, it's a new entity which has not applied - has not agreed to the agreement, so that's the whole reason why you can't have joint ventures after the fact. If they want to get

together, I agree with (George), one of the entities withdraws the other one goes forward and it maybe has different (unintelligible) whatever. That's the mechanism. As long as there is not a new applicant or a different applicant from the one that applied and signed all the agreements.

(Edgar Watson): This is (Edgar Watson) speaking.

Chuck Gomes: Just a minute (Edgar). I'll get you in there.

(Edgar Watson): All right thank you. I'm sorry. It was just right on point, but I'll wait my turn. I'm sorry.

Chuck Gomes: No that's okay. I just want to let (Paul) finish.

(Paul): I was kind of done.

Chuck Gomes: Okay, go ahead (Edgar).

(Edgar Watson): I understand here. I'm just urging the greatest possible flexibility and the opportunity for ... If the goal is for parties to settle their differences and not go to auction, I think you have ruled out from the beginning and just sort of without any avenue to explore a very fruitful way of settling differences and the mechanism that's been proposed by two speakers that, "Oh, the answer is for one organization to withdraw and then post approval of application to receive 50% of the shares of the other entity." That's just not going to work in the business world. If you were requiring an application to be submitted by an "established institution" and so again, I'm just taking us as an example, Bank of America Corporation files an application and there is a contention with

say Wells Fargo and then we have an agreement simply in order to resolve the string contention: one buys 50% of the shares of the other? The anti-trust department would go berserk.

(George): (George) here. I think you'll find that it's going to be optimal for almost every applicant to set up a clean shell corporation to do the application. Then you would just merge the shells. You wouldn't merge Bank of America obviously.

Chuck Gomes: Okay. I want to move on from this one, but Kurt, let me make a suggestion here. I think a lot of people in different ways are making a point that being too rigid in terms of what can happen in terms of two or more parties working together probably is detrimental to what you want to accomplish and some of the things that you're concerned with, for example, having to start the evaluation process over or whatever other things might need to be done in some of these cases could be handled, I think, by the appropriate qualification language in this particular area. But, rather than continuing to debate that and talk about ideas, I think we've covered this one pretty well and I thank (Kristina) for raising it. Let's go to (Amadeu).

(Amadeu): Okay. I have many issues regarding this module. Most of them going to some sort of the same concern that we're discussing now is that I think that we are missing some mechanism to minimize conflict and it's very well intentioned, but it (unintelligible) too rigid in many areas. But I won't discuss that because I think in writing would be more useful the discussion.

Now, there is one question I would like, again, understanding whether this is what was intended. We have more than one community-based

application. More than one of them succeeds in the evaluation, the comparative evaluation, that is a score 11 or 12. The solution is, apparently, auction. Now, let's imagine two scenarios. The first scenario is that imagine dot cat or, you know, the Academy of Language and Universities on one side and the Academy of Sciences, the schools, and the publishers on the other side apply all for dot cat.

Well, I don't think that ICANN should encourage civil wars, so to speak. Let's imagine that dot travel or IACA (?) and SITA (?) applied for either at the same time or dot aero, whatever. Right? I don't think that in the case that you really think that there are two very well qualified institutions that are somehow unable to even find an agreement because there is no way, after the submission, to change the strings or join forces. They are forced to go until the end and having community-based applications into an auction (unintelligible) good idea.

Now imagine the second one, it might end up that dot cat (unintelligible). How you will option that, I mean, it's a very bad situation for any of them. Think about, you know, dot spa for resorts as open one. Dot spa would also, you know, the language (unintelligible) Spanish (unintelligible) is a very bad choice. But anyway, let's imagine that. And reserve dot spa for something else. I mean in this situation, especially when it's for the same community, shouldn't you say simply that there is no consensus and the domain could not be created instead of forcing them into an auction?

Kurt Pritz: So what was the very last point (Amadeu)?

(Amadeu): The question is, in case of more than one TLD application passing the comparative evaluation for the same string and the same community,

don't you think that simply not creating the TLD is a much better solution, forcing them to agree and come in the next round is a much better solution than organizing an auction within that community? Because that's the current situation apparently.

Kurt Pritz: So there is two...

((Crosstalk))

Kurt Pritz: Wait, give me a chance to understand it. So there is two community-based applications and they both - they're in contention and they both score 11 or 12 so they both win. So there has to be an auction.

(Amadeu): Yes.

Kurt Pritz: And so...

(Amadeu): But they go to auction also with other applications which are not community-based. All of them go to the auction.

Man: The community trumps (unintelligible).

Kurt Pritz: No, I don't think so. I think that only the community ones are in the auction.

(Amadeu): Okay, but then if both GNSO and CCNSO applied for dot IANA. Do you think they should go for an auction?

Man: It's reserved for the (unintelligible).

(Amadeu): Well, it's just an example. Let's imagine that.

((Crosstalk))

Kurt Pritz: Right, they are two non-profit entities. Those are *bona fide* community applicants. Both represent communities.

(Amadeu): Yes.

Kurt Pritz: So who should get it?

((Crosstalk))

Chuck Gomes: Just a minute. I think what (Amadeu) is suggesting is that maybe just forcing it into an auction isn't always the best route. There may be cases where it's better to not even issue the string. Now, I'm not going to weigh in in terms of what's right. I think he's raising a question that's worth further consideration. Okay, who else wants in the queue on this?

(Paul Stahura): (Paul) does.

Chuck Gomes: (Paul). Who else?

(Eric Brunner Williams): (Eric) also.

Chuck Gomes: Okay. Anybody else?

Kurt Pritz: Anyway, I just want to make sure ... this is (Kurt), I just want to say (that) I was sort of restating (Amadeu)'s question. I wasn't being conclusory about it in any way. Just so I captured it.

Chuck Gomes: Okay good. (Paul)?

(Paul): I was going to say, they're not forced into an auction like you said Chuck. They can agree to cooperate, which they can do before they apply or they can do after they apply, but they're not forced into an auction. If they cooperate, and decide how to resolve the contention, then there is no auction.

Chuck Gomes: Okay. (Eric)?

(Eric): Yeah, I'll make this one concrete. There are three Cherokee nations: the Eastern Cherokee nation in North Carolina where I am right now, the Cherokee in (unintelligible) Oklahoma, and the United (unintelligible) also in (unintelligible) Oklahoma. All three apply for Cherokee. All three get 11 or higher. What do we do?

It's not clear that we should auction them off because what we're doing is basically causing, as (Amadeu) pointed out, strife in a community where no extra strife is required. Not going ahead with awarding one-to-one may be more prudent than just blindly allocating based on any particular mechanism, whether it's coin tossing or auctioning. Thank you.

Chuck Gomes: Now one of the problems I see here and one of the straps that the GNSO recommendations puts on staff was to make sure that, as much as possible -- and we know there is limitations to this -- there needs to

be an objective measurable process. So, if the option of not going to auction in a case like (Eric) just cited, what would be the criteria that would be used in the evaluation process to pick that nobody wins type scenario?

And I'm not saying we should decide that now, but that would have to be in there so that there's some objective manner of determining when that case would happen, if it was decided to go that way.

(Steve Metalitz): Chuck this is (Steve Metalitz). Did I succeed in getting in the queue after (Eric)?

Chuck Gomes: Same subject right (Steve)?

(Steve): Yes.

Chuck Gomes: Go.

(Steve): I was just going to say.

Chuck Gomes: Oh, I'm sorry, I skipped (Eric) ... no, I got (Eric). You're on (Steve). Go ahead.

(Steve): I was just going to say, as I read this Section 4.3, it doesn't say that there would necessarily be an auction. There would be an efficient means of resolution and it might include an auction, but I'm not sure that it rules out the kind of solution that (Amadeu) was talking about. That's just my - I guess if it's a question, the question is, is auction always going to be the efficient mechanism for contention resolution if the parties can't agree?

(Amadeu): That was somehow also my question. I will say that, in some cases, auctioning is the least efficient (unintelligible) that I was describing.

Chuck Gomes: Right.

Man: (Amadeu), they could get together, the three of them in this case, and flip a coin if that's what they decided.

(Amadeu): No, because they cannot change the TLDs in case there are different communities. Cats and cat, for instance the one that we have (unintelligible) TLD or because they cannot modify the proposals to incorporate all of them in case they want to join for the same community. So, under the current circumstances they cannot join. Only two of them can withdraw or one of them can withdraw, which is different.

Man: I think they can join in some way.

Man: I agree.

((Crosstalk))

Man: As long as they don't submit a new application or somehow a new application, that hasn't been submitted, kind of sneaks in there who didn't even agree to this agreement on submission. One of them goes forward and the other one has agreed to split it three ways with them or there's all kind of ways.

((Crosstalk))

Chuck Gomes: What I think we're hearing Kurt is that some flexibility here is desirable and it's been communicated in a lot of different ways and with several different examples. Do you want to say anything else on that Kurt?

Kurt Pritz: Only to reiterate (Steve Metalitz) point is that, throughout this document, it talks about efficient means of resolution and not about auctions. So, even though I tried to wax eloquent about auctions before, I want to take the opportunity to assert again that this means if the dispute resolution for community-based TLDs, that score over 11 in contention or even in cases where not, it's not settled yet.

((Crosstalk))

Chuck Gomes: Let's go on to (JC).

(Eric): May I make one last observation Chuck?

Chuck Gomes: Okay (Eric). Brief please.

(Eric): Brief. It's not about the money. It's about the policy. There are three different policy models and we need to somehow make it so that only one of them is not the outcome. That somehow there is the ability to merge their policies. Thank you.

Chuck Gomes: Thanks (Eric). That's good. (JC)?

(JC Vignes): Hello?

Chuck Gomes: Yes, go ahead.

(JC): Oh, sorry. It was partly answered by a question before, but just to make sure, the module says that there is similarity between a name and an existing ccTLD, it's a reason for contention. I'd like to know whether, if you take for example the word 'franchise,' that starts with 'fr,' is it a reason to kill it from the get go because it's similar to dot france? Will it be considered by the panel even if it's (unintelligible)?

Kurt Pritz: I'm sorry, because it starts with the first two letters?

(JC): Yes.

Kurt Pritz: Yes so I...

(JC): If it starts like a ccTLD, will it be a reason to kill it or will it still be considered?

Kurt Pritz: It depends on -- there would be a panel of examiners and an opportunity to object, but I think what you're asking about, if I understand, is a comparison between ccTLD dot FR and a full name?

(JC): Yes.

Kurt Pritz: To me, those are not confusing but...

Olof This is Olaf. Could I take an example of what exists already today? Take dot info. Well, that was certainly acceptable and not confusable to dot IN (India), so I think the case he brings up is, well ... I have difficulty seeing that they would be deemed as confusing.

(JC): Okay.

Chuck Gomes: Okay is that okay (JC)? Anything else?

(JC): I'm good. Thanks.

Chuck Gomes: Okay. Thank you. I put myself at the bottom of the queue on this one. I've got a few questions. One of them, thanks to (Kristina), was already answered, but in Section 4.2.1 on Page 4-6, second paragraph, it says only community-based applications - applicants may elect the comparative evaluation. ICANN policy states that, if there is contention for strings, a claim to support community by one party will be a reason to award priority to that application.

Now, two questions in that regard, Kurt. What happens if the claim of support from the community is not substantiated? The second question is, would the claim to support a community be substantiated before getting to this point in the process?

Kurt Pritz: Right, so the answer to the second question is "no" -- that the only time the community-based appellation comes into play or is considered is during this comparative evaluation. I think what your question is describing is whether, before the comparative evaluation, if there is some sort of pre-determination that a certain threshold by an applicant is met to reach - to identify it as a community-based TLD.

Chuck Gomes: Isn't that somewhat of a problem because let's say there is an implicit community-based - in other words - an open application that implicitly relates to a community and then you have one that specifically is community-based. If there is no comparative evaluation, then the

community-based applicant would actually be awarded the TLD without any substantiation of the basis of their claim that they are community-based.

Olof They wouldn't qualify. This is (Olaf). They wouldn't get - well - score very high on the community endorsement aspect of it, so I think...

Chuck Gomes: Yeah, but Olaf, the fact that they're community-based trumps the one that's not claimed to be community-based...

Olof No, not unless they score sufficiently high in the comparative evaluation.

Chuck Gomes: But hold on...

(Steve): Chuck, could I get in the queue?

Chuck Gomes: Just a second. Yeah, I'll let you in (Steve) but...

(Paul): Me too. (Paul) speaking.

Chuck Gomes: OK. The one that is not - that is open - is not part of the comparative evaluation.

Men: Correct. Correct. Correct.

((Crosstalk))

Man: Your conclusion is not correct.

Chuck Gomes: Go ahead. Let's see. (Steve) first.

(Tony Harris): (Unintelligible)

(Steve Metalitz): I think this question was raised before, but maybe to clarify, a comparative evaluation would occur -- isn't it true that a comparative evaluation would occur even if there is only one community applicant as long as there is also a non-community applicant?

Man: That is correct.

((Crosstalk))

Chuck Gomes: Is that correct Olofand Kurt?

Olof Oh yes. Oh yes.

Chuck Gomes: OK, that's helpful.

(Steve Metalitz): Okay, so comparative means, in that case, compared against the criteria not compared against another applicant.

Chuck Gomes: Ah, good point.

Man: Exactly.

(Steve): It may be a little bit confusing.

Man: But that's only if the community elects.

Man: Correct.

(Tony Harris): Chuck, (Tony Harris).

Chuck Gomes: Just a second. (Paul) did you get your point made?

(Paul): Yes, I clarified it.

Chuck Gomes: Okay and (Tony Harris), go ahead.

(Tony Harris): Very quickly. I went back to Module 1 here in 1.2.2.1, which says, for purposes of this RFP, a community-based ccTLD, gTLD etc., etc., and it says an applicant for a community-based gTLD is expected to -- and you have four very specific requirements here. My question is, do you get through the initial threshold if you identify the community-based gTLD, but do not fulfill these four requirements? In other words, you wouldn't get your comparative evaluation if you hadn't fulfilled it previously. So the substantiation is done up front. That's my point.

Kurt Pritz: Yes. So the answer to that is, the only time that substantiation is done, is during the comparative evaluation that, if an entity elects to represent a community and therefore elects to restrict its domain, and then it passes the initial evaluation and there is no objection by anyone else in the community, and there is no contention among strings, then that entity can get the top level domain and be bound by the restrictions it's made.

There is a provision for a post-delegation community objection for those community TLDs that claim to represent their community and then, after the fact, the community realizes that it might be abusing the

community label, but that would be with probably with a different set of remedies. The community-based test comes into play during comparative evaluation.

I think, and if you want to talk about it for a minute, a part of their reasoning behind this is, if you can picture it, an evaluation process where we get many many community-based top level domain applications and we have a set of evaluators trying to decide many gray areas of whether a TLD rises to the level of a community-based one or not; when, in fact, no one really cares or it doesn't really matter.

It only matter if there is - if somebody objects to that TLD, so there is a path provided for that, because somebody cares about it, or it matters if there is a comparative evaluation. So, therefore, you have to make sort of decisions between two competing entities and it's not -- so we just thought operationally -- it was very difficult to set up a panel to spend a lot of effort and probably contention for a part of the evaluation process that didn't provide a lot of value at the end; so, I don't know if that makes sense or not, but that's part of the reasoning behind why we just do this test when it's required.

(Tony Harris): Thank you, Kurt.

((Crosstalk))

Chuck Gomes: It seems, Kurt, that there may be a flaw there, but I'm not going to belabor that.

Kurt Pritz: It's certainly a balancing, Chuck. That's why we're having this discussion now to talk about some of that balancing that goes on...

Chuck Gomes: Yeah. Right. No, I got that and that's fine. Let me go on to my next...

(Paul): Chuck, I have a question. It's (Paul) on this subject.

Chuck Gomes: Go ahead (Paul).

(Tim): This is (Tim). I'd like in the queue too.

Chuck Gomes: Okay (Paul) and then (Tim).

(Paul): Kurt, assume that there is community application and so, therefore, it's restricted. In the application, they have restricted themselves and then they go ahead and apply and there is no other applicants for that string and there is no contention and no objection, are they bound by what they said on the restrictions or are they not bound by that?

Kurt Pritz: They are bound by that.

(Paul): Thank you.

Chuck Gomes: (Tim).

(Tim Ruiz): I kind of had to join late, so if this was covered, I apologize. Just say so and I'll listen to the recording, if this is being recorded. I'm not sure. In regard to the community-based applicant, would -- in the Cray report it talks about the single organization TLD which might be a corporation applying for a TLD for its employees. Would that be considered a community-based applicant?

Kurt Pritz: Well, I think - I don't know. That's a hard question, so I feel like saying that's already been covered (Tim). ((Laughter)) You have to read the community-based criteria. When I read the community-based criteria, I don't get that a corporation qualifies as a community; but, if a corporation wanted to apply for a top-level domain and then was in contention with another applicant, then they could enter that contention route and then you would look down the criteria to determine if that was a community or not.

Chuck Gomes: Kurt, let me ask a couple of specific questions there. Wouldn't a - couldn't a employee base of a large company be considered a community or a customer base of a particular brand like IBM or something? Why couldn't that be considered a community?

Kurt Pritz: Well, maybe... What do you think about that? In all of our discussions about the creation of a community-based TLD, we talked about other reasons for it and certainly not that reason. This is a discussion that started in Cairo.

(Ray Fassett): This is Ray Fassett. Can I get a comment in here?

Chuck Gomes: Just a second (Ray). (Tim), did you have any more on your question there?

(Tim): No, I just wondered if that had been considered just because, in some cases, it might be a corporation (unintelligible) for a string that happens to be a famous trademark that would be one thing. But, in other cases, it may not be and there may be other applicants with other purposes. I think it's important to understand whether or not, in that case, if a

corporation applies for it under those conditions, that it would be given preference, more or less, over that string.

Chuck Gomes: Thank (Tim).

((Crosstalk))

Chuck Gomes: Yeah I'll get you in there (Adrian). Go ahead (Olaf).

Olof Yes. If it was a corporation and they self-declared as a community, well pretty likely that they would use their company name and it's pretty likely that whether there would be contention about that particular string. There would be not necessarily end up in comparative evaluation, but rather, end up in the objection processes that precedes the comparative evaluation.

((Crosstalk))

(Tim): I don't think that's necessarily true. In some cases it might be, if we're talking about Microsoft or something, but if you're talking about even a string like apple or orange or acme, then I could see where the situation could arise, but anyway, I appreciate it. Thank you.

Kurt Pritz: That's right. In apple, you can have an apple growers association be in a pretty strong community and computer users be in a pretty strong community.

Chuck Gomes: (Ray).

(Ray Fassett): Yes, real quick, that drives right to my question. I think we need clearer crisper definition of what nexus means. The heading is nexus between proposed string and community. The score of three - it becomes - nexus means between the string and the name of a community institution and now we're trying to define what community institution might mean. Does that include a corporation? So, I think clearer definition here is in order. Does nexus mean a connection between the proposed string and the community? Or is it to mean a connection between the proposed string and the community - the name of a community institution?

((Crosstalk))

Kurt Pritz: I was hoping in all of this, this was one of the clearer ones so the ... so, whether the proposed string is a well recognized label for a community.

(Ray): Yeah, but that's different than a community institution. Those are two entirely different concepts.

Kurt Pritz: So, give me an example so I can capture the issue best.

(Ray): Take SHRM, you know, dot jobs, right? So they file for SHRM and that's fine. That's the name of their community institution.

Kurt Pritz: Right.

(Ray): That's not necessarily the name of a community or, actually, what is the nexus? That's the question. What is the definition of nexus? The connection between the string and what -- the community? The name

of the community institution? So there's an inference that the name of the community institution therefore represents the community.

Kurt Pritz: I think the intention here is that it would be well recognized. I know who SHRM is and maybe many on the call don't, but SHRM is clearly tied to that society of human resource managers and; so, rather than, dot human resources, that might be a little more distant so, dot BSA Boy Scouts of America, at least over here, is fairly well known; but, dot scouts doesn't have quite the nexus, so if it's the Boy Scouts of America that are applying for a string, it's more arguable that dot BSA is their string rather than dot scouts. So the intent was to kind of capture that distinction.

(Paul): Chuck it's (Paul). I have a question.

Chuck Gomes: Yeah, just a second. I think (Adrian) is next. Go ahead (Adrian).

(Adrian): I was just picking up on something Kurt said earlier with respect to when he said, I believe, that corporate domains were - he didn't think that those fit into community. I'm just picking up on definitions of open gTLD. I think I agree with him, because it says an open GTLD may or may not have a formal relationship with an exclusive registrant. Kurt, would it be fair to say that the exclusive registrant in this case could be a corporate?

Kurt Pritz: Well, yes that's certainly true, but then that doesn't necessarily preclude the community question and I think, like I said, this is a fairly new discussion about that given the identification of sort of a brand TLD; so, we should continue the discussion of this in the comment

forum and ICANN to provide some sort of draw man for that for discussion.

Chuck Gomes: I'm sure that this is one that will need to be clarified in the next edition here. (Paul).

(Paul): Back to nexus. The GNSO talks about the community and community intent. I'm under the assumption that it's not intended to capture all the broad generic words there are into one - into a community. Otherwise it just makes a whole mockery of the processes and the original intent of community. Is that assumption correct that nexus is just a whole idea of community? It's not supposed to capture these generic words.

Kurt Pritz: Without passing judgment exactly, the intention of that nexus line and you get the three points if that's your label then that is the intent of that. That was meant to capture what we heard during the GNSO discussion and, as I described before, there is a path if it's less of a nexus, but then that requires really strong community tie and other things so it's not the be all and end all, but it's certainly very important in the test.

((Crosstalk))

Chuck Gomes: I heard Olof there. There's somebody I missed there. Who was the other person?

Man: Let Olof go first.

Olof: Very quickly. That perhaps this nexus one could express it in mathematical terms, that is, a one-to-one relationship irreversible, so

that there would be a clear one-to-one relationship between the string and that particular community. So it wouldn't cover more or less in any direction.

(Paul): So you're saying it's not reversible. In other words, that's what you said, in other words, the label is yours and not somebody else's?

Olof Oh not reversible in the meaning sense that it covers the community, nothing more. That particular community that is intended.

(Paul): Like Boy Scouts of America. Boy, if they selected boy, that would not make it two for them.

((Crosstalk))

(Paul): Yes, so you're saying, I just want to be clear.

((Crosstalk))

Olof Thinking aloud here - how to express it.

(Paul): If they selected boy, wouldn't that make it two? Is that correct?

Kurt Pritz: Well, that's why we have evaluators.

((Laughter))

Man: I could never get that job.

((Crosstalk))

Chuck Gomes: The evaluators are supposed to be given objective criteria that they use and that's what we're talking about right now. It was never anticipated in the GNSO if the evaluators would make subjective decisions without having some clear measurable criteria to use, so let's keep that in mind. Now I understand that you can't totally eliminate subjectivity, but we want to minimize that as much as possible. Let's go to Mike Pallage.

((Crosstalk))

Kurt Pritz: So any of the comments that anyone has had toward making these criteria more objective would be so welcome.

(Paul): Understood.

Chuck Gomes: Okay (Mike).

(Mike Pallage): Thanks, Chuck. (Mike Pallage). Again (Paul), to address your question with regard to whether the term is a generic or a commonly used word or phrase, if you recall when we had this discussion and this, if you will, class of names kind of surfaced, it was during the last spring when we met in Marina Del Ray.

The two examples we used, at the time, were dot bank and dot library. What we were talking about was the scenario we wanted to guard against would be sort of an entrepreneur coming forward, some VC, saying I want dot bank. As opposed to a group of the World Bank Organization coming forward and saying they wanted dot bank.

The two examples we used, during this discussion when this concept was framed, was the example of a dot library and a dot bank. The only reason I raise that is, it was not a prescription to preclude a generic use of a word in connection with a community. So that's the only kind of disagreement or at least difference of opinion I have on that linking (unintelligible) application.

Chuck Gomes: And I think that is an accurate assessment of what went on in the PDP.
So...

Kurt Pritz: (Mike), how do you think this scoring then captures it? So, if it is a very specific name, that's right on top of the community, you get your three points. If it's not, then you get your two points but, by having dedicated - strongly dedicated - registration policies, strong community establishment, and endorsement, then you still can meet that score criteria.

((Crosstalk))

(Mike): I guess my question -- and again I was going to submit this in the written comments -- is the point system ... part of the problem I have with the point system is someone could have an 11 versus an applicant can have an 11 and an applicant could have a 10 and, under the ICANN definition, we have a clear winner versus a scenario where someone gets 10 and someone only gets 4 and is not a clear winner. My concern and this, I think, does go to (Paul)'s concern about does Boy Scout that incorporates boy, is that a 3 or is that a 2?

Man: Or a one.

(Mike): Or a one -- and then the other point of concern, which I think (Margy Mylam???) from Mark Monitor raised during the consultation and which has been acknowledged here today, is most corporations or most entities applying for a TLD are most likely to do that through a clean shell corporation. If you look at the longevity criteria, which is one of the other ones, a newly formed entity would automatically drop that person down to a 2. So someone, as we said, if the Boys Scouts wanted dot boy and they created a new shell, they're already a 10 preventing/precluding them from ever becoming a community-based application.

So, I think it's that type of rigid analysis, which I think is somewhat problematic. If you recall, (Marilyn Cade) talked in Cairo about the potential of creating a little more shading instead of a one and a three, perhaps a one through a five ranking because, I think with the one to three ranking criteria, you are probably going to get some unintended results or outcomes. As I said, I will come up, as I said, in the written comments on some potential ideas on objective criteria because again this is a very difficult scenario and one which potentially could be deemed by applicants and...

(Paul): Chuck, I have a comment.

Chuck Gomes: Go ahead (Paul).

(Paul): (Michael), it doesn't say that community institution is the applicant otherwise it would have said -- is string is name of well-known abbreviation of applicant. So, because it doesn't say that, I interpret that to mean that community institution does not necessarily have to be the applicant.

Chuck Gomes: Okay and I want to move on past this one, but let me make a general observation going back to the history of the PDP on this. There were a couple of them at least of the 19 recommendations that we recognized were more challenging in terms of the objective criteria aspect than others. This certainly was one of those and we acknowledge that.

I think the staff has done a good job at making a crack at this, but I think we've also realized in the discussion that we've just had in the last 20 minutes or so, that this is definitely one that some continued discussion and more input on the comment forum and so forth is very definitely warranted. Now...

(Ray): Hey Chuck, real quick, just one quick comment, (Ray), real quick. Okay?

Chuck Gomes: Make it quick please.

(Ray): I will. It just dawned on me that, I thought these A, B, C, and D were going to be evaluated mutually exclusive. It's dawning on me that how you answer in B may affect how you score in A. Is that a correct observation?

Kurt Pritz: So, well this is Kurt. I don't think so.

(Ray): Okay.

Kurt Pritz: I'm not sure, but I think I agree with (Paul Stahura) that the community establishment criteria calls for a clearly identified organized and pre-established community of considerable size and longevity, but it

doesn't require that the applicant be of certain longevity so, I think that can be clarified. Just want to check on the thinking and the development of that and then that can be clarified.

Man: Thank you Chuck and Kurt.

(Steve Metalitz): Chuck this is (Steve Metalitz). Could I just ask since we've now been at this for 1 hour 45 minutes. How long is this call?

Chuck Gomes: I'm going to talk to that right now (Steve).

(Steve): Okay. Thanks.

Chuck Gomes: Before we finish Module 4 ... obviously my goals have been superceded by good/great discussion on Module 4 and some on Module 3 too. So, obviously, we're not going to get through all the modules. I wanted to at least finish Module 4. The call will end at 2 hours. Okay? Because I think to go longer than that is tough and, of course, we've got Kurt on vacation. Many of you are on vacation too. So, we're going to cut it off at 2 hours.

Now, I did ask Kurt yesterday whether or not he was available to do another call next week. Some of us are involved in the IGF next week, which makes it a tough week. I'm one of those. And (Avri) is one of those. We might even have to do a call the following week, but that would put us past the end of the comment period.

A one week extension of the comment period would probably accommodate that if staff was willing to do that. Since the multi-lingual comment period is ongoing anyway, that might not be a bad idea. Let

everybody know we're going to end this in about less than 15 minutes. Hopefully, we will finish Module 4 by then and Module 5 and 6 would be covered in a separate call either next week or the week after.

One of the problems next week is it may be very difficult for either (Avri) or I as chair and vice chair to chair the call depending on the timing, but it probably would be bad for us in any way.

(Adrian): Chuck, it's (Adrian). Can I speak to that please?

Chuck Gomes: Yes.

(Adrian): Just real quick. You just said that it would be a good idea if we could potentially delay the comment period by a week. Could I just put a little appendix to that or, if you like, so long as it doesn't impact any timeline going forward.

Chuck Gomes: Agreed. I totally agree with that and that's why I made the comment (Adrian) that, considering that you have the multi-lingual version of the guidebook comment period that's going to extend a little bit past, I don't think extending it by a week should have any impact at all on the ultimate timeline. Now, Kurt, do you agree with that assessment on my part?

Kurt Pritz: Well maybe a week ... anyway. That's something we can talk about for a long time because we do have the multi-lingual comment period extending longer, but I know that there is extensive important comments that are coming in...

Chuck Gomes: Well, keep in mind though we've pretty thoroughly covered modules - we will have pretty thoroughly covered Modules 1-4, so it's not as if work can't continue on those before the end of the comment period.

Kurt Pritz: Right.

(Amadeu): Chuck, alternatively, you could learn Russian or Chinese in one week.

Kurt Pritz: I know this whole thing could be gamed (Amadeu).

Chuck Gomes: Okay, now I do want to finish Module 4 and I have several other questions since I had put myself last in the queue. In Section 4.2.2, which is on Page 4-6, the very first paragraph says the panels charter concern whether one of the community-based applications clearly and demonstrably would add more value to the Internet's domain name system. How is added value determined? Now, I really don't necessarily think that the criteria that are used to score people necessarily shows added value.

Kurt Pritz: Well, that's what is intended, so I don't know if that's unfortunately worded, but the sole criteria for determining this is in Section 4.2.3.

Chuck Gomes: Right and I'm going to come to that. I have some questions on that that are kind of related here. Also, Section 4.2.2 says open applicants within the contention net will not participate in the comparative evaluation. Now that's correct right? They will not?

Kurt Pritz: That's correct.

Chuck Gomes: Okay. So, an open gTLD would lose to a community-based gTLD if the community-based gTLD passed the evaluation?

Kurt Pritz: Score 11 or 12, right.

Chuck Gomes: Yeah, with 11 or 12. By the way, going back to a comment that (Mike Pallage) made - it's possible that a score of 11 may be overly restrictive, especially since some of these definitions are somewhat subjective in terms of value. An open gTLD could only win against a community-based gTLD if all community-based gTLDs were unable to substantiate their community support and didn't score at least 11 the way it's worded right now. Is that correct?

Kurt Pritz: I'm sorry Chuck. Can you say that again?

Chuck Gomes: Yeah. The only way an open gTLD could win against a community-based gTLD, if there's contention, is that the community-based gTLDs were unable to substantiate their community or had objections, however that might happen, or they didn't get a high enough score in a comparative evaluation. Is that correct?

Kurt Pritz: Yeah, so the community-based string would have to score above a 10. They'd have to score 11 or 12, then the community-based string wins in the way this scenario is constructed.

Chuck Gomes: And so the open gTLD that has string contention would lose automatic if they get 11 or 12.

Kurt Pritz: Right.

Chuck Gomes: Okay. Alright. Then, does an open application that's implicitly focused on a community get the same treatment as a community-based application in terms of the community impact?

Kurt Pritz: No, the strings that identify themselves as a community-based string have the opportunity to be considered in the comparative evaluation and also are required to follow the restrictions that they propose as part of their community-based TLD. The asserting that you're a community-based string has a positive of the chit in comparative evaluation and, then, I would call that a burden of being required to comply with the restrictions.

(Jeff Neuman): Hey Chuck, this is (Jeff Neuman). Can I ask a follow-up?

Chuck Gomes: Sure, (Jeff), go ahead.

(Jeff): Kurt, a couple times during this call you said that those community-based would be required to follow the restrictions that they set forth. I just want to know -- this probably relates more to Module 5 -- that there is nowhere in the base agreement where that is set forth. There's nothing...

((Crosstalk))

(Jeff): Just to finish, there is one thing that says that everything you said in your application was true and accurate, but that's not the same thing as requiring you to follow through with everything you've said.

Kurt Pritz: And it's not in the specifications anywhere?

Chuck Gomes: Well, that's something to take note of and to check.

Kurt Pritz: Yeah, so it'll certainly be incorporated into the agreement, those restrictions.

Chuck Gomes: Going on to Section 4.2.3 that you mentioned, Kurt, Page 4-7, the table that's there, that shows how points will be applied three, two, one, etc. that some people have already talked about... One that struck me was is that there is three points given for an applicant that registration eligibility is strictly limited to members of the community and so forth. That gets a higher score than one gets a three and then only a two is given to a registration where registration eligibility is predominately available to members of the pre-established community, but also permits people or groups informally associated with the community to register.

It's not at all clear in my mind that the second one is of lesser value than the first one, but I just raise that. I'm not asking you to evaluate that. It certainly doesn't seem - it actually seems to me that the second one could be of more value to the broader community than the first, but that's just an opinion on my part that I'll communicate and leave it at that.

Kurt Pritz: Yeah, I think I understand your point exactly.

Chuck Gomes: Yeah and I don't know how we answer that, but I just wanted to point that out. For community establishments, the third column in that table says there is one point if no community is addressed. Wouldn't that be an open application then and shouldn't it be a zero? I don't know.

That's probably a minor point, but I throw that out. That's probably a good one for (Olaf).

Kurt Pritz: Yeah, so if you get a one, that means you're two points down and you're not going to win.

Chuck Gomes: Well, I understand that, but it doesn't even seem to be applicable because, if there is no community addressed, then it would be an open application would it not?

Kurt Pritz: Right.

Chuck Gomes: Yeah okay. And then, under community endorsement in that table, in the first column three points endorsement by a recognized institution or by member organization, does that mean there is no opposition at all for the three points? ((Pause)) I don't know. Again, I throw that out for you guys to grapple with...

Kurt Pritz: To make clear. Right.

Chuck Gomes: Yeah. I think a little more detail to differentiate the scores would be helpful there. In 4.3, Page 4-8, third paragraph, it says those withdrawing cannot apply for a new string. I'm assuming that means in the current round. They could apply for it in a later round.

Kurt Pritz: Of course.

Chuck Gomes: Yeah, just I think probably a minor thing to clarify there. Then last or next to last Section 4.4, Page 4-9 and also Page 5-1, the second paragraph, if the winner of the contention resolution has not executed

a contract within 90 days of the decision, ICANN has the right to extend an offer to the runner-up application. Boy, that seems ... if, after all of the investment that people are making to do this, that forcing them to get everything wrapped up in 90 days may be a little excessive. If it was a minor investment and so forth, it would be a little bit different, but it's pretty significant. And then ... go ahead.

(Jeff Neuman): (Unintelligible) If the contract were in any way fair, it might be easier to get that done in 90 days. But, given the current one-sidedness of the contract, to require someone to actually take that agreement in 90 days, is just not feasible.

Chuck Gomes: And then Section 4.4 is my last point on Page 4-10. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic rights to apply for gTLD string if the first place winner does not execute a contract within a specified time. My question there, and you don't necessarily have to answer it now because we're about out of time, but my question is why? It would be great to have some rationale as to why that happens? That the runner-up has invested a lot too, if in fact they're next in line and they qualified, why wouldn't they have a right to be considered rather than only at ICANN's option?

Kurt Pritz: I think this is meant to create options so that 90 days isn't the hard and fast rule, that there might be reasons for going past the 90 days, and that ICANN isn't obligated at the end of 90 days to offer it to the second place or another TLD applicant, but can rather, for any number of reasons, some of which cannot be anticipated, can extend that 90-day period. I'm kind of linking your last two comments together into one.

Chuck Gomes: I think some clarity and maybe a little bit more flexibility in those things would be helpful, but that's just my opinion. We've just got a couple minutes. Is there anybody else that has anything on Module 4?

Okay. What I want to do first of all is to thank and compliment everyone on this call for what I believe was an extremely effective use of our time. Everybody followed the guidelines excellently. We even were able to get in people that didn't submit questions, which I think is a positive thing. My compliments and thanks for the excellent cooperation and the great contributions. I compliment everybody on that.

I would like to also suggest, we're going to have to, Kurt, if you can work with (Glen) and (Avri) and I in terms of some possible times for another call and in the next day - actually if we can begin to explore that today -- it would be great although it's getting pretty late for (Glen). I don't know if that matters for (Glen) ,but... ((Laughter))

Kurt Pritz: She was on in the middle of the night last night with me so.

Chuck Gomes: She's always working in the middle of the night, I know. I experience it all the time. So again, my thanks to everybody. Make sure that if you haven't already done so, that any questions or comments you communicated today, those get put in writing on the public forum page and if you had any of those in Cairo that haven't been submitted to that page in writing, also please do that. Any final questions or comments?

(Adrian): Hey Chuck. (Adrian), I've got one.

Chuck Gomes: Go ahead (Adrian).

(Adrian): Olofput together a brief summary of questions that were brought up in that session, or two sessions in Cairo, and I was under the understanding that if you brought it up in those things and they were captured in all of the questions, that would be submitted as comments. Is that not the case anymore?

Chuck Gomes: Well, I don't know. I had, I think suggested that (Adrian) because we had the transcript and so forth; but, in looking at the transcripts, it's pretty challenging to do that. Like I said, my recommendation is that you do submit them. I know I ended up doing that myself and, as you know, I asked quite a few questions.

(Adrian): So if you want to make sure, then submit them; but, otherwise, you could assume that ICANN at least heard them if they're noted.

Chuck Gomes: Yeah, but don't complain if they don't get noted in that basis.

(Adrian): I very rarely complain about anything.

Chuck Gomes: Oh, I know.

Olof: Could I just mention -- this is Olofhere -- it was meant as shorthand capture of what's already been addressed in order to simplify the follow-up calls like today, so we didn't repeat those questions necessarily. I mean, for your memory only. That was the main intention of it -- to simplify -- since we covered a lot of ground under Module 1, which actually stretched into both three, four, and five.

Chuck Gomes: Thank you (Olaf). And keep in mind, too, that a lot of people made comments, not necessarily asking questions in Cairo, so you want those in the record as well. Anything else before I adjourn this call?

(Jeff): Chuck, this is (Jeff). Where is the (Olaf)'s document?

Olof Oh, it's on Council list. Version 3 was the latest one and I think that was sent on the 7th of November.

(Jeff): Okay, is there a place you could put it aside for the Council list because a number of us are not members?

Chuck Gomes: You don't have to be a member of counsel list to see the archives, Jeff. Anybody can go to the counsel email list and see the archives.

((Crosstalk))

Chuck Gomes: And that's why it was helpful that Olofsaid that it was sent on November 7.

Olof It was.

(Jeff): Okay.

Kurt Pritz: I've got to bail you guys, but thank you very much everybody for...

Chuck Gomes: Thank you, Kurt. We appreciate it very much.

((Crosstalk))

Chuck Gomes: Have a good week off, Kurt. Alright everybody, this call is now ended. Thanks again and we'll be talking again in a week or two.

(George): Thank you, Chuck.

Woman: Thanks Chuck.

(George): Are you still there, Glen?

(Glen): I'm still here. Yes.

(George): Okay (George).

(Glen): (George), yes.

(George): Did you send the invitation to everybody who sent comments to the comment mailing list or just people in the constituencies, because I think people that submitted comments might want to be notified of the next meeting.

(Glen): Oh yes (George). What happened was I sent a notice to the constituencies on the constituency list where the constituencies were expected to notify all their members. I sent it to the council list. I sent it to the gTLD list to people who originally worked on the recommendations, such as the council members, and I sent it to a lot of individual people that have been faithful contributors.

(George): What I meant, though, is there is actually the already submitted comments if you grab a mailing list of all the people that already submitted comments in the forum?

(George): Or somebody else who manages the mailing list (Kieran)- or not the mailing list but the comment forum.

(Glen): The comment forum, yes.

(George): They can probably grab all the...

(Glen): Absolutely yes.

(George): All right. Have a nice day.

(Glen): Yes and I've got them all and I sent all the people who were not on the, you know, not on the constituents list, for example, I sent them all the format that the call was going to take.

(George): Oh, okay. I am one - when I submit comments to those lists, I used a different email address. I didn't get any notification at that email address so...

(Glen): Which one? The gTLD one?

(George): No (unintelligible). I used my yahoo address for that.

(Glen): Oh.

(George): And so if it was like automated that everybody was sent a comment got an invitation...

(Glen): No, that wasn't the case, no.

(Eric): This is (Eric). I hope not because we had a really good use of time today and not everyone who submits comments makes good use of time.

(George): Well true. You don't want (Jeff Williams) on the call.

(Eric): I was just thinking of that name in particular, yeah.

((Crosstalk))

(Eric): And the point of what we're doing is not to ensure that there is equal access information. The point of what we're doing is to correct the guidebook.

(Glen): Yes, exactly.

END

ATTENDEES on the CALL

GNSO Council members:

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Chuck Gomes - Registry c. chaired the call
Edmon Chung - Registry c.
Adrian Kinderis -Registrar c.
Tim Ruiz - Registrar c.
Mike Rodenbaugh - CBUC
Olga Cavalli - NCA
Kristina Rosette -IPC
Mary Wong - NCUC
Tony Holmes - ISP
Tony Harris - ISP

Participants:

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George Kirikos - LEAP
Richard Tindall - DemandMedia

Ken Stubbs - Registry constituency
Eric Brunner Williams - CORE
Steve Delbianco - Exec Director NetChoice (IPC)
Eric Palmer - PIR
Mike O'Connor - (CBUC)
Moshe Fogel - Communigal Communication Ltd
Jeff Neuman - NeuStar (Registry constituency)
Sebastien Bachollet - ALAC vice chair
Cheryl Langdon Orr - ALAC chair
Amadeu Abril | Abril -
Joyce Lin - 007names.com
Michael Palage - CBUC/IPC/Registrars
Rudi Versnick - President,CEO Internet Society Belgium, ISOC
Smita Pahwa - Net 4 India Limited
Benjamin Brandao - Web.com
Jean-Christophe Vignes - EuroDNS
Eugene O'Rourke
Steve Metalitz - Coalition for Online Accountability
Werner Staub - CORE
Yvette Wojeichowshi
Edgar Thomas Watson - Asst. General Counsel, Bank of America
Becky Burr - NCA ccNSO
Chris Chaplow - Managing Director Andalucia.com S.L.
Kerry Oslund
David Maher - Registry constituency Chair
Claudio DiGangi - IPC
Paul Stahura - DemandMedia
Bruce Tonkin - ICANN Board member
Clarke Walton - Registrar constituency
Michael Young - Afiliis
Scott Hemphil - Afiliis
Sébastien Bachollet - ALAC vice chair
Caroline Greer - DotMOBI
Jon Nevett - Networksolutions – Registrar constituency chair
Danny Younger- Individual
Ray Fassett - Registry C
Seth Reiss - Individual
Richard Schreier - Individual

ICANN Staff:

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Kurt Pritz - Senior Vice President, Services
Olof Nordling - Director, Services Relations and Branch Manager, Brussels office
Marika Konings - Policy Director
Glen de Saint Géry - GNSO Secretariat