

ICANN SAN JUAN, PUERTO RICO
GNSO Working Group: New gTLDs
Recommendations
Saturday, 23 June, 2007
14:00 to 18:00

>>AVRI DORIA: Okay. It's 2:00, people. Please start finding your seats so we can start.

>>AVRI DORIA: Okay. So basically what we've got this afternoon is we're going to start with a discussion on the policy development and implementation. Basically the staff has been taking our moving target, though the target is moving more slowly all the time, but has been taking a moving target. So when we look at that, we should be aware that they have been working against a moving target, trying to basically understand how the policies work with implementation and starting to come up with implementations suggestions so we may find some interesting points to discuss as we go through.

And after this, and this should be as extensive and in depth a discussion as people want to make it, we'll go back into a general discussion where basically the discussion will start focusing against the new gTLD recommendations and looking at the issues that have come up today in relation to our issues.

Liz, you wanted to say something?

>>LIZ WILLIAMS: Yes, if you don't mind.

Whilst we are going through this, can I get everyone to get the little skinny part A piece -- and perhaps, Ed and Margie, you'll need some lights up there but that's going to mess up the slides. Could I get you to turn to page 17, and you will have in front of you the list of proposed recommendations.

Whilst Kurt is going to go through this, I'm pretty sure we are going to get into detailed discussion.

That's it. Part A in the binder. It's tucked inside the binder.

If you could have that ready. And what I'm going to do as we're going through this, so we try to address some of the issues that we have surrounding the recommendations from an implementation perspective, when you are raising questions, would you mind, just to help me collate everything, refer to a particular recommendation number so that I can map everything back together.

So page 17 of the part A document, which will take you straight to the existing recommendations.

Thanks.

>>KURT PRITZ: Thank you.

>>AVRI DORIA: Thank you.

>>KURT PRITZ: Is there a switch?

>>AVRI DORIA: No. You just talk.

>>KURT PRITZ: Thank you. Does this work?

Actually, I would like to echo what Liz said, but the slides sort of map to this document that is the ICANN staff discussion points. So what I would like to do is page through this document, and the slides provide an overview, and then the document provides the details.

So we can discuss the detail recommendation by recommendation.

So the good thing about that is it follows well to this document. We'll be able to follow along.

On the sort of not-good news is it doesn't map really well to the timing of a process -- you know, an implemented process for TLDs. So we're kind of hopping back and forth in the implementation time line. But I don't think that's going to be difficult at all because the issues are separatable and individually discussable.

Has everybody got a chart?

This is on line 2; right?

As far as the introduction goes, I'd just like to introduce some of the features of recent staff work, what we have undertook to drive to completion.

I think it's an admissible achievement for the big ICANN where we have reached this stage where we can sort of interlock progress on policy development with progress on implementation so that potential problems in the policy can be fed back into the policy development process while the process is going on. And we can foreshorten the whole process because policy and then implementation is not serial but aspects of it are in parallel so that we can in a more timely manner implement the policy that's developed and deliver on this goal of designation or delegation of new gTLDs.

So I think that's kind of cool.

These features are really subjects of our past presentations to the GNSO council or in the GNSO public forum. And you may remember them from last time, and they are online, or I can deliver them.

So staff has made a project plan and a roadmap that includes principles guiding the implementations. There's about ten or so general principles starting from protecting stability and security to -- well, I am not going to mention all ten of them, but I didn't want to repeat all this work again here.

We have made a list and a project plan of implementation tasks. We have associated costs with those implementation tasks and included that in the ICANN budget this year. So that there is one recommendation that says the cost for this implementation should be recoverable through fees, but there's two issues with that. One is timing and one is pricing. So the timing issue is that we're going to hopefully launch an RFP for applications at the end of ICANN's fiscal year 2008, which is July -- you know, the end of June next year.

So at that time, ICANN will have realized all the startup costs associated with launching this project but not have received any of the fees associated with the application. So there has got to be some cash allocation in the ICANN budget for this.

Secondly, there is a price implication, and you have talked a lot here about price being a barrier to potential application fees, potentially being a barrier to entry. And so these startup costs are substantial. And when we make our pricing decision on the applications, taking into account the advice of the council, we don't want to create barriers by fully recovering costs if that turns out to be something that has significant negative impacts to the community.

Am I talking too fast?

We have also outlined a communication strategy which is key to success here. When we launch the round, we want the fact that the round is launched fully available worldwide in a number of channels. And there's other slides from other presentations that outline that.

And then in this objection-based process that we are going to spend most of our time talking about today, we want to ensure that those who have standing to object also have the knowledge and wherewithal to object.

And then finally, in the meeting in Lisbon, we presented an outline, a first flow-chart of an objection-based project and in accordance with the working documents you presented here. And the idea of that, of course, is to take a lot of the objection and contention and decision-making and dispute resolution outside of the capital ICANN, the big ICANN, in order to make the process objective and protect all the entities that are involved in the process, and to make it neutral.

So that's what we've worked on in the past, and hopefully you've seen that, and we have delivered some more materials on that objection-based process for this meeting, and we'll discuss those later.

So I'm just going to continue on with the slides.

So if you look at the introduction to this document, I've pretty well covered more than what's in there. There's some examples in 1.4-1, et seq. that describe important issues that still require discussion. That's a sampling, so I'm not going to touch on those as part of this introduction, but rather they'll be covered later on.

So the implementation plan, as described in this document, provides for a two-level review of applications. So terms of art we want to start promulgating or hope get adopted in everybody's lexicon, are after applications are received and reviewed for completeness and make sure the checklist is attached and clear, is two evaluations. One is an initial evaluation stage so that's meant to provide a fairly quick turnaround process where if your application meets certain criteria, a TLD is awarded in a relatively short period of time.

And in order to do that, you pass through these five gates, and these five gates are taken -- or six, depending on how you look at it, but these five gates are taken in parallel.

So the first gate is whether the application meets objective and technical business criteria.

Objective technical and business criteria. So that's very similar to the sTLD round, although the lessons learned from that are to make an attempt to make them more objective, and make it more apparent on its face whether the application passes or fails. And that is to expedite the process and also to manage the expectations of the applicant.

And then the second is more of a technical evaluation, and that's whether the string itself might lead to technical instability or unwanted results in the DNS.

I'm not an expert in this, but examples of strings that might cause this might be dot www or dot http or maybe dot pdf. I don't know. So that's an objective technical evaluation that occurs as part of the initial evaluation.

And then whether the string is a reserved name should be clear.

The string is not confusingly similar to an existing or proposed string. If it does, it enters into the part of the extended evaluation that is called string contention.

If it is confusingly similar to an existing name, of course the application will be rejected, but if it's confusingly similar to a competing string, then it would enter into a string contention evaluation that's part of the extended evaluation, and I will discuss that more later.

And then finally, that no formal objection is raised.

So the work of this council has identified five areas -- or we have distilled them to five, so that's what we are going to talk about, five areas where objections are raised. And what we want to talk about later on in this is what those areas of objection are, who can raise -- who essentially has standing to raise objection. And then what we haven't done yet is we're developing the process for resolving these disputes and providing these fora. And certainly ICANN does not want to be in the business of creating code, so we want to use what exists in each area of formal objection. So again to reiterate, initial evaluation is a relatively short period, and there should be scads of names that pass through the initial evaluation and result in the delegation after TLD in a fairly rapid period of time.

However, if it does not pass those five gates, then the application would go into an extended evil workstation. So there should be -- there would be another fee associated with that evaluation.

The applicant would be made aware of the relative -- you know, the expected time frames of the evaluation, all the procedures and standards for that evaluation. Some -- you know, be informed that there's a substantial likelihood that the application might not succeed.

So one of the driving principles, implementation principles, that has been described is that the applicant is aware at the outset of the -- has a clear idea of what it faces from a procedural, cost, and time standpoint.

And so the applicant would then be made aware that, you know, one of these five things triggered an extended evaluation process and that he or she or they were entering a dispute resolution process and have that clearly laid out. And we're going to talk about that some more.

But that's the -- if you had to condense the evaluation process down into one slide, that would be it.

So graphically. Later, after this presentation we are going to hand out graphic representation of the project -- of the evaluation flow. It's already been posted. It's essentially six feet of flowchart.

But briefly, the initial evaluation is made up of these five gates, just as I describe them here. So they all occur in parallel.

And then, the extended evaluation is essentially this, and the focus of it, of course, is this dispute resolution process, this independent dispute resolution process on the right.

If there's questions, if the panel, the technical or business panel, has questions regarding the application and they are meeting the objective qualifications, then those questions would take place as part of this extended evaluation.

The initial evaluation is intended to be short and crisp and encourage applications that are complete.

And then also the technical evaluation, if the independent technical team determines that a string may tend to break the DNS, there might be some iteration of that -- iteration of that issue.

Yes?

>>JEFF NEUMAN: Are we asking questions now or....

>>KURT PRITZ: The Chair is not here, so I'll take a question.

>>LIZ WILLIAMS: Do it while you can, Jeff.

>>JEFF NEUMAN: This is Jeff Neuman. My question on the evaluation, and I don't know if you can do this but is there any TLD in the past that you can compare, would be the equivalent of an initial evaluation versus something that would be extended? Obviously dot xxx was extended. But I believe every application in the last round did have questions. Almost every single one had some sort of questions in one way or another. Some of them less questions than the other.

Are you saying that if there's any questions whatsoever on the application that that's automatically put into this extended evaluation?

>>KURT PRITZ: Yes.

I think, somewhat ironically, dot post was the application that didn't have any questions and sailed right through.

The difference is advising the applicants up front of the additional -- the potential additional extended process and making the technical and business operational qualifications sufficiently objective so that there's a clear -- there's a fairly clear understanding at the outset whether the application meets them or does not.

>>JEFF NEUMAN: I would ask just that a little bit more thought goes into that. Because I think almost every application, even if you are clear and crisp, there's going to be -- you don't know who you have on the panel evaluating it. There's almost always questions in almost every RFP that we have ever responded to. And I think there should be some sort of distinction between you are just looking to clarify one -- Because I was involved in the back end of dot travel and we got some questions, at least technical questions, but they were cleared up within a matter of -- it took up with letter and two A's, pretty much, for those questions to be cleared.

>>KURT PRITZ: That's a fair comment, and to a certain extent it's a distinction without a difference because if it is a short period and you are in an extended evaluation, it still only takes one letter to clear it up. So even though you --

>>JEFF NEUMAN: I'm talking about because there are fees involved; right? Because you would charge -- You are making a distinction for fees, and I'm saying I don't want that to be a barrier for applicants. I am making this up, but let's say it's \$10,000 for one that would pass initial, but if it goes into the extended now it's at least 50 hours.

>>KURT PRITZ: That's a fair comment. There might be one iteration of questions. It depends -- I think when we look at the criteria and see how objective they are and how clear they are, and if it's fairly clear and you don't meet them, then you know it. And the fee structure has still got to be decided and that fee might not be so much. But it's a fair comment.

>>JEFF NEUMAN: Sorry, you weren't there so --

>>AVRI DORIA: Okay, thanks, yeah.

I apologize. I was told that mike was --

>>MICHAEL PALAGE: No.

>>JEFF NEUMAN: That was me.

>>AVRI DORIA: So no other comments?

Thank you.

Yes.

>>ALAN GREENBERG: I'm confused. I think Kurt is saying if you go into an extended evaluation there will be an additional fee. Part of the extended evaluation is technical and business operational qualifications.

>>AVRI DORIA: Please use the mike.

>>ALAN GREENBERG: If technical and business operational qualifications are part of the extended evaluation, who does not meet that?

>>KURT PRITZ: Well, let me clarify. Let's go back.

See in the initial evaluation, there's also that box, and so if the applicant initially does not pass --

>>ALAN GREENBERG: Okay. Got it. Thank you.

>>AVRI DORIA: Marilyn.

>>MARILYN CADE: Well, actually, I am just continuing the rest of the question from my close friend and collaborator there.

>>ALAN GREENBERG: I didn't know there was one.

>>MARILYN CADE: So would you go back again to the previous slide?

So it's technical and business operational evaluation. Then go to the next slide.

Technical and business operational qualifications.

The technical evaluation, when I look at the flowchart, when I look at the flowchart, am I going to see that if I were to label that box B, technical and business, that I need to go through B before I get to C? Or -- Because they both have to do -- you are talking about assessing the answers on qualifications. Then you do an actual technical evaluation?

>>KURT PRITZ: Maybe I am not clear in my chart.

So here in initial evaluation, if you don't pass --

>>MARILYN CADE: Yes.

>>KURT PRITZ: -- but there's -- it's an area where additional clarification or elaboration may serve to answer all the questions, then you would go to this box here.

>>CHUCK GOMES: Kurt, is the technical one you are showing here the stability evaluation?

>>KURT PRITZ: Yeah, the center one.

>>MARILYN CADE: Okay. Then --

>>AVRI DORIA: I can manage the queue if it needs to be managed.

>>MARILYN CADE: So I would just say is, then, in relabeling this, it probably ought to say technical evaluation slash, because it's in direct response to the stability questions in the one before. And I was reading it as being in relation to the box that's to its left.

>>KURT PRITZ: The box to its left --

>>MARILYN CADE: Which is technical.

>>KURT PRITZ: -- yeah, maps to the box to the left above. And the center box maps to the center box. And the right box is the way biggest box.

[Laughter]

>>MARILYN CADE: Yes, yes.

>> Not drawn to actual scale.

>>JEFF NEUMAN: I know this idea was brought up probably back in 2002 or 2003 before the sponsored -- last sponsored round, but is there any more thought on an accreditation response for a registry that once they meet the technical criteria that they wouldn't have to go through a whole evaluation again? At least with respect to the registry portion? I know there's lots of applications that might be piled on top of it. But in order to avoid inconsistencies, if one panel determines that there is a back-end registry that's qualified, or whether it's front or back end, that they wouldn't have to go through this whole thing again.

>>KURT PRITZ: I think so. I think the technical questions that came up in the sTLD round went to other aspects of the TLD operation and not the back-end provider, which pretty much in every case passed the technical evaluation.

So then in our discussions, we think we're constrained to having the string contention resolution after the resolution of those other issues, and that is because you want to see who is left standing at the end.

You know, I think we would rather not have string contention resolved earlier, and then find that the winner of the string contention fell out for some other reason.

So while string contention is listed there at the end, we would provide opportunities and encouragement for the conflicted parties to resolve the string contention issues in some way and provide an ability to do that.

But absent that, we are suggesting a string contention resolution process that would occur after the resolution of those other....

>>AVRI DORIA: I have a question about that.

If there's -- string contention implies there are several people applying for the same string. They won't all necessarily fall through your sieve at the same rate.

So how would that work?

>>KURT PRITZ: They would have -- They would have to wait. Which may encourage a resolution among the parties.

>>CHUCK GOMES: In other words, they themselves wouldn't have to wait till all three -- or four or both of them were done, so their hands aren't tied to come to some sort of resolution on their own. But if they are going to depend on other mechanisms for resolution of the contention, then they would have to wait.

>>KURT PRITZ: That was a better answer than mine.

So the remainder of this document maps to the staff notes that we have just pointed, passed out or we posted earlier this week. In most cases what staff is trying to do is take the recommendations and we don't discuss them all, but we discussed recommendations that we want to echo back what was said and our plan for implementation just to make sure we're on the right track. You know, we feel fairly comfortable that we have but we think it is important to echo back what we've heard and in some cases we're requesting additional guidance on recommendations.

So this is the hardest one, but recommendations 1, 7, 8, 9 and 10 have much to do with the early part of the process and, I think, can be fairly easily handled.

We certainly agree -- and in all our operating and implementation principles, we agree for the requirement of a transparent, predictable process. The RFP should describe the entire process and manage the applicant's expectations and include all the criteria against which the applications are assessed and timelines, so that's pretty much an echo back of the first recommendation.

We've just talked about this but in 7, 8 or 7, 8 and 9 discuss the business and technical criteria. That's what we have just been talking about at this time and making it very objective and we are for having a very black-and-white task. But something also we recognize from the sTLD round is that innovative applications often raise technical issues that aren't considered in the criteria, so that might be some unexpected iteration. I think of a couple sTLD applications where the technical team raised questions that went beyond, Is this registry operator, is this back-end operator qualified to run this TLD but, rather, what our NAPTR records are really going to be inserted into the zone and if they are, that can create a technical issue. They're not. Some of the formatting of Web sites may lead to user confusion.

That's sort of a staff warning that we're going to write criteria in that one phase, the technical and business criteria as black and white as we can, but we expect some iteration.

And then, finally, we will provide a concise and complete base contract. We think there will have to be some allowance for amendments based on different business models. Those proposed amendments will be posted for comment in the usual way.

I can think of ICANN fees and that might be a bar to some business models and other business models may be an outstretched business model. So there is other aspects of a base contract that might -- you know, might vary based on the business model or the legal environment in which the legal registry is operating.

>> (inaudible).

>>KURT PRITZ: Our base fee model has been -- we don't like to use percentage of revenues because that leads to unfortunate comparisons with governments, but our model initially would be some small percentage of revenues.

>>BRUCE TONKIN: (inaudible).

>>KURT PRITZ: It would essentially be revenue per name. But we've seen provisions for selling names in bulk and different revenue models, so I don't want to exclude that.

>>BRUCE TONKIN: (inaudible).

>>KURT PRITZ: That's my expectation.

>>MAWAKI CHANGO: Just for clarification, we are not talking about application fee?

>>BRUCE TONKIN: What happens today is like dot com, for example --

>>AVRI DORIA: Use the mike, please.

>>BRUCE TONKIN: What happens today, Mawaki, there are two sets of fees, fees that are done on a transactional level per registrar for the registrars that pay that fee and there is also the fee the registries pay. At the moment, there is quite a bit of variation in that model. For dot net, it is 75 cents a name as an example. For dot com, I believe, it is a lump sum effectively. So it varies by registry agreement.

Each registry as part of its normal operations pays some sort of fee to ICANN each year. So I was just asking a question, is that going to be standardized.

>>MAWAKI CHANGO: That's the kind of fee you are discussing now? The registry fee that you are talking about, right?

>>BRUCE TONKIN: Yes.

>>AVRI DORIA: Mike had a question.

>>MICHAEL PALAGE: Kurt, what happens if a registry doesn't want to charge, they want to give domain names away for free? How would one account for that in the application?

>>KURT PRITZ: I don't know. I mean, there is a way, right? There is some form of fees. There is ICANN services required, management of the registry services, new registry services process and efforts to which ICANN has to go to support the registries. So there would have to be some sort of fee applied.

>>CHUCK GOMES: There certainly could still be a fee per registration even if there is no charge for registration.

>>AVRI DORIA: I would like to remind people to use the mikes. Since it is being transcribed, every once in a while do say your name. Even though the people that are talking a lot probably are recognized. Like, I don't keep giving my name.

[Laughter]

>>KURT PRITZ: Turning to recommendation 2, goes to string contention. So from a timeline, it falls at the end of the process. The recommendation is just that strings must not be confusingly similar to an existing TLD, and then if you take that to its logical conclusion, strings that might be delegated shouldn't be confusingly similar to one another. So there has to be a process for considering applications that are confusingly similar to one another.

The process that staff is contemplating really tries to identify these issues in a couple different ways. There will be an algorithm developed and independently conducted process as part of the initial evaluation to determine if applicants have applied for strings that are confusingly similar to one another.

>>MIKE RODENBAUGH: Is it intended staff will make that determination?

>>KURT PRITZ: I don't think so. I think there's going to be some algorithm that works to identify that so there has to be some way of consistently saying, you know, is dot CO any letter confusingly similar to dot com or is it a combination of dot CO, some letter plus the purpose of the string. But there has to be some waiting system available to those who are doing the evaluation so that the results are as consistent as can be.

>>MIKE RODENBAUGH: What about different languages, for example? Dot web in German?

>>KURT PRITZ: That's correct. So we have to take into account the IDN.IDN comparison and also the IDN ASCII comparison.

>>AVRI DORIA: I have Ray and Alan and Steve and Mike.

>>KURT PRITZ: So let me just make one or two more points, Avri, and then we can ask questions.

>>AVRI DORIA: Sure.

>>KURT PRITZ: There will also be an objection process where interested parties can file a formal objection that a submitted string is confusingly similar to an existing string. So VeriSign might issue an objection if they think something is similar to dot com or another interested party can. And then, finally, this -- if strings are found similarly confusing, yeah, confusingly similar, that will trigger the string contention resolution process that's part of the resolution.

>>AVRI DORIA: Correct me if I've forgotten anyone. I have Ray and Alan and Steve, then Mike and then Philip. Anyone else in that sequence for now? Okay, and Chuck and Kristina. Ray?

>>RAY FASSETT: I know in a couple of the gTLD PDP meetings it was discussed confusingly similar, how to put some scope to that, and I notice in the staff document that they were going to look at some legal research on what does "confusingly similar" mean in various contexts. But I know it was discussed in the committees that it may be restricted to visual and/or phonetic. So they were trying to put a bit of scope to what confusingly similar could mean in this context of a TLD. I'm wondering if the staff has kind of looked away from that, come up with its own algorithm, or will it confine it to phonetic?

>>KURT PRITZ: My personal understanding is -- and I could be wrong and any guidance from the council would be excellent -- is that "confusingly similar" means visually confusingly similar. So something -- I don't know.

>>CHUCK GOMES: It includes visual.

>>MIKE RODENBAUGH: Visually, phonetically.

>>BRUCE TONKIN: What's common in the trademark community, it doesn't go -- that would be interpreted as visually similar in that context essentially. That's the intent.

>>KURT PRITZ: But not translation where the translation is not either phonetically or visually.

>>AVRI DORIA: Okay. Let's --

>>PHILIP SHEPPARD: There were typical categories. I think we agreed we would not differ from that practice.

>>AVRI DORIA: I think we will all be hitting the same sort of question here. Yeah, there was a description of the discussion on the confusingly similar in the part A final report. There is a discussion. It does go beyond the visual.

Next I had Alan.

>>ALAN GREENBERG: It strikes me that "confusingly similar" visually means you will start have to do pattern recognition because right now there are no IDN names. It's easy. Once you have an established base of IDN names, you are going to have to look at and say does it look like one of the others and you can match them with the eye if there is 20 of them but not if there is 1,000. It will be an interesting challenge.

>>STEVE METALITZ: Steve Metalitz. Kurt, your second and third points, and as you mentioned earlier, it seems as though there are two ways in which someone could get bounced out based on this criteria. One, the evaluator using some algorithm to be determined could bounce them out and, secondly, a formal objection by non-evaluator could lead to them being bounced out. I wondered why you thought that should -- that dual system, that redundant system, should apply in this area but not in other areas that are subject to the objection procedure?

>>KURT PRITZ: Two reasons. First, they're different in that the bullet number two applies to applicants and bullet number three applies to existing TLDs. But I think that in the execution that whatever algorithm is applied would be applied to applicants and existing TLDs, I think that if this is a fairly objective process and with the complexity of IDNs that we just discussed, having an objection-based process that might bring something new to life, I think it just goes to, you know, you hate to make a decision and have it be wrong because you didn't understand some IDN implication and have that brought to light later.

>>STEVE METALITZ: But the result would be if, for example, something by the algorithm was deemed to be confusingly similar to dot com, it would be struck out. But if the -- and there wouldn't be any formal objection process. But if someone came forward and said, I want to have dot Coca-Cola, Coca-Cola would have to pay a fee and go through a formal objection process in order to have that.

>>DAN HALLORAN: Steve, this is Dan Halloran. To answer the question about the redundant, why staff objects and why let other people object, I think if ICANN thinks a proposed string is confusingly similar, we don't want to rely on someone else coming forward to make that argument. It would come back to us if we let CON just because nobody objected. We don't want to let a string in. We need to be able to object to it. At the same time, we don't want force other people to only rely on us to be the gatekeeper.

>>STEVE METALITZ: You don't feel you need to object to any of the other criteria that are subject to the formal objection?

>>DAN HALLORAN: We had a lot of discussion in Marina del Rey in February about in which case should staff feel to object, where should we stay out of it. I think the council pretty much told us if it's morality or one of these things, staff should stay out of it. If it is one of the technical issues, like is this string is going to break the Internet or two strings confusingly similar, that's something staff should object.

>>STEVE METALITZ: Those are two quite different criteria. Breaking the Internet, if you decide CO anything is confusingly similar to dot com, it will not break the Internet. It is just going to create other problems. I'm not sure those problems are that different from having a dot Coca-Cola. I was wondering why this one was singled out for this redundant system.

>>CHUCK GOMES: Isn't that at the top level handled with other criterion as far as other implementation?

>>KURT PRITZ: I don't know. I am one question behind. I think Dan's comment goes to string contention is more like breaking the Internet. It is more of an objective test that's suitable for staff evaluation, whereas the questions about morality or public order or community really are -- should be independent -- completely independent of staff. >>AVRI DORIA: I will add people to the list. I have Marilyn added to the list and Mawaki. And it was Michael Palage. Mike, did you have a comment? You had your hand up at one point. It is your turn.

>>MICHAEL PALAGE: Thank you, Avri. With regard to the algorithm, I guess my question would be it would be important for ICANN to look at prior positions that it has taken in legal matters, particularly prior to your involvement in ICANN. Back in the 2001 round, there was an objection by the BZ operator in connection with the allocation of dot biz application. So I think it would be important to, if you will, test that application, that algorithm to see what the outcomes are, to see that it may not be -- to see what type of outputs you get so it is not inconsistent with positions that ICANN has taken in legal matters previously.

One might also want to look at Cameroon, CM, versus COM, things like that, and, of course, I think there will be suitable caveats that the algorithm is not meant to be dispositive but one factor in the overall determination. That's kind of my data points that I would kind of raise and suggest to staff to account for.

>>AVRI DORIA: Philip, your turn.

>>PHILIP SHEPPARD: I have one question of clarification going back to the earlier discussion. Am I reading your second paragraph there correctly? The staff involvement is only about judging two names in the round confusingly similar? So the dot com example is not going to be a staff judgment. If somebody comes in with that, staff will be silent until VeriSign objects? Is that what we're saying? That's what the words there say.

>>KURT PRITZ: You're reading it correctly. But I think -- you know, staff -- I think the way it will work out -- and I think somewhere else it is written that staff may object that an application is confusingly similar.

>>PHILIP SHEPPARD: The caveat is blindingly obvious, staff may do it for you. That wasn't my question. That was clarification.

My question was more generalized on the objection process. You mentioned in this document that the objection process will be subject to a fee on behalf of the person objecting in all cases of all the objections you have talked about.

Can you now or a little later, in talking about the rationale for what should be fee-based and your estimate as to if it's \$10, \$100, \$1,000, \$100,000 fee in terms of order of magnitude?

>>KURT PRITZ: I think the fees should map to the costs, to the extent they can. I'm sorry to say "I." But that's what I think, but it is the result of quite a bit of discussion.

Also, applicants come into this process, by and large, with their eyes open. And to a very real extent, they understand whether their string will raise objections.

>>PHILIP SHEPPARD: My question is not the fee the applicant might have to pay as part of the extended evaluation, but you're saying there will be a fee that the objector has to pay who is potentially the independent third-party who suddenly had something happening they didn't like. I wanted to know the rationale as to why they should pay a fee.

>>KURT PRITZ: Two reasons. One to draw a line between public comment and an objection. So there are two criteria that I know of to object. One is the payment of a fee and, two, in certain case, certain entities or individuals would have standing to object. So certain individuals would be able to object and be part of a class -- class is a wrong term.

>>PHILIP SHEPPARD: Maybe the fee make it is clear it is a formal objection.

>>KURT PRITZ: Right. And then one of the rationale behind that is that parties interested in objecting that have -- and there is the right amount of interest around that would be able to raise that fee. You know, if an individual can't raise the fee, there would be enough individuals or entities interested in objecting to a proposed string that would be able to put the fee together to raise the objection.

>>PHILIP SHEPPARD: And the order of magnitude you are thinking of for that fee?

>>KURT PRITZ: You know, I can't comment on it because we have not psyched out what it would cost. But I would think that an application -- the dispute resolution process is probably the most expensive part of processing the application.

>>PHILIP SHEPPARD: Orderly fees in line with UDRP or higher?

>>KURT PRITZ: I don't know.

>>MICHAEL PALAGE: A fee is \$2,000 for administrator and I think, Kurt, it will be substantially higher.

>> \$1,600?

[Laughter]

>>CHUCK GOMES: Kurt, on the third bullet there, you say it looks like any interested party, assuming they're willing to pay the fee, can file a formal objection. I think in the new TLD committee, we were talking certainly about registries in the case of existing TLDs being able to file a dispute. Can you talk a little bit about what the thinking there with regard to allowing any interested party to file an objection?

>>KURT PRITZ: Well, suppose there was a registry that wanted to create a shell registry for typos of its own registry and, therefore, wouldn't object to the entity it established to enter a name or to apply for a name. It rightfully should be objected to but the proper objector would be motivated not to object. So it is just a gaming thing that, you know, may or may not be a valid line of thought.

>>CHUCK GOMES: Is there any issue, then, with regard to standing in that regard? Of course, where I am coming from is the frivolous type of, you know -- people that have money could still submit frivolous objections just to slow down the process or cause harm. But what about standing? Does standing not come into play on this particular one?

>>KURT PRITZ: The thinking here is that the fee is sufficient to provide standing because this, among all, should be a fairly straightforward test to apply so that an objection here wouldn't delay the designation like an inquiry into a morality of public order would.

>>CHUCK GOMES: Thank you.

>>AVRI DORIA: Kristina.

>>KRISTINA ROSETTE: I do want -- I do have some further questions along the lines of what Chuck was asking, but I just want to clarify that if the algorithm comes up with -- I call it a match, does that automatically kill the application, what's the effect of that? That would effectually kill the application except that there would be a -- some sort of an appeals process and Dan has something else to see.

>>DAN HALLORAN: That sounds like something that has to be in the details of that objection. There is still tons of work to be done so that might say give a rise to a presumption (inaudible).

>>KRISTINA ROSETTE: All right, I see, okay.

With regard to the objection process, the external objection, can you have multiple parties objecting to the same string? Do you envision that? In other words, they all decide -- either scenario, either you have everybody who is opposed to it deciding to gather together because as it turn it is out the fee is a quarter million dollars to oppose and they need to pool their cash or in the alternative you have a situation where there's more than one potential objector but the grounds that they would object on, above and beyond confusingly similar, are sufficiently different that they don't want to join them.

>>KURT PRITZ: So it seems that when you object, you don't have to make your whole case and so it seems unavoidable that one person could object and then combine with others to put together a case to put together all the grounds for an objection. There is an ability for multiple parties to object if that's what they want to do. I don't think if they can make that distinction in the implementation.

>>KRISTINA ROSETTE: Obviously, the flip side of that is that you could have a situation where the application is just serially objected to with no end in sight.

>>KURT PRITZ: There's a closing date for objections that occurs at the end of the initial evaluation period.

>>AVRI DORIA: On the list at the moment, in the queue so far, make sure I haven't missed anyone, I have Jeff, Marilyn, Mawaki, Mike and Ray. Did I miss anyone that wants to be on the queue on this particular slide? No, okay.

>>JEFF NEUMAN: I guess mine is pretty quick. Supposedly in response to Steve but it took a while to get back, I just want to know what the recommendation was. I think there was a lot of people here pointing out a line of questions, what if this happens, what if that happens. A lot of us have an interest in getting it this process underway, so it would be helpful if you would provide a recommendation. So, Steve, was your recommendation with your comment that everyone should be charged a fee and it should only be done afterwards or that ICANN hires some trademark attorneys whose sole job is to look for confusingly similar before an objection process? I didn't understand. I understand your question but I didn't understand what your recommendation was.

>>STEVE METALITZ: Should I respond?

>>AVRI DORIA: Yes, since he asked you a direct question, please.

>>STEVE METALITZ: If the idea is there will be two bites at the apple here, then maybe there should be two bites at the apple tell on some of the other criteria and trademark would be one of them. I don't think it would be that much more difficult necessarily to create the algorithm for bullet number two on this slide and create the algorithm for some of the confusingly similar to a trademark situation. There would still be a formal objection process but as there is here, if this method is deemed appropriate here, maybe it is appropriate for that.

>>JEFF NEUMAN: I thought it was a matter of scope. If you are talking about how much trademarks are there in the world, trademarks, common law marks, it is a lot different to do the analysis of confusingly similar for trademarks than it is for the -- even if we have 50 or 100 strings or even 1,000. It is a lot easier to do that than to look at every possible trademark that's out there.

>>STEVE METALITZ: Again the goal here is not to catch everything that might be caught in a formal objection process. It is an initial screen, as I see it. The initial screen, perhaps, could be done on a trademark.

>>AVRI DORIA: Okay. Marilyn?

>>MARILYN CADE: My point is related to the issue that I just want to raise the question of whether we want to be practical and pragmatic or naive, innocent and sometimes ignorant in the processes we put forward? And so here's my point. If we want to be practical and pragmatic, there has to be a mechanism by which those who sold trademark rights in multiple countries and defend those rights are able to prevent their name from being proposed by someone else as a string. If there isn't and I am just being practical and pragmatic here, if there isn't, we are going to really bollix this application process up.

>>BRUCE TONKIN: Does it matter? It is our recommendation.

>>MARILYN CADE: That's what I am saying. I am not sure it belongs here as a topic.

>>BRUCE TONKIN: It is a recommendation.

>>MARILYN CADE: But we are talking about an appeals process or mounting a challenge and I thought we were trying to address that somewhere else.

>>KURT PRITZ: Here, very specifically, we are addressing confusingly similar.

>>MARILYN CADE: Right. That's why I don't think the Coca-Cola thing -- I think we have addressed the Coca-Cola thing elsewhere.

>>JEFF NEUMAN: Now I am confused. Where did we address it? There is a working group that's addressing protection of rights of others.

>>BRUCE TONKIN: There is a recommendation on that.

>>AVRI DORIA: It will be a separate process recommendation, I believe, also in the document. Here it is talking specifically about a confusingly similar issue. The guess the point was brought up between strings and the extension of the notion of confusingly similar to other entities in the world was essentially what was brought up. But this was specifically for confusingly similar string-to-string, and there will be other discussions on -- but I understand the point you're making.

Jon, I have added your name to the list and I have Mawaki.

>>MAWAKI CHANGO: Thanks. But my point is not on these slides. Can I go ahead?

>>AVRI DORIA: I would actually like to keep it on this slide? And perhaps before we move on to other slides, I will come back to you.

>>MAWAKI CHANGO: Let me just mention this. It is about application fees, so I don't know if it is a slide earlier or...

>>AVRI DORIA: Okay, thanks. I will keep you on the list. Mike?

>>MIKE RODENBAUGH: I will wait for the discussion on the infringing of legal rights of others. I thought we got into it a little bit with fees. I have an issue with that.

>>AVRI DORIA: We should have jumped ahead a little. Okay. Ray?

>>RAY FASSETT: Thank you. Just a clarifying question. It appears to me that an interested party will have standing by simply paying the fee to object. Is that what we're --

>>KURT PRITZ: In this case, yes.

>>MIKE RODENBAUGH: Is it fair to ask VeriSign to pay a fee to object for COM? If someone applies for dot Yahoo and it is not me, is that fair to force me to pay a fee that's five figures? I don't think so.

>>KURT PRITZ: I think that's a valid point. If there is a staff or independent evaluation as a threshold test to catch, you know, the obvious cases and how far obvious gets into gray and how we finally implement the process, then the fee would be paid on (inaudible) cases which is would probably be more appropriate. That's a good comment.

>>AVRI DORIA: I have Jon and then Jeff and Michael Palage.

>>JON BING: Just a modest observation. If we are looking at the confusingly similar strings, and you are looking at the example of the string representing a domain name or a proposed domain name, an example of the string representing a trademark with respect to ICANN staff taking initiative or not, there is, of course, this marginal difference that the domain names are related to contractual obligations of ICANN. It may be argued that flowing from this contractual obligation they should look after the interest of the contracting parties and, therefore, it would be very natural to require them to defend or act on behalf of their contractual parties while this formally -- but only formally. It is not so with other strings.

>>AVRI DORIA: I had Jeff.

>>JEFF NEUMAN: I think to answer Mike, I think what you would do and this may be a controversial suggestion is you have both parties put money into an escrow and the loser -- or the winner gets it back.

So in other words, you just -- you charge -- if there's a dispute filed, you make the applicant pay, you make the challenger pay. And then however it comes out, the winner gets the money back.

>>MICHAEL PALAGE: And just to follow-up on that, Mike, that's one of the thing dot Asia is doing now with their premium name processes. I think the pioneering program that we've discussed where the applicant will have to put up a substantial fee, and if, in fact, the prevailing party does prevail, their costs will be reimbursed or the application -- the challenge fee will be reimbursed from that application.

So I think that is tying in with what Jeff said, and it just shows, again, one of the innovations that dot Asia is looking at in their launch.

>>AVRI DORIA: Okay. That was the end of my queue for this particular slide.

>>KURT PRITZ: Sadly, there's more to go on string contention.

[Laughter]

>>KURT PRITZ: So this slide outlines a process, the string contention process, so it's not in the form of a flow. But it sort of -- the last bullet defines what that flow might be.

So first we recognize that, you know, strings can be generic words or they can represent existing institutions or communities. And that distinction becomes important later on.

So the second bullet goes to the -- goes to a point that was made earlier that parties will be afforded or will be encouraged to settle the contention issue during the evaluation process. But if they do not and the contention process or contention resolution process must be initiated, it's essentially a three-step process.

One is that the parties might elect to enter into either an arbitration or a mediation session in order to resolve their dispute. Then if they elect not to do that, and in that case certainly both -- like I said, this isn't a logic diagram, but both parties must elect to do that.

Second, if one of the strings represents a community or established institution, then we could have the sort of comparative evaluation or beauty contest that's been discussed in the past. So an independent panel would take the merits of the various applications and award -- award the applicant best suited to operate in the TLD, balancing, you know, representation of a community or representativeness of a community or technical competence or economic or other value to the domain name space.

So in that case, either -- either applicant or one of multiple applicants may elect to enter into that process, and then the comparative evaluation would occur.

But absent a result there, or if the parties don't elect to enter into arbitration or enter this comparative evaluation, then an auction would be conducted.

>>AVRI DORIA: Chuck.

>>CHUCK GOMES: Kurt, on the second subbullet up there up at the end, you mentioned some things that I don't think we talked about with regard to comparative evaluation, and it just could be my memory, but I thought the comparative evaluation that we talked about in this slide involved community -- comparison of community support, not comparison of economic benefit and things like that.

Am I incorrect on that?

>>KURT PRITZ: So, yeah, that's an excellent point. And we had a lot of discussion about that.

So there's a scenario that an applicant represents -- saying this carefully, in the right way -- a very small community or has a very tenuous tie to that community that may or may not be -- you know, they may or may not be a valid representative of that community.

And that application might be competing with an application that would have great impact or benefit to the DNS community, either monetarily, economically, or by providing some service.

And so in the balancing, I don't think we want to have a process that says if one applicant purports to represent a community and -- that that applicant would automatically win the comparative evaluation, but there ought to be some balancing.

>>CHUCK GOMES: Isn't it reasonable to expect that if the one applicant was going to provide this great support to the community that they should be able to get the community's support?

>>KURT PRITZ: Well, it might be the DNS community, it might be providing some medical service worldwide or some other charitable benefit that's not a tied to a community.

>>CHUCK GOMES: One more follow-up to that. If we go down that path, it seems like almost we have to set up some objective criteria for those additional things in advance; otherwise, it's going to be a very subjective process.

>>BRUCE TONKIN: The intent here, just to get the context of the discussions Chuck was talking about, is that was really a very specific clause that we're talking about. In the general sense, I believe we're saying that the parties meet together and sort it out, or there's an auction process.

But then we had a very specific carve-out which I think was similar to one of the other recommendations about some sort of established institutions in that area.

So the idea was this was sort of the clause that related to geographic strings, as an example, or strings that had some meaning to a community like dot bank or the equivalent. Whereas it's sounding like staff is going a bit further than what we had intended there.

Because if you talked about a dot medical, or I'm not quite sure what your examples are, but if it was a generic string, it was what was meant by an auction, it was my memory of the discussions we had.

>>AVRI DORIA: Anyone else want to be on the queue? Philip.

>>PHILIP SHEPPARD: Thank you.

Chuck -- Chuck.

Kurt, I can where you are going with that, and I have some sympathy for that direction.

My main concern, really, is one of perhaps you also need to introduce some sort of uniqueness test.

It may be that for the small community who happens to have unluckily hit a round where someone else went in with the same name, for them it's really the only word that's going to work.

But for the other one, there could have been a whole range of things that might have worked. And all they have to do is agree to change the name. And they may be allowed to do so. And that would strike me as an unfairness if you are awarding it on an economic test at that point.

So I think you need to think through how that would work in order to avoid that sort of unfairness.

But I can see where you are going with that so I have some sympathy.

>>AVRI DORIA: Did you have an answer?

>>KURT PRITZ: No.

>>EDMON CHUNG: It's Edmon Chung. Related to that question is, Kurt, you mentioned that I want to get a clarification on who decides whether we go into the comparison -- you know, comparison sort of valuation. You mentioned at the end of the presentation just now that both parties or all the parties need to agree before we get into the comparison.

So the situation where Philip just mentioned, of course if I am a commercial, large organization, economically in a better position, I would never agree to go into a comparison evaluation, comparative evaluation.

So I guess that's an area that may need some --

>>KURT PRITZ: Yeah, maybe I didn't make that clear on why a flowchart should be here.

In the case of arbitration, both or all parties have to agree, or two or more parties have to agree.

In the case of comparative evaluation, one party can decide that a comparative evaluation should be undertaken, and that would be sufficient.

>>EDMON CHUNG: So any one particular party can ask for a comparative?

>>KURT PRITZ: Correct. And then -- And then it would go through that.

>>EDMON CHUNG: Okay.

>>KURT PRITZ: Well, one of -- The applicant that elects to undertake the comparative evaluation would have to represent a community or established institution.

>>AVRI DORIA: Steve.

>>STEVEN METALITZ: Yes, Steve Metalitz.

I just had a question of whether what you just went through, Kurt, is that reflected in this staff discussion points document? Because I wasn't able to find some of what you were talking about about evaluating non- -- criteria other than community support or opposition.

>>DAN HALLORAN: Indicating long document.

[Laughter]

>>KURT PRITZ: Let the record show.

>>STEVEN METALITZ: It's not in prose. It's just a graph.

>>AVRI DORIA: I must admit, sometimes following that is a trifle tricky.

Any more comments on this slide before Kurt is allowed to move on?

>>KURT PRITZ: If you could turn to recommendation 3, it's fairly long to read but it goes to protecting the existing legal rights of others under generally accepted internationally recognized laws.

So what is important, we think, is using precedent and processes that exist and international standards that exist for protection of the rights of others.

And also, developing a process that recognizes famous and well-known trademarks and IGO names.

>>MARILYN CADE: Are we going to take questions as we go through or do you want to go through this entire page?

>>KURT PRITZ: I am going to just briefly -- the other two bullets are -- This sort of speaks for itself.

The universal declaration of human rights, reading that, it may be asserted as a defense to a claim of infringement or -- or otherwise possibly a claim to infringement. And those claims would be made through the objection process.

>>MARILYN CADE: So when you take a queue, can I be on it?

>>AVRI DORIA: Yes, Marilyn. Anyone -- Yes, go ahead.

>>MARILYN CADE: This was what I was thinking about when we were -- when we brought up the issue of Coca-Cola that I thought we had tried to address this. But I just want to raise the question of what we're envisioning about charging for -- and I'm not suggesting that ICANN does not need to recover its cost. However, in an environment where people are not interested, they have a famous and well-known brand and they run a business, and their goal is not to become a registry. Encouraging them to run a registry might distract them from being a tier one or a bank or a whatever.

But if somebody else comes along, and I will use ATTT, as an example, three T's, it's a common infringement of a famous and well-known brand, by no means is AT&T interested in having somebody else confuse their millions of commercial customers or governments.

So are we envisioning, just to pick on them as an example, are we envisioning that they would need to pay a fee or that they would be able to, under this, object and strike the -- you know. I just need to -- and I don't think they are alone in that. There's lots of -- we could spell Koka-Kola with all K's, just speculating on another one.

But how do we envision the fee process working here?

>>KURT PRITZ: Well, I think that -- you know, and every time I say "I think," pretend I'm saying something else -- that applicants are spending a lot of money to make an application to get a TLD, and that the application process and request for proposals would be clear about recognized principles of law, infringement of trademark. And that someone who attempted to launch ATTT for the purpose of gaining phone customers would lose the objection and lose -- you know, and lose a lot more money than the objector.

And so would be -- The theory is that they would be dissuaded from an attempt to, you know, gain a TLD that -- gain a TLD that can be used for infringement purposes.

And also that AT&T is out protecting its trademark, spending money and protecting its trademark every day.

You know, I worked at Disney and we sent letters out all the time and expended considerable funds identifying trademark violations and those who did them.

So....

>>MARILYN CADE: So just a follow-up comment to that. I'm just saying all this means, that people need to understand, certainly protecting a famous well-known brand, you do build into your budget a certain amount of money to do that. I think potentially it -- There are any number of people who will spend any amount of money to gain the benefit of the financial value of a famous brand.

So I think we may hear more about this from that community if they don't feel comfortable about the process that exists to protect -- to keep them from getting caught up in this.

>>KURT PRITZ: I think that -- So we recognize that and discuss that quite a bit. And so then we discuss the alternatives to a fee-based system or an objective-based system.

And we think those -- first of all, those that are interested will do the best job of protecting trademarks and not a third-party panel hired by ICANN.

And we also -- we also want to discourage vexatious or shell complaints by those who would do it if it was free.

So I understand exactly what you are saying. And, you know, the -- It's glib to say the Internet is an area where companies have to spend more and more to protect their marks, but balanced against the alternatives that we consider, this seemed to be the best, if not good.

>>AVRI DORIA: Jeff.

>>JEFF NEUMAN: I kind of wanted to echo what Kurt said. Marilyn, you have to make the assumption that someone is going to go forward, someone is going to put an entire proposal together, someone is going to put a complete technical proposal together with all it entails, that it has to pass through every other element of the evaluation in order to get to this stage. You know, that costs a lot of money. And I don't know what business in the world would actually do that just to mess with a famous and well-known brand.

Because that's a lot of money to just have some fun. And very few entities actually can do that.

>>MARILYN CADE: Can I --

>>JEFF NEUMAN: So that's one. Number two --

>>MARILYN CADE: Jeff, just a minute. I want to thank you for that and I feel really reassured.

>>JEFF NEUMAN: I'm sure you will be there to help AT&T when it gets applied for. In fact, that's my next application.

Kurt, let me put in my expression of interest

[Laughter]

>>JEFF NEUMAN: So the other point is again -- I'll stick by the point that yes, companies do need to spend some money to protect intellectual property, and again I would put forth the proposal that if there is a good faith objection, that both parties put in the money, it gets put into escrow and the winner gets to get it back.

>>AVRI DORIA: That's the recommendation you made earlier.

>>JEFF NEUMAN: Right.

>>AVRI DORIA: Kristina, I'm not sure if you had your hand up at some point.

>>KRISTINA ROSETTE: Famous and well-known marks? You betcha.
The first question is how do you anticipate this is going to be defined? Who is going to define it? And second, will that be an eligibility requirement for participating in the challenge process or will it be part of the adjudication.

>> Reference implementation. Right, Bruce?

>>KURT PRITZ: Did your second question go to standing?

>>KRISTINA ROSETTE: To a certain extent, yes. Were you going to make it a requirement of standing or are you going to make it just as long as you pay your part of the process that part of the decision will be, question number one, do you own a well-known mark, and then go from there?

>>KURT PRITZ: So we have as a standing requirement that the rights holder has standing to object. So the party that's harmed can object, and not anybody.

>>KRISTINA ROSETTE: Right, no. I realize that. But I guess I'm asking a broader question of whether, as a threshold standing requirement, the party that wants to object has to prove that they own a famous and well-known mark. Do they have to prove that in addition to paying their fee before they even go forward?

>>KURT PRITZ: No. I think --

>>KRISTINA ROSETTE: It will be part --

>>KURT PRITZ: I'm not sure, but I think they need to allege that.

>>KRISTINA ROSETTE: Okay.

>>KURT PRITZ: But the dispute resolution process would determine that.

>>KRISTINA ROSETTE: And I guess the other question is, this sounds like this would be something that ICANN would want WIPO to handle. Is there any (inaudible) to speak to who the likely dispute resolution provider is?

>>KURT PRITZ: Yeah, well I don't want to put the word WIPO up there without conferring with anybody from there, but I see a process like that, you know. The UDRP process occurs after the fact; right? After a name is registered, and this process is before the name is registered.

So it can't be the same process, but there are discussions that have been around a similar process.

>>KRISTINA ROSETTE: Following up on that, is it anticipated that it will be the dispute resolution provider that will be required or given the opportunity to identify what would be considered a famous and well-known mark? In other words where, to whom? Or is that going to be something that will be set out?

>>KURT PRITZ: Set out?

>>KRISTINA ROSETTE: Are we anticipating that we are going to try to identify what a famous and well-known mark is and to whom? Or do we anticipate that that will be solely within the purview of the provider?

>>KURT PRITZ: So I'm not the best one to answer that. I don't think we would have a list beforehand of famous and well-known marks.

>>AVRI DORIA: I have a list of people now. Ray, Jeff and Mike, and Bruce. Was somebody actually wanting to respond to the question? That was Jeff and Mike and Bruce; right?

>>JEFF NEUMAN: I'm just kind of curious as to why -- I didn't know we had to distinguish what is famous and well-known. Is that just words up there? Because I thought it was basically anyone who was going to allege infringement, whether it was a famous and well-known mark officially as they define it.

I would think our company, we're NeuStar, I would like to think we are famous and well-known, but probably not under their definition. But it would be something that if someone wanted to dog NeuStar, it would be something surely we would want to file an objection against.

>>KURT PRITZ: I don't know if I am going to put this the right way but I think we are trying to distinguish someone finding a jurisdiction in which they can register any name or a common name and allege trademark violation based on a registration in some jurisdiction that allows that sort of registration.

>>JEFF NEUMAN: I think the problem is the notion of famous and well-known has been litigated for years in every single jurisdiction and there's not one and I don't think there ever will be one kind of agreement as to what is a famous and well-known mark.

>>MICHAEL PALAGE: And Kurt, just to follow-up on what Jeff is saying, I chaired working group B which is famous and well-known marks, and the reason we came up with the sunrise concept available to all trademarks is we recognized that there was no definitive list, global list of what is famous and well-known; okay?

So I agree with Jeff here. By putting had a -- By -- I think staff's intention here was to prevent against the gaming that occurred in the dot EU roll out with the Benelux marks. I appreciate what you are trying to do but that wording, I would submit, creates more problems because what's the list, who is on the list? And as Jeff says, when you go to a trademark owner and tell them their mark is not famous, then that has its own consequences.

To me, I think a much better approach to this -- right? And this is the beauty of the UDRP -- is the UDRP allows someone to say does that person have a legitimate fair use? Does that person have an interest? And this is actually something in the first session that we talked about today, even with regard to dilution.

The U.S. dilution bill recognizes that there are certain fair uses that need to be protected.

So I think this wording, again, should be -- I agree with Jeff. It should talk about the ability for someone with trademark rights to challenge. However, the ability for that person to come back and say, "I'm using this in a fair use sense," should be a defense.

So just to highlight 15 seconds. I just went to the U.S. PTO trademark database, and this morning I talked about a dot union application. There's 20 trademarks for dot union; okay?

But if there was a union org that wanted to come forward to propose a dot union TLD, they should be able to use as a defense, if one of those trademark owners was to challenge, that the use of the mark -- the term "union" was in its commonly intended or, what people refer to, the generic term.

>>AVRI DORIA: I have a list and I want to get back to it that had Chuck, Ray, Bruce.
Chuck.

>>CHUCK GOMES: Two questions, Kurt. If the complaint fees are going to be cost based, is it correct to assume, then, because I think there are going to be multiple complaint processes, that the fees for using different complaint processes might be different? And what I'm getting at there is, and I'm the wrong person to be making this assumption but I'll make it anyway, that in the case of really well-known marks, whether there's a list or not, the -- it seems like the process would be nearly not as expensive resolving a complaint like that as it would be in some of the other complaint processes that we have.

Is that a fair assumption?

>>KURT PRITZ: Yeah, I think it is.

We haven't done -- We haven't costed out these processes yet.

>>CHUCK GOMES: Yeah, I understand.

>>KURT PRITZ: So as soon as you get to some quantum of difference between processes, I would think it's reasonable to charge a fee.

>>CHUCK GOMES: Thanks.

Now, the second question I have, and I think we talked about this at one time in the new gTLD community but I don't think we spent much time on it, and that is once a complaint is filed and the complainant wins, does that eliminate any future challenges for that same name or can it be opened up again? Obviously if their rights went away, that would change it.

But what's the thinking in that regard? Because that's kind of a longer term issue, but one I think we need to consider.

>>KURT PRITZ: Well, I'm not sure. I'm not sure I understood. Because my answer wants to be that objections can be filed during the initial evaluation period and then at the close of that period --

>>CHUCK GOMES: I'm talking about a subsequent round. So let's get real specific.

Let's say that ATT was -- somebody applied for that TLD, and AT&T challenged it and won. And so next round somebody does it again.

Does AT&T then have to go back and go to the expense again of challenging it again or -- And again, I don't think we spent much time on this issue. I think it's an important question for us to answer, though.

>>MARILYN CADE: I don't mean to jump the queue but we did address that in the controversial names thing.

With you thinking about the similar -- a similar approach?

>>CHUCK GOMES: I wasn't relating it to that. That may -- It may be fine to do that. I was not thinking in that term.

>>PHILIP SHEPPARD: I thought we had addressed that, and we envisaged a list would build. We didn't actually talk about how long that list would exist.

>>AVRI DORIA: We did talk about it at one point but I don't think we ever actually finished that conversation because we had one notion, if I remember correctly, that, yes, once it was disputed, it went on -- I mean, in that dispute, not the controversial names, it went on a list that would no longer be available, not even to the person who initiated the dispute.

>>PHILIP SHEPPARD: And of course that --

>>AVRI DORIA: But I don't know how far -- I have to go back and check how far we actually took that, because I don't think we have it in the recommendations.

>>PHILIP SHEPPARD: But also, that discussion, of course, took place in the absence of a possible many thousands of dollars' objection fee.

>>AVRI DORIA: We were not talking about fees at that time.

>>PHILIP SHEPPARD: So the idea of the same person being hit in every round is clearly something we need to avoid.

>>AVRI DORIA: I have Ray on the list and then Bruce.

>>KURT PRITZ: If I could just address that for a second.

The environment changes; right?

So AT&T could go out of business.

[Laughter]

>>KURT PRITZ: Or I think there's uses of a string that would be an infringement and uses of a string that would not be an infringement.

The Disney family photo album, you know, might not be an infringement of Disney's rights. But if they were to -- If they were to use the site to advertise vacations, then it would.

>>AVRI DORIA: Ray.

>>RAY FASSETT: Yeah, Kurt, I think you just hit on the point that I was going to raise, which is alleged infringement.

If someone files for dot ATTT and they are not going to use it in any way for telecommunications industry, or aren't proposing as such, I think that creates a greater burden on whoever thinks that their mark is being infringed to show that.

Does that make sense? Is that what you are trying to get to here? Alleged infringement, that the burden is placed on the party that's objecting to make a beyond-reasonable-doubt case before there is even use of the TLD that there is an infringement?

>>KURT PRITZ: I don't think beyond a reasonable doubt is the right standard, but I think infringement has different elements besides just the use of the name.

There's one other comment I want to make that -- So the second bullet, I think, is intended to say that a process, a UDRP-like process, would provide for objections to alleged infringement of well-known marks, but it would not, you know, create a list of well-known marks.

It really goes to, you know, there's shell marks or registrations in other jurisdictions that might not be afforded protection, but that this procedure would be to allow protection of marks that should be protected.

I shouldn't open my mouth.

>>AVRI DORIA: Okay. I have Bruce and Ken and then afterwards a couple of people have asked me already.

So there's a coffee break scheduled, and so when we finish discussing this slide, we'll break and come back.

But to go back to discussing this slide, Bruce.

>>BRUCE TONKIN: Thanks, Avri.

I guess it partly comes back to the wording we currently have for recommendation 3 itself, and I think that wording probably needs to be improved a little bit.

But I think if we come back to the way UDRP is structured, you basically have to show not only that you have standing in the sense that you might be a trademark holder, just giving an example, but also that the party that's holding that string doesn't have a legitimate right to that.

And I think the recommendation 3 at the moment is trying to sort of say, well, there are a number of rights. Someone may well have a trademark, which is one form of right. But there's other rights, which is where some of the freedom of expression stuff came in.

So I think in some ways, it's almost competing rise that need to be dealt with and that's part of why there's a dispute resolution process as opposed to an absolute yes or no, which is a bit different to the confusing string issue. Because the confusing string issue is saying, well, here's two strings, there's dot kom and dot com which is basically saying these are confusingly similar so we are not going to allow a dot kom. Whereas in recommendation 3 we are really talking about say one party has put forward a string, one objects to that and they have standing to object to that, but they also have to show that the other party doesn't have a legitimate right to that as well. Because that other party might have some rights on that string, too.

So I think that's kind of why it is very much a dispute process. So I would be a little bit carefully about being specific about this relating to famous and well-known marks. I think that's getting ourselves into trouble. I think it is better to make it more general, which is the way it is currently worded in the recommendation. Those who have legal rights recognized internationally, there is a dispute resolution process to resolve that dispute.

>>AVRI DORIA: Thank you.

>> KEN STUBBS: First of all, part my ignorance, the reason I say that is Glen offered me a book that's beginning to assume the characteristics of the size of the U.S. budget with respect to this process.

The first question relates to a comment that Michael made about the use of the words "famous well-known marks." Is there anything wrong at this point in time with just getting rid of the actual verbiage there so as to eliminate this perceptive problem that could show up in the future?

The second question relates to a comment that was made about the fact that if someone was to challenge this and the name was -- and the string was removed, that no one would be allowed to use it in the future. That's something I'm having trouble understanding and that is -- let's use Google, for instance.

If somebody proposed Google, Google prevails. If Google decides five years down the road they want to use it, it sounds to me like they don't even have the right to even apply for it.

The third question applies to this whole process, and pardon my ignorance here. Once we have a list, why would ICANN even consider accepting an application for a string that's on the list and have we arrived at some sort of a preclearance where someone can propose a string to ICANN in confidence to determine whether or not they should go out and spend all the money that it would take to put something like this together, God forbid? And ICANN would say, I'm sorry, don't waste your time.

>>MARILYN CADE: it is not transparent.

>> KEN STUBBS: Why not? We should have the possibility of going to a committee. It is a business decision. If ICANN says we don't think you should do it and here's the reason why, if you want to go ahead and do it, you're spending an inordinate amount of money but at least you have some sort of a preclearance procedure.

It seems to me there should be a process, assuming you have confidence in ICANN's staff's ability, you don't have to avail yourself to that process. It is not incumbent on someone else to do it. It is just food for thought.

>>AVRI DORIA: On two other things before -- on the one about the -- if challenged it goes on and never to be granted list, that was discussed but at no point did it ever make the recommendations, as far as I know.

>>BRUCE TONKIN: Let me just comment on that, Avri. I would separate a challenge because two strings are confusingly similar versus a challenge around legal rights because I think they are different things. Again, coming back to my dot COM, dot KOM, if a independent panel decides they are confusingly similar and they are not allowed, that's why it would go on that kind of disputed list as opposed to, say, someone going for Google and Google goes against that, that's really just the outcome of that dispute process. It is not intended as some sort of absolute list. So different contexts.

>>AVRI DORIA: And then on the third proposal, I would be really surprised if ICANN wanted to offer such a "we recommend you not apply for this because" service. That would shock me. Did you have any other comments?

Okay. So I think we're finished, at least for the moment, on recommendation three and we'll -- yeah, right. And we'll take a 15-minute coffee break and then come back. I assume you have more slides.

>>KURT PRITZ: We have seven more slides.

>>AVRI DORIA: This is bringing out a whole bunch of the issues, and I think this is great. (Break).

>>AVRI DORIA: Okay. We're now back with Kurt presenting the -- working through the staff implementation. People want to have private conversations, they can continue outside, please.

So we are going to -- this meeting continues until 6:00. So another two hours. I am going to try to break it at fairly close to 6:00 because there is a whole bunch of things going on this evening and council members should have received an e-mail about cocktails with the board working group on governance and then there's a dinner tonight. I will give that explicitly at the end.

So definitely going to try to break pretty close to right on time. So, Kurt, I think I have babbled on long enough for the room to be yours.

>>KURT PRITZ: Thank you. Next, I've coupled recommendations 4, 5 and 19, not necessarily because they're related but because they all fit on one slide and they're relatively straightforward.

With regard to recommendation four, which states that strings should not cause any technical instability in the DNS, staff has developed this -- these questions that are actually fleshed out a little bit more in the document for determining whether there will be a chance of technical instability.

And those -- the prongs of those test are that the applicant meets the criteria published in the technical requirements that the string will not result in user confusion and the string would not result in unexpected application responses or other Internet responses or violate any RFCs.

So we think that's essentially a fairly straightforward test and we'll consult is S sac and other technical experts to ensure that the steps of the test or both necessary and complete -- necessary and sufficient. With regard to the string being a reserved word, our discussions have just revolved around whether there should be a process within the new gTLD process for determining if a string should be released for allocation at any time. So I don't think -- I'm happy to discuss that here. I don't have a point of view on it necessarily, although there might be some good examples. But that's something for consideration.

And then, finally, when you read this a number of times, you take something that's relatively straightforward and start seeing ambiguity in it. So staff takes the statement that -- in recommendation 19, that registries must use ICANN-accredited registrars as meaning -- as is existing registries must use only ICANN-accredited registrars but, also, we don't see in the recommendations this time a carve-out for what are sTLDs now where sTLDs can have criteria and then have a credit, I guess is the right word, a limited number of selected registrars for their registry based on their community requirements and their screening requirements. So as of right now, we don't see that special case in this recommendation document.

>>EDWARD VILTZ: Kurt, why not?

>>KURT PRITZ: We just don't read it anywhere and we were writing a process around that such as the sTLDs have now but we didn't see it was provided for.

>>AVRI DORIA: I will take a queue. I have got Jeff. I have got Alan. I've got John. Who else do I have? Okay. So Jeff.

>>JEFF NEUMAN: Okay, thanks. I guess, this may be obvious or not obvious, but it doesn't say in there that the registry can't propose itself to be an ICANN-accredited registrar, is that correct? In other words, in your proposal the registry could say, If selected, I intend to become an ICANN-accredited registrar. It doesn't say but I want to make sure it points out there. It may be more relevant to the proposed contract form.

>>KURT PRITZ: Right now -- gosh, I'm going to display ignorance in an area where I'm supposed to be proficient, but right now registry agreements say they shouldn't own an ICANN-accredited registrar.

>> More than 15%.

>>KURT PRITZ: Yeah, more than 15%. So I'm not sure that -- I don't see the authority to change that in this policy development. So our presumption is that it would remain the same.

>>AVRI DORIA: Certainly not something that's been part of this process. So it hasn't been part of this PDP process to change that.

>>BRUCE TONKIN: I guess the way I would describe it, to answer Jeff's question, this is what's in the policy and then there is also what's in the existing contract, like five-day add-grace periods are in existing contracts but are not part of this policy. So separate topics.

>> JEFF NEUMAN: To the extent we are actually going to discuss at some point the base contract, I think it is very relevant.

>> ALAN GREENBERG: There was discussion in the last teleconference, maybe before, about small targeted registries, there may not be registrars who are truly interested in it because of the small market and that maybe we had to make different provisions for them. It didn't end up in the recommendations, but I know there was some discussion about it.

>>CHUCK GOMES: It's an issue -- I'm sorry for jumping in, but it is directly in response to that. Obviously the registries brought this up a long time ago. And, in fact, we're continuing to discuss the issue with registrars and so something could be forthcoming later that would come to the whole group. But it is not that far along.

>>AVRI DORIA: I have got Jon on the group. Did you want to get into the queue. So, Jon.

>>JON NEVETT: Kurt, quick question. When you mentioned sTLDs that have the right to have community-sponsored registrars, which ones are you referring to? Is it all of them or just the two you have seen so far being coop and museum?

>>KURT PRITZ: I think just coop and museum can restrict the number of registrars. Other sTLDs have different criteria that registrars have to meet in order to become -- right.

>>JON NEVETT: They are all ICANN-accredited registrars?

>>KURT PRITZ: Yes.

>>AVRI DORIA: Grab a microphone.

>> MARCUS FAURE: If I may remind you --

>>AVRI DORIA: Give your name, please.

>> MARCUS FAURE: CORE is both an ICANN-accredited registrar and also a registry operator for several TLDs, has applied for several TLDs in the past and is intending to do so in the future so that creates a bit of a strange situation here.

The specialty of CORE is that CORE does not actually register any domains itself but only through its members.

>>AVRI DORIA: Give your name.

>> MARCUS FAURE: Sorry, I'm Marcus Faure from CORE.

>>MARILYN CADE: Marcus, can I ask you to clarify? Would you explain please that -- CORE doesn't operate gTLD registries, does it?

>> MARCUS FAURE: I'm sorry? Could you say again?

>>MARILYN CADE: When you said that CORE operates gTLD registries, is that what you said?

>> MARCUS FAURE: No, CORE is the registry operator for several sTLDs at the moment.

>>MARILYN CADE: Which are gTLDs.

>> MARCUS FAURE: Dot museum, for example.

>>AVRI DORIA: I will put you after Dan and then you can grab a microphone.

>>KEN STUBBS: Technically, when you indicate that CORE is a registry operator, CORE is not the signatory to the registry operator contract but, rather, a technical back-end provider for registry services; is it not? To the best of my knowledge, the signatories are (inaudible) and MuseDoma in terms of being the actual registry operator?

>>DAN HALLORAN: In those cases, those are the sponsors and CORE is the registry operator. They are not the contract party with the ICANN, but they are referred to as the registry operator in the contract. It varies per contract.

>> MARCUS FAURE: That is correct. As I said, CORE has also replied as a sponsor and will do so in the future.

>>DAN HALLORAN: I just want to give more context around this, like where you have the bullet "registries must use ICANN-accredited registrars," that's a straight quote from recommendation 19. And we sort of -- you can spin around and around, we don't know exactly what that meant. Instead of just saying, tell us what that means, we gave you a guess of what we think it means just to get your impression of it. If it is meant to be something else, tell us.

>>AVRI DORIA: To me it looks like one that we really need to talk about a little and decide whether that second subbullet, the last subbullet on the page, is something that this committee agrees to, agrees with that for all new -- if I understand what you're saying, for all new gTLDs, all new registrars could register and use against them and there would be no deciding we only use some of these registrars but not others. Is that what you're asking?

>>DAN HALLORAN: That's what I'd guess we would have to put in the base contract right now. In other words, the base contract would be like -- more like biz info, org, less like aero, museum.

>>AVRI DORIA: So I will take a queue on that specific issue. I have got Mike P. Do I have anyone --

>>MARILYN CADE: Before you take the queue, would you note, I think also a typo in the right. Community-sponsored registries to select certain registrars.

>>AVRI DORIA: Mike.

Did anyone else want to be in the queue? Mike, go ahead.

>>MICHAEL PALAGE: I will wait until Dan is done. So, Dan, if, in fact, the provision was -- the base contract says one must use all ICANN-accredited registries in the base contract -- in the registrars, in the earlier slide there was a statement that if a registry operator proposed in their application certain business elements where they would be able to deviate from the baseline, would that be something that would be able to be deviated as dot museum is currently able to do based on the situations with its dynamics?

>>DAN HALLORAN: I think what we've got set up here we will put up the base contract but we haven't been -- we, ICANN staff, haven't been free of the obligation to sit down with each registry and go through the negotiation process. They can propose whatever they want, and we will post for comment. But this would be the baseline.

>>AVRI DORIA: Jon. Anyone else?

>>JON NEVETT: I want to point out one factor that probably is obvious but these are all new gTLDs so they're all small when they start. So it would be hard to have a baseline rule that says small gTLDs could do X, Y and Z at the beginning. There may be something on the back end that if, you know -- and that's why we are talking with the registries, we being the registrars, are talking to the registries about some kind of vehicle to address the coop and the museum-type situations where very few registrars are interested in selling those names.

>>AVRI DORIA: Yeah, because I guess there was nothing in that that said all the registrars had to be willing to sell it, it is just that all could.

>>MICHAEL PALAGE: And I think that's actually part of the problem, for the smaller registries as Chuck could say, they generally don't which then puts them in a rather awkward position to serve the interest of their community which is one of the reasons why museum has articulated the ability to potentially go direct in limited circumstances, which as I said, Dan, would be a modification from the baseline contract.

>>AVRI DORIA: Any other comments on anything on this slide?

>>DAN HALLORAN: One last thing on this. Somebody raised the point about ownership of registries owning registrars and vice versa. That wasn't addressed that we saw in this recommendation 19, at least I didn't see you guys giving a recommendation on that and there is no current policy on that. That version is in some contract, it is not in other contracts. So just to leave that on the table, that you guys haven't raised that as far as I know and we didn't give any feedback on that.

>>CHUCK GOMES: It is in your outline for a base contract.

>>DAN HALLORAN: Right. Again, that's -- we're just laying out -- okay. It is not a policy is what I'm saying.

>>AVRI DORIA: Any other issues on this slide? Okay. Six?

>>KURT PRITZ: So relating to --

>>CHUCK GOMES: (inaudible).

>>AVRI DORIA: This is easy.

>>KURT PRITZ: Relating to morality or public order. I think it is most important that a lot of research needs to be done here into existing roles and precedent to guide the dispute resolution procedure. So, for example, you know, one example is the Paris Convention for the protection of industrial property which I think is from 1899 which has the expression relating to morality or public order that trademarks wouldn't be granted to those entities raising those issues. And so we would look to any precedent set and decisions made under that treaty to provide some standards for independent dispute resolution panel to adjudicate disputes or, you know, objections.

There is some, if you read the document -- there is some differences in the language between the GAC principles and the GNSO recommendation and so a resolution of that would be good. I don't know that they're that different, but we want to ensure that at the end of the day the implementation matches the requirements of both the council and the GAC.

And then, again, staff in reading, you know, GAC principle 2.1 in Article 29 recognized that requirements of morality and public order tend to limit speech or may limit speech in some ways.

So there's -- as far as a mechanism for triggering an objection and hearing the objection, starting the dispute resolution process is well settled. But the dispute resolution process itself, its standards and who populates the panel is going to require a lot of work.

>>AVRI DORIA: I had one question, clarification. This is basically triggered by the same sort of someone comes, pays the money and disputes it?

>>KURT PRITZ: Yes.

>>AVRI DORIA: Okay. I will take a queue. I have Chuck. Anyone else? I have got Robin. Kristina. Anyone else? Okay, Chuck, start.

>>CHUCK GOMES: Kurt, I am concerned about the wording on the second main bullet where -- I certainly appreciate the need for additional discussion, no problem with that. But it says "it is advised so staff implementation matches SO and AC advice." My first come there is I suspect that might not be possible. The SO recommendation probably in this case will not match the GAC recommendation. Hopefully we've accommodated some concerns of theirs when we're done, and we're not done yet.

But I don't see how you can necessarily expect to match the two. Same thing with geographic names. We're not -- I doubt that we're going to do what's in the GAC principles. Hopefully we will provide some mechanism, though, to deal with their concerns. So I hope that there isn't an expectation that staff has to match the SO and the AC because I don't think that's going to be possible.

>>KURT PRITZ: Yeah, I think that's better put. Thanks.

>>AVRI DORIA: Okay, Robin.

>>ROBIN GROSS: Thanks. I just want to agree with Chuck's statement there on bullet point number 2. And I also wanted to raise a couple other issues on the screen here. The first issue is that I don't see any recognition up here about freedom of expression rights. All I see are limitations on freedom of expression rights, so that's a bit troubling for those of us who have been trying to get some recognition of free expression rights in this policy. All we see here are limitations to that, that's my first concern.

My second concern is with trying to use the Paris Convention to decide what words can be used in a top-level domain. If you want to talk about trademark rights, then it is appropriate to bring in the Paris Convention. If we're talking about whether or not a person can use a word at all, it's completely irrelevant. It is completely inappropriate. The Paris Convention deals again with trademarks and decides whether or not somebody has an exclusive right to prevent somebody else from using a word, not whether or not the word can be used at all. And so we've got a mismatch and it is a serious mismatch. Thank you.

>>KURT PRITZ: So we're casting about or looking for existing standards that identify rules relating to morality or public order and looking for precedent or past decisions to guide the actions of a panel. And certainly, to me, I didn't know this convention of 1899 was not at my fingertips but it was brought to my attention as one place where there might be some precedent or existing rules.

Another place ICANN might look is to a single jurisdiction where there's a body of laws or a body of rules and some precedent and some decisions that a panel can follow. I don't know, I'm not an expert in this either but we talking about certain jurisdictions that might apply but certainly we are looking to an existing set of rules rather than developing our own code.

>>ROBIN GROSS: I appreciate that. Again, my comment is that you're looking at the wrong set of rules. You are looking at trademark rules. You are not looking at whether or not people are allowed to use words, period. So it is an appropriate measure for guiding us in the morality issue.

>>LIZ WILLIAMS: Can I just jump many and give a hand here? The slide, if you look at page 10 of the staff discussion points document, which is the plastic-covered document, you will also see reference to the Covenant on International Civil and Political Rights and the Universal Declaration of Human Rights.

I have been thinking seriously since our conference call on the 7th of June about how to make progress on this because it is a very, very difficult thing to do, and I just put this out for the group to consider. The recommendation is attempting to provide a framework for what we anticipate the kind of applications we will get and we have to deal with them. There have to be some measures and some tests that a set of evaluators can use to assess whether someone objects to an application on the basis of this recommendation.

So the recommendation may well need some tightening of drafting, and I think that happened post the 7th of June conference call and it also, happened, Robin, when you submitted your constituency impact statement. There was additional language that is now included in the updated draft of the report.

The three tests include the Paris Convention, the Universal Declaration of Human Rights and the Covenant on International and Civil and Political Rights which addresses in part the freedom of expression things that you have raised.

There is a couple of things I want the community to confirm that they wanted to do. First of all, the recommendation as it stands in the report still has the old language about freedom of speech. And I would like to confirm whether the committee actually wants to amend the drafting of that recommendation to say "freedom of expression" which is a broader term, not so U.S.-centric, which the "freedom of speech" term is.

The other thing we need to do if we've got the drafting right that recognizes the GAC principles that recognizes peoples' concern about morality and public order which we are going to have to deal with no matter how irksome or difficult we might find it, then the challenge is to set up an appropriate set of tests for how an application could be evaluated and what kind of instructions we could give to an evaluator.

So whilst, Robin, you might not be happy with that as it stands on that slide, the staff discussion work document sets out two other things that were addressed in the Christine Farley and Jacqueline Lipton's papers and Miriam Sapiro has given us on that as well.

First of all, a couple of things, does the committee want to change the draft into "freedom of expression," number one? Number two, if that satisfies those who are dissatisfied with the as-you-see drafting of the recommendation, then we can probably do some more work on the tests that one would apply assessing the application which is the subject of an objection and that we need to provide instructions for applicants and evaluators to address legitimate objections that are going to come in on the basis of applications that sit within this recommendation.

>>ROBIN GROSS: I think the answer is, yes, we need to change it to freedom of expression as opposed to free speech because that is the terminology that's used in the international covenants. So I think that's really important. And, again, I understand we are looking for tests because tests are helpful, but the problem is the Paris Convention is not an appropriate test for this for this issue. It belongs to trademark issues. It does not belong with whether or not people are allowed to use words at all. We have got one of our three tests is not proper.

>>LIZ WILLIAMS: Except that it refers specifically to the use of morality and public order, the effects of morality and public order.

>>ROBIN GROSS: The right of somebody to prevent someone else from using a word.

>>AVRI DORIA: Let me go back through the queue and come back to you.

I had Kristina, Liz, Jeff, Chuck.

>>KRISTINA ROSETTE: I am happy to surrender my position so we can flesh this out.

>>MIKE RODENBAUGH: Mine is real quick on that specific point.

>>AVRI DORIA: I had Jeff, Chuck and then Mike.

Philip.

>>JEFF NEUMAN: I am with Kristina, I want to flesh this out a little bit more. I am fine fleshing it out.

>>CHUCK GOMES: Me, too. What I really wanted to ask was, you know -- I think Robin's question is a good one. We cite the Paris Convention as an example and if it doesn't relate, then we should remove it as an example, but I think some other people may be able to share light on that.

>>AVRI DORIA: Bruce, did you want to shed light on this?

>>BRUCE TONKIN: I was going to respond to Liz's freedom on expression versus speech. If I can respond on this particular one, I was saying to Kurt a better one is to use the U.N. Declaration of Human Rights because that is more in the context of what we are talking about here. Under either one, in the Paris Convention, it is not something about two parties arguing about a string. It is basically in the Paris Convention saying that you cannot trademark something if it is -- if it violates morale or public order. It is just an example of where that term has been used in another context. It is not that you would use the Paris Convention itself to make the decision. It is two different things.

So the idea here in the way we have talked about is that we're going -- the idea is there's an appropriate dispute body that takes into account what's at an international level accepted under morality and public order. That's the objective. And it is just, let's say, Paris Convention as an example of where there is such a restriction. You are not applying the Paris Convention. The wording of the slide has created the confusion. The wording of our recommendation, I think, is a lot clearer.

The comment I was going to make from freedom of speech versus expression, freedom of speech, Robin, is what's in the U.N. Declaration of Human Rights. That's the word that's used.

>>ROBIN GROSS: It is in the preamble, but it is not in Article 19 which is the freedom of expression article.

>>BRUCE TONKIN: Okay, freedom of opinion and expression, I was trying to search for that string. I think, ICANN domain names comes out of that speech. Speech to me is assuming verbal -- maybe I am interpreting it a bit differently. Personally, I would think expression is a more general term that relates better to the context of ICANN.

>>AVRI DORIA: Mike?

>>MIKE RODENBAUGH: I agree with Bruce's point. We are not looking to the Paris Convention for a test necessarily but, as the slide says, for precedent and guidance as to how that test has been applied and might be applicable to this situation. I think it is very hard to argue that trademark precedence aren't relevant here.

When you create a new TLD, you're generally creating a trademark. You are creating a registry business --

>>BRUCE TONKIN: You are creating an identifier is the word you are looking for.

>>MIKE RODENBAUGH: You are creating a source identifier which is the definition of a trademark.

>>AVRI DORIA: Mike, we have been very careful to divide those two.

>>MICHAEL PALAGE: But, Mike the, PTO has explicitly said in their guidelines the TLD cannot serve as a source identifier. The United States Patent and Trademark Office.

>>PHILIP SHEPPARD: Why?

>>MICHAEL PALAGE: While we're on that topic, Philip, one might also want to point to the fact that ICANN's general counsel has stated that a TLD should not serve as a source identifier and there was a communication to the GAC.

We are not limiting it to one country but ICANN's previous general counsel has made the statement on the record and, therefore, includes precedent that you might want to account for.

>>AVRI DORIA: Did I catch everyone here? Jeff, you had your hand up? Philip, you had your hand up at one point and I have Steve. Philip, you had your hand before Jeff and then Steve.

>>PHILIP SHEPPARD: If you go back to the reasons the Paris Convention was first introduced, it was the most appropriate hook going back 100 years or so which first floated these concepts upon which international law and national law has been built and, in particular, applied to reasons why registrational authorities might refuse trademarks.

The reasoning process they went through would serve as a useful model, anybody who is an adjudicator or panelist or whatever in a dispute resolution process to look at similar processes that have flown from the Paris Convention. That was the only reason it was there as the most relevant international model that there is around this issue.

And it specifically is grounds for refusal. It is nothing to do with disputes between parties.

>>AVRI DORIA: Yeah, I think one of the things, I think Bruce had pointed out, that in the number 6 as written for the gTLD committee, it had been examples of such. Whereas here it really looks like it's -- that is not an example. That is --

>>BRUCE TONKIN: The proceedings. Yeah, I think it's the slide that's wrong.

>>AVRI DORIA: I think that may be part of the issue. I'm not sure it's all of the issue, but it may be certainly part of it, that that is just an example of one type.

Next I had Jeff.

>>JEFF NEUMAN: I'll pass because I think it was just covered.

>>AVRI DORIA: Steve.

>>STEVEN METALITZ: I'll pass.

>>KRISTINA ROSETTE: Want to go to me?

>>AVRI DORIA: Sure. I was just going to say the list is empty.

Kristina.

>>KRISTINA ROSETTE: I just had two questions. The first for Kurt and the second one for Chuck.

With regard to the identification of a single jurisdiction with an established body of law, is the thinking that there may be some jurisdiction out there that has done this extensively enough that is a general model, not necessarily a rule but as a model that it could be something that would help the panel in deciding how to --

>>KURT PRITZ: That's right.

>>KRISTINA ROSETTE: All right. And I am wondering also whether this would be a good time to have Chuck walk through the dispute process for controversial names that the reserved names working group came up with? We punted on that this morning.

>>AVRI DORIA: We certainly can.

It would be interesting to look at the sort of differences between the two.

I don't know. Chuck?

>>CHUCK GOMES: Okay, I can do that. I won't connect up so that you can see the slides, but let me scroll back up here.

There were -- I think there are several recommendations we made for those. How many in here were not in the session this morning?

So there are a few. So first of all, we did not recommend that there be a controversial name reserved category, reserved name category for controversial names.

We said there should be a list of disputed names created, so as controversial names are challenged and the challenges are successful, that a list should be developed, not to create a new reserved names list, but, rather, so that future applicants can see what had gone on for their application in making decisions.

The reserved names working group recommended that a process, controversial names dispute resolution process, and so we were making this recommendation for this group right here to consider, that in the event that that process was initiated -- in other words, a challenge was initiated -- that the label would be placed on hold status to allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications would reenter the processing queue. The period of time for the dispute should be finite and should be relegated to the controversial names dispute resolution process.

The external dispute process should be defined to be objective, neutral and transparent, which I think is what staff is trying to do in what they are trying to do there to have something that's as measurable as possible.

The outcome of any dispute should not result in the development of new categories of reserved names. I already said that one.

The new gTLD controversial names dispute resolution panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process -- our report talks about that. I won't go into those here.

The next recommendation in that regard is that -- and this is where a little bit of discussion occurred this morning, although we didn't really have time for detailed discussion. What the reserved names working group suggested was only allowing advisory committees or Supporting Organizations to file disputes with regard to controversial names. And since they don't have processes for that, those would have to be developed by those organizations.

And it's important to note that we did not suggest that those organizations needed to have a consensus position to object, but there should be evidence of support and they should be able to detail those who were in support of and those opposed so that everything was open and transparent.

And then the last recommendation that the -- with regard to top-level domains that reserved names working group suggestions is that in any dispute resolution process, controversial names should be considered last in the order of things.

>>AVRI DORIA: I would like to -- I have Jon on the list. I would like to make a comment sort of what came up this morning.

I think one of the issues that Dan, I think it was Dan had brought up, was I think the word was operationalizing? I just wanted to make sure I could say it and I was sure I would trip over it. Operationalizing the A.C. and the S.O.

One of the things that I think the group was looking at was some way of creating a filter that didn't need to a priori establish who had standing, and basically assuming that advisory committees and Supporting Organizations had standing vis-a-vis ICANN.

So that was -- And what we basically have at the moment is the recommendation that recommends some sort of filtering mechanism and a notion that says standing is not the issue. It's do you have the money.

And so I think that's sort of where we're left between the two recommendations, as it were. The recommendation from the controversial names and the recommendation from the staff.

I had Jon on the list. Anyone else want to be on the queue?

>>JON BING: Thank you.

I just thought we should mention or at least speak out loud that of course there is the alternative of the European Convention of Human Rights which has an explicit freedom of expression article in it, and which I cannot remember that we discussed this as an alternative. And I hesitate to mention it also as an alternative both because of the wording of Article 2, paragraph 2 -- Article 10, paragraph 2, and also because it is regional. But mention is made of national jurisdictions, and certainly a regional jurisdiction is slightly wider than a national jurisdiction.

And I especially wanted to draw your attention to if you are looking for a body of case law, this is where you will find it because there's a rich case law associated with Article 10 in contrast to the U.N. charter, which do not really have any case law, as I said, to it.

But that is as far as my comment goes. It's not meant as a recommendation, but only drawing your attention to this possibility.

>>AVRI DORIA: Can I ask a clarifying question on that?

So this is sort of in that first bullet of the body of law that one could look at. This is a recommendation of a possible dispute resolution mechanisms? I'm not --

>>JON BING: No, it's only a recommendation of a standard, a standard for drawing the line between the freedom of expression and what should not be permitted as the burden goes in a democratic society.

But I'm not -- again, I want to be clear that I'm not offering this as an alternative. I just thought you should have it mentioned as it is such an obvious legal instrument.

>>AVRI DORIA: Thanks, okay. I have Bruce in the queue. Anyone else in the queue at this point?

Okay, Bruce.

>>BRUCE TONKIN: I had a question for the staff, and I was trying to understand what the status is.

Is the perception of staff that there isn't an existing body that can be used? So what you are looking at doing is creating a body and then defining what the rules for that body would be? In other words, UDRP effectively didn't exist. We created UDRP, and then there was a selection of UDRP providers, is one way of going. Or another way of going is saying there is this international court that exists and we will use that court.

So I just want to understand what work has been done around those dimensions.

>>KURT PRITZ: Right. So our position right now is that there's not a body that exists that would be able to address these disputes, but I think there's more research to be done. But we don't know of one now.

>>BRUCE TONKIN: So then maybe Dan could comment on this as well. So is the perception -- I just want to understand what the next steps are, because somehow we have to converge on a solution here.

So is the next steps from the staff point of view that you start looking at creating an equivalent of a UDRP set of rules? And that that would go out for public comment, and then you would appoint providers to those rules? I just want to understand.

Given the current recommendation as it stands, what's the end result from the staff perspective?

>>DAN HALLORAN: I think that's right. What you outlined, Bruce, sounds right.

We need to -- obviously there is a lot of work that still needs to be done around this.

We need to -- like we have in the UDRP, there's standards, there's defenses, there's procedures. We don't have any of that here. All we have is the gist of a recommendation from the council, and we have the gist of one way we might implement it.

We have another good example or another good suggestion from Jon just now.

So there's still a lot of work to do, starting with research on it.

>>BRUCE TONKIN: So the issue for, I guess, the GNSO at this stage, since it's been in the GNSO context, I think this is probably one of the most controversial recommendations that we have had, and I think people are feeling, and you get that sense around the room, this slide doesn't address it, it's not a blame about the work, but I'm just trying to understand. I think people would feel they need more information before they are happy approving this recommendation, the recommendation on the floor.

So I guess the -- and Avri is chairing this, but I assume the committee needs a bit more information as to it might come back to the context of (inaudible) a bit more informing about how this could be implemented that people feel comfortable that it's practical before they could sign off on it as opposed to necessarily having the final outcome.

But I think we need to somehow get to that additional amount of information that people have enough confidence that they can proceed.

>>AVRI DORIA: Yeah, I think the step that we're at now is partially that, but partially if this recommendation was sort of seen as compatible with the recommendation that we've got, or basically the implementation is that, and I get the impression that we're not at a point yet where we have --

>>BRUCE TONKIN: (inaudible).

>>AVRI DORIA: -- or an implementation that is sufficiently corresponding to the recommendation.

>>DAN HALLORAN: It's a little bit of a chicken and egg thing. You tell us what the rule is and we'll come up with a way to implement it.

And we've got just basically one steps of a rule: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally-accepted internationally recognized principles of law," period. We are taking a stab -- and there are some examples which are kind of confusing in their own right. And then we are taking a stab at it.

So if you are saying -- Maybe you can say this is close enough, take a stab at writing up a draft procedure and rules, maybe we can go back and do that.

>>AVRI DORIA: The other thing we have got coming into it, though, is the reserved names discussion on controversial names.

>>DAN HALLORAN: Right. So we don't even know yet -- basically we didn't know yet, are we supposed to be writing something like this? Are we supposed to be writing something starting with the address supporting organization telling us --

>>BRUCE TONKIN: I don't think that's worth discussion. I was a little bit concerned, I suppose, because that's something (inaudible) operationalized an advisory committee. And the GAC didn't want to be in that role, and I don't believe we want to be in that role either, (inaudible) other advisory committees. So I think the perception is there's some sort of dispute that's raised, that there's a dispute panel that resolves that dispute and then there's some rules that that dispute panel would use in making a determination essentially.

>>AVRI DORIA: Yeah and I think that's generally agreed to. It's just the specifics of each of those three that's still the open question.

>>BRUCE TONKIN: So then the extra work that could be done, I suppose -- I think you're right, I think if you can sort of draft the UDRP-type process, because it applies to a number of things in the policy at the moment, that's got a bit more flesh on it, I think that's the next step from my perspective that will (inaudible). Because this is almost too high level. We are arguing about a slide at the moment, and I don't think it's a useful discussion.

I think we have a recommendation, and that was the discussion at the last council meeting. And now we're trying to get some more information on that. And I think essentially we don't have enough information.

>>AVRI DORIA: Philip.

>>PHILIP SHEPPARD: I would just like to support exactly what (inaudible) was just saying in terms of process and to point out -- and, Liz, you can tell me if this is still the case -- but there are a good few pages of precedent that -- and guidance that we had included in earlier iterations of the report on precisely this issue. And it's in the main report, still.

Have a look there in terms of helping with interpretation, Dan, because it's useful stuff and proves that it's not an impossible task. It's just a question of finding the right panel.

>>LIZ WILLIAMS: To be precise, in part A, I did spend a lot of time, and thank you to Kristina and to Philip for providing background information after our Los Angeles meeting that actually fleshed out this information. It begins on page about 32 of part A, and it sets out, for example, the trips agreement, what takes place in the UK, in U.S.A., Jordan, Egypt and Australia. And it does set out the narrative around this particular recommendation. And it also sets out the materials from the various examiners' manuals that are used again to focus on the utility of the test for what the recommendation is actually trying to set out to do. And that's quite a lot of detail from page 32 to page 37 in the actual report.

So Bruce is right. This is only the slide that is being dealt with, and the detail is in the report.

>>KURT PRITZ: So, Avri?

>>AVRI DORIA: Yes.

>>KURT PRITZ: What I am hearing is the council -- given this recommendation, the council is looking for some feedback that this recommendation is implementable, given some research, and some direction, some basic direct as to what that implementation would take.

>>BRUCE TONKIN: So you've done that in this report. You've got a draft base contract, for example, so that gives people a bit of a feel of what the contract would look like. And (inaudible) draft resolution process --

>> Speak into the microphone.

>>BRUCE TONKIN: I can't get any closer. That field is obviously coned.

Oh, that's much louder.

I think if we can do the equivalent of what you have done for the draft contract with sort of a draft dispute process, that sort of sets out some of the rules and picks up on this legal research, that's kind of the next step. So it might be a two- or three-page draft process without trying to dot every I and T but enough so is that people can see that it works.

>>AVRI DORIA: Steve.

>>STEVEN METALITZ: Yeah, this is Steve Metalitz. I'm not sure if it was one of the three points that Bruce raised, but this whole issue about who has standing to bring such a challenge I think is an important one to be addressed in this draft. And obviously that includes this idea of maybe the GAC would have standing to do it.

I would just point out that if you look at some of these other precedents and other systems that we're talking about, in some cases it's not really a challenge procedure, you know, these in the Patent and Trademark Office in the United States, and I think this would be true in other countries as well, although I could be corrected.

The agency itself conducts this investigation. Somebody comes in, files a trademark registration and the agency itself could say, oh, no, we're not going to allow a person to gain any exclusive rights in that name as an identifier of product or service because it is contrary to public order or morality. And we apply a criteria.

But in other words, it doesn't have to be someone bringing the challenge in order to do it.

Now, whether that's appropriate -- I'm not suggesting that's necessarily an appropriate method to use here. I'm just pointing out that some of the precedents we're looking at are -- provide for self-generated challenges, if you will. And if we don't do it that way, we have to figure out who does have standing.

>>BRUCE TONKIN: And Steve, it's right in that context then that there's an appeal process after that?

>>STEVEN METALITZ: Yes, there is an appeal process. At least, again, in the U.S. there is.

>>PHILIP SHEPPARD: Just to follow-up on that, also, if we have the problem again of substantial fees for this type of objection, then it's almost rendering null and void this entire process, so it has to be objection based. So we may need to consider a different fee structure for this type of thing as opposed to a third-party right being invoked.

But again, your point about trying to prevent frivolous objection is also valid.

>>MIRIAM SAPIRO: As ICANN has begun research into these questions, one of them is when you are talking about the context of a PTO office or interpreting, for example, the European Convention on Human Rights or the universal declaration or any of the other relevant treaties, the context is of a government or government agency interpreting the standard, either in an international context or, in a PTO setting, within its own jurisdiction.

So there's little doubt, to pick on the U.S., the U.S. PTO has the authority to make that kind of determination within the jurisdiction of the United States.

So an interesting question becomes, and we will see whether there are any precedents for this, as to whether a nongovernmental authority has made a determination as to public morality or public order, whether or not there are precedents that exist for doing that.

If so, it would obviously be quite helpful.

>>KURT PRITZ: I have a couple points.

So I don't quite understand where we are, then, on the issue of who has standing to object. And I have some material on this later, so if we want to discuss that, we can preserve it for then or have it now.

And I also had a question about the timing of the objection and saving the objections to controversial names for last. Because not having an objection process in parallel would, you know, make the process longer.

So I would want to understand the thinking behind this.

>>CHUCK GOMES: Do you want to respond to that last question, Avri?

>>AVRI DORIA: Yes, although I do think we should save the standing question until we get to your slide. But on the timing question.

>>CHUCK GOMES: Why don't you go ahead and respond to that. You were on the controversial --

>>AVRI DORIA: I thought you were going to respond to that one. Basically, the notion had been that the rest of the bases for dispute were far more cut and dried and that one should deal with the sort of -- not easier, but basically more easily defined criteria first and that if a name didn't make it through that far, one didn't need to even resort to the morality and such issues.

And that was really the reason of this issue being a much harder one, a much more controversial one to resolve. One should resolve all the more clearly defined issues first.

>>CHUCK GOMES: And I'm not going to try to answer your other questions, Kurt, but I think it's incumbent on the new gTLD committee, in as short order as possible, to take action on the recommendations by the pro and reserved name working group so that staff, then, as they are continuing to work on the implementation has more specific direction.

We haven't had time to do that yet, but what I'm suggesting is we need to do that as soon as we can so that they have a little more detailed information in terms of what direction we are going.

Obviously -- and we are going to talk more about standing, but there are some decisions there that we need to make as a committee in terms of which direction we are going. And this is really the first time the committee has looked at, together, the two working group recommendations.

And so now the next thing we need to do is to take action on those. Some of them are harder than others, but we need to do that as quickly as possible, and I think that will be very important for the staff.

And by the way, I am very impressed with the way staff is staying up with this and the thought that's gone into what they've done.

>>KURT PRITZ: Avri?

>>AVRI DORIA: Yeah. And that was one thing that I was hoping we would get to some of that today, but it's pretty obvious that were not going to get very far in that process today so we will have to figure out how to or when to schedule the next part of that discussion.

Yes.

>>KURT PRITZ: So regarding -- To test my understanding, regarding timing, we would take objections all during the same time period and might adjudicate those objections serially if, in the development of our processes, we found that resolving this particular objection is a lot more costly and a lot more time consuming.

So that's a balancing we could do as we develop the process. If we were able to develop a clear -- a clear process, a very clear process with good standards, then -- yeah, okay.

>>DAN HALLORAN: And just to make sure that's clear, too that we wouldn't let people file all the other objections, and then if they fail on those objections, then file an offensive objection.

>>AVRI DORIA: That's a good point.

Okay. Please.

>>KURT PRITZ: Recommendation 12, and then we point out in paragraphs 4.1 and 4.2 of the document that clear, predictable, transparent dispute resolution processes have to be developed.

We saw that there was no proposed objection for geographical place names in the recommendations, but it has been identified by the working group.

And so we have identified it as a potential objection in our list, anticipating ongoing work.

So there's some discussion about that.

And then we get into the standing discussion right here that the working group proposed that objections can be -- and so we read this before today; right? So we inserted the word "solely" there, was our understanding by ICANN advisory committees.

And that different than that, the staff-based procedure is based on principles that standing to object varies on the nature of the objection. And there might be -- you know, we think there might be legal liability or timeliness issues associated in an ICANN committee operational.

And so if I go on to the next slide to flesh this out, these are the objections for -- These are the grounds for objecting to a string.

That an applicant is not the appropriate representative of a community. That a string is confusingly similar to an existing top-level domain, and the registration or proposed string will violate existing rights under international law. The registration of the string will be contrary to accepted legal norms relating to morality or public order. And the string is a geographic identifier.

So those are the five buckets.

And then --

>>BRUCE TONKIN: Hang on. That last one --

>>KURT PRITZ: This last one?

>>BRUCE TONKIN: Yeah.

>>KURT PRITZ: So we have seen some of that in the reserved name working group, but we recognize -- the previous slide said specifically that's not a recommendation yet.

>>BRUCE TONKIN: I think my understanding is that last one is encapsulated in the first one, a geographical identifier is related to a defined community. So that's the (inaudible).

So geographic identifier is currently covered under recommendation -- under the community group. So (inaudible) define that community. So I wouldn't separate it out like that.

>> Microphone, please.

>>BRUCE TONKIN: I'm just pointing out the way the new gTLD committee recommendations cover the geographic category is currently under recommendation number -- find it -- 20.

So recommendation 20 says, "An applicant will be rejected if it is determined based on public comments and otherwise that there is substantial opposition to it from among significant established institutions of the economic sector or cultural or language community to which it is targeted or which it is intended to support."

So that's our current recommendation on that, and that's -- so geographic is not a separate category.

>>AVRI DORIA: Okay. Mike and then....

>>MICHAEL PALAGE: I just want to agree with Bruce. And as the chair of the reserved name working groups on geographic identifiers, that was our intention, that that catch-all would be the mechanism. That it was not a separate criteria or a separate objection point, as Bruce had articulated.

So I agree.

>>KURT PRITZ: I think a point for making it separate -- or maybe not making it separate, but wring it would be -- the dispute would be resolved from a different manner than a TLD representing a cultural community or a language or institution, and that is given the GAC principles, a method for resolving whether a geographic identifier was appropriate is a TLD would be the express consent of the governments involved.

So for example, what happened with dot cat, and getting the permissions of those governments.

So I see a different -- We see a different road to resolving the disputes associated with geographic identifiers than we do with the other communities that are defined in the recommendation.

>>BRUCE TONKIN: But, Kurt, the example you are giving, you are saying it's a country that is objecting? Because that's the established institution for that type.

I just see it as subcategory of your first point.

>>AVRI DORIA: We are going to continue going through.

>>MICHAEL PALAGE: I mean, Kurt, I really do agree with Bruce here. Setting up a separate category -- It was our -- At least within the group that we worked with, it was that catch-all, number 20, that was going to address the concerns of the geographic reserved name working group.

We were not envisioning a separate criteria. We were looking at, as I said, the defined community, and the government, as Bruce said, would be able to articulate that on behalf of its citizens or the -- you know, whether it's a government or official or something of that nature.

So we did not intend a separate test or criteria.

>>KURT PRITZ: Okay.

>>AVRI DORIA: Philip.

>>PHILIP SHEPPARD: Kurt, in your staff discussion notes, you raised, I thought, some very valid questions about the imprecise nature of the wording of our recommendation, despite the fact that (inaudible) 75 of it, on the recommendation 20.

Have you -- Your slide here seems to be more optimistic. Have you thought -- I mean, you know what we're intending. Have you internally thought through that and found some more easier words to interpret? Or is it still an issue?

>>KURT PRITZ: So it's really the topic of another slide, but what we're intending is to preserve the sanctity of the objection-based process.

And so just to ensure that community input or public comment is part of that objection and dispute resolution process and not a separate process for deciding whether or not that string should be delegated or not.

So the dispute resolution provider would take -- would take public comment as part of the -- part of the process for resolving the dispute.

Bruce and I were talking earlier about -- if I capture this right, Bruce -- what I might call a zoning commission or somebody -- some panel you go to where you want to, you know, knock down the top of a mountain to build your -- to build your mansion.

And if there's one person in the room, you know, complaining about it, that that wouldn't get much of a hearing. But if you had many, many people in the room complaining about it, and those commissions or those people that meet regularly develop

standards around, you know, what's a meaningful -- what's a meaningful level of community comment to become a meaningful part of the debate.

>>PHILIP SHEPPARD: I just want to know if you are expecting more from us in terms of clarification of what we mean or you would like precise wording?

>>AVRI DORIA: If your response is specifically to this.

>>DAN HALLORAN: First, thanks to Bruce and Michael for clarifying and reminding us about the geographic identifier. I understand that and remember that and want to make sure Kurt is okay with basically taking five and rolling it into one.

And then second, on Philip's question, I think the first bullet point there is sort of an attempt to -- it is not our place to rewrite it but it is how we interpret how that can be boiled down and stated as a precise grounds for objection, the idea you have in Recommendation 20.

>>BRUCE TONKIN: The key thing there in that first point, then, is substantial opposition so if you have progress on how to define that, I agree the recommendation is deliberately general, I guess, because we use things like "significant" and "substantial." When you come to actually build that into a process, that needs to be defined and measured in some way and that is the crux of the issue.

What I was relating to Kurt is other government institutions obviously must have some standard for building approvals and things like that. Just wondering if ICANN has done any more work on that. Kurt?

>>WERNER STAUB: I want to make a comment about the word "express consent" or "express agreement." Actually, the GAC principles, the current draft expression "unless in agreement with relevant national governments."

And it does not say "express." "In agreement with" has many meanings and express consent is one of the possible things that could be a documentation of agreements, but there are other ways.

I think we should avoid overspecifying the method or the form because this could lead to diplomatic incompatibilities of a certain form that would actually perfectly be acceptable as a form of agreement.

>>KURT PRITZ: That's a good point. Bruce, we haven't done much work on setting a standard for that.

>>DAN HALLORAN: What you are asking about would also go into a two or three-page outline of how grounds for objection one -- would be the actual rules, what would be the defenses, what would be the evidence you need to show.

>>BRUCE TONKIN: I think that's the critical thing because we have this in a number parts of ICANN. I don't think we've come to grips with it. It is as simple as you are posting agreement for public comment. We have all these things for public comment, but we don't really define what we do with that public comment. Do you just sort of read it and say that was interesting?

If I talked in Steve's community -- Steve Metalitz's intellectual property community, they have a letter that's signed by a number of people. They would say that's substantial opposition. There is nothing documented about what is and is not substantial. People are saying I want to oppose this, what do I have to do? Do I have to write a letter with signatories? What do I need to do? I think we need to be very clear about that.

>>STEVE METALITZ: Thank you. Steve Metalitz. I think Dan is correct that the top bullet is something of a rewrite of recommendation 20 and which is not necessarily a criticism of it because I'm sure recommendation 20 could be improved. But one thing that struck me there is this phrase "represented by an established institution." I wonder if that's meant literally that this would apply only if there was one and exactly one institution that can be linked to a particular sector or particular community? I would suggest that that's not going -- that's going to be an awfully rare case but it might be quite common that there would be a very small number of institutions.

And if you had opposition from an established institution, which is what Recommendation 20 actually says, that that would be indicative of a string that, perhaps, should not be approved. I guess the question is, is that really meant literally as an established institution or would it accommodate a situation where there are a small number, one or more of them is opposed?

>>KURT PRITZ: Steve, I didn't hear the very last sentence it. Would there be one or more?

>>STEVE METALITZ: One or more established institutions and one or more of them is opposed to the string.

>>CHUCK GOMES: If I can jump in on that one. I think our intent there as a committee was to get some standing from whatever the group is that's complaining. I don't think there was any intent to limit it to one institution.

>>DAN HALLORAN: I want to clarify, too, all that is is a PowerPoint bullet point. It is read slightly differently in the staff notes. It is kind of an evolving thing. We haven't definitively rewritten it, and I think it needs more work.

>>KURT PRITZ: In this bullet, the established institution would be the objector. There could be an objection that the applicant is not -- does not represent the community and the applicant may or may not represent the community but the established institution, the objector, does.

>>AVRI DORIA: Probably should move on to your next slide. You still have on the one and standing, and I think that was a good one to get to.

>>KURT PRITZ: Line out the bottom.

>>AVRI DORIA: Actually, would it be line out or add that there are types of established institutions.

>>KURT PRITZ: Yeah, there are types of established institutions.

>>AVRI DORIA: So established institutions, for example...

>>KURT PRITZ: Right, right.

>>AVRI DORIA: Did you want to talk through it or let everyone read it?

>>KURT PRITZ: I think it stands --

>>AVRI DORIA: Stands without reading. Do we have comments or questions, clarifications on standing?

>>BRUCE TONKIN: So my comment on this -- and I think it might have been asked already when we talked about this, when you have got the "anyone" category, the concept is there some fee paid as well, is there?

>>KURT PRITZ: That's correct.

>>BRUCE TONKIN: "Anyone" effectively equals anyone who has paid?

>>AVRI DORIA: Is there a fee on all of them, though? So it is anyone who pays a fee? It is the established institution who pays the fee?

>>KURT PRITZ: Standing, anyone who pays a fee and is the right-hand column.

>>AVRI DORIA: That would also be governments that paid a fee.

>>KURT PRITZ: Yes.

>>BRUCE TONKIN: I just think morality and public order is probably the most difficult one which probably needs a pretty heavy-weight process around it. I think you would want a reasonably high bar which comes down to what others were saying. Some of these things you almost do in order. If it is a technical problem or it is confusingly similar, it is dealt with with a relatively simple process.

If it gets down to this one, where you get some separate international panel, I would assume there needs to be some investigation to see whatever that word is widely accepted internationally as a problem which would require research. I think you would need a bar and not just one person saying "I don't like that because I feel like it."

>>AVRI DORIA: I think that's why the controversial names subgroup had basically looked for some -- and understanding the objections to having the ACs, basically some way of saying anyone but anyone filtered by some intermediate entity because you didn't want to predefine "standing" because it is impossible to know who's going to object to what. But, yet, to provide some sort of filter to all of that.

Marilyn, you were on the list.

>>MARILYN CADE: I think I am actually just elaborating a little bit on the point Bruce was making because, you know -- and I also think this term "established institution" takes a little examination. So I am going to use the Navajos again as an example, or any indigenous people. When we say "an established institution," are we saying you have an identity? What's the threshold by which we think we have to meet in order to be an established institution? On the other side of that, I am just going to say this concept of any one doesn't seem to be realistic either because you could have a community that has just begun to identify themselves as a group that has identity. They are working together. They have been working together for ten years but have not been able to formalize a relationship, there isn't anybody else who fits in that space and you have one person who objects to -- you know, I do think this is going to take more testing when you -- when we get public commen!

t on this and that's kind of the question I wanted to ask is, how do we envision taking public comment and what would the questions be that we ask around these categories?

>>BRUCE TONKIN: You may, in fact, want "established institution" to apply to number four, which is that it is an established institution that relates -- that has a responsibility for the last three words. So if it was an established institution with responsibility for morality and public order, I know in Australia there is a broadcasting act and there is a body that is responsible for that. They would have standing to raise the objection.

But then they have to pass the international test because there could be a word that's an issue in Australia which you couldn't broadcast in Australia but it is not an international standard. They could have standing to raise the objection but it may not be accepted. I think you are better off with something that says an established institution with responsibility for morality and public order.

Now, government is probably an example of one of those as well. I think anyone is just creating trouble. You are kind of opening it up for anything.

>>WERNER STAUB: Just one point about the payment of the fee. Again, it is a diplomatic problem. I think it is okay for anybody, including public authorities but not national governments. I could not imagine the national governments would accept for purely diplomatic reasons that they would pay a fee to initiate the complaint to private organizations such as ICANN.

So it probably would have to be -- an exception is probably better to document this from the start for national governments, it would not be a fee.

The second question of what national governments -- some of them may not be recognized by other countries, by many countries. But one could introduce a method where the government that recognized a given government could act on its behalf if it actually does the diplomatic recognizing.

>>KURT PRITZ: Three comments. The first is staff's use of established institution quite a bit in our writing really goes to the fact that there's benefit accruing to someone reporting to represent a community, either in the application process or in the objection process. And so our intent is to preclude those who would say we have established this institution last month because we represent this community. So I recognize the problems you're identifying. So the intent is to keep people from -- keep applicants or objectors from games saying the community moniker.

>>MARILYN CADE: I am very sympathetic to this. By the way, I am also sympathetic to the idea -- I worked with Avri and a couple of other folks on the controversial names issue. I am sensitive to the issue of putting ICANN in the middle of this. I am hoping we can find the miracle of expert panels that are effective, efficient and affordable. The reality is there is going to have to be a threshold.

>>KURT PRITZ: Right, an objective threshold, I agree. I wasn't done with my comments, so can I keep the floor?

Bruce, I not be able to capture cogent thinking here, but with regard to bullet number four, we were more concerned with a valid objector who might be precluded by raising the "anyone" bar, either by a government or an organization and so that we actually evolved from a very high bar there in internal staff discussions down to anyone to ensure that objections could be raised.

And then who commented last? Werner. Oh, and so we, too, discussed about governments writing checks and thought that would be very difficult. And someone stood up and said there is plenty of people in governments that can write checks. So I understand --

>>MARILYN CADE: Some government said that?

>>KURT PRITZ: What? No.

[Laughter]

Some of us. I understand that comment about how that might be difficult, and that will have to be considered.

>>AVRI DORIA: I have Dan, then Mike, then Ray, then Robin. Am I missing anyone? No.

>>DAN HALLORAN: I just wanted to agree with Marilyn's point about the issue with established institution because this concept is borrowed from -- at first we were talking about who we were going to give TLDs out to. We said if you were an established institution, we will give you some preference. And now we have borrowed that concept into this objection criteria and standing for objection so that the example that popped into my head is, let's say, AT&T applies for dot blog. And you could have a million bloggers writing in to say we oppose this. But yet there is no established institution for bloggers. That might be substantial opposition we should listen to, but they don't have -- So, anyway, established institution might be a good bar for giving preference who gets the TLD but it might not be so applicable to who could object.

>> MIKE RODENBAUGH: I thought on that issue of established institution, we discussed it in Marina del Rey and I thought we agreed there was a time period that they had to be established and I thought we actually decided five years.

>>DAN HALLORAN: Right.

>>AVRI DORIA: Does that five-year work within the same way you were thinking within the staff?

>>BRUCE TONKIN: Just a comment, Dan, there wasn't a concept established necessarily giving them the right to the TLD. It was in the context of them having grounds to object.

>>DAN HALLORAN: It was? Okay.

>>BRUCE TONKIN: They were used in the same context we are talking about here.

>>AVRI DORIA: Established community that was objecting -- the dot bank example.

>>DAN HALLORAN: You did have to have an established institution to object.

>>KURT PRITZ: Also in string contention, an established institution might gain an edge by representing that community.

>>BRUCE TONKIN: That's a different thing. I am just saying the general concept -- this is the objection process.

>>AVRI DORIA: I will get back to the list. So Ray.

>>RAY FASSETT: I just had a clarifying question, when we say who can object? Is it who can object to a string application? Who can object to the purpose of the applicant's use of the string? And is there a difference?

>>DAN HALLORAN: Can I give one quick response? Whenever that term "purpose" gets thrown out, I think there is a bunch of ways to look at that. There is the purpose the applicant writes down in their application. There is the purpose they might have in mind that might be different than what they put in their application, you don't know. There is the purpose that they decide to change the TLD for two years later when their business model isn't working out.

There is the purpose that a registrant comes along and sneaks in and gets a name and uses that domain for another purpose. "Purpose" is a little bit of a slippery concept to stick into these recommendations.

>>RAY FASSETT: Right. I had -- that's actually where I was going with it. I think when we think about who can object, we need to think about it in a narrow -- in a more narrow scope of to a string, not all potential purposes that could exist within that string.

>>AVRI DORIA: Yeah, I do believe that we have pretty much all the way through been trying to stick to talking about the strings. Though, the issue came up earlier one applies to do one thing with the TLD, but yeah.

I had Robin, Marilyn and then Steve.

>>ROBIN GROSS: Thanks. I think we need to have -- under number four on morality.

>>AVRI DORIA: Into the mike.

>>ROBIN GROSS: On number four in morality and public order, I think we need to have something like much more restrictive in terms of who can object, like a government. Let me give you an example. So if an Egyptian company wanted to register dot gays, an idea that might be illegal in Egypt, they would have a right to object but the Legion of Decency could not object to an American who wants to register a dot gay.

I think we need to have a very, very high bar for objections on morality or public order or we will see the Legion of Decency-type organizations objecting to everything and it will really raise the costs for anyone who wants to register something that could be seen in any way as being immoral or disorderly.

>>AVRI DORIA: Marilyn.

>>MARILYN CADE: I want to go back to the example of five years for just a minute. If we're talking about dot bank or dot finance or dot something security exchange or something of that nature, but if we're talking about dot blog and it was generated, Dan, by your suggestion, dot blog, for instance, is not going to be -- it's going to be a concept that there isn't going to be an established institution and they probably haven't existed for five years, even if they have organized themselves as the white head bloggers in the last year.

So when we talked about that five years, we were talking about it, as I recall, primarily when we were talking about a string that was going to represent an industry where people associate trust or identity with it, such as dot bank.

Are we, today, thinking that we would have the same criteria of established institution if we were thinking about dot talk, dot blog, dot chat?

>>AVRI DORIA: Okay, Steve. Before you start, Steve, I want to thank you. You're the only person who consistently gave their name before you spoke every single time. It's wonderful.

>>STEVE METALITZ: Thank you, sometimes I have to remind myself. Steve Metalitz.

[Laughter]

Thank you. See I got my chorus going.

Just two points. One, quickly on Ray's point, in fact, I think the objection is not just to the string, it is to the string being allocated to this applicant, so it doesn't necessarily mean that the string would be objectionable in every case.

And, then, to the point that Dan raised with the bloggers and Marilyn's comment, it really does get back to a point that, I think, Bruce raised which is to try to give people a realistic expectation of what is expected in a public comment period and what difference their comments will make.

It seems to me there is very little reference in the staff discussion paper to public comment. I know it is in the flowchart and I know it's there at several points, but it is not clear to me what role public comment is expected to play.

I understand the desire to channel objections into a more formal objection process so you know whether there is really an objection or is there a lot of people that are unhappy in a public comment period. There are a lot of people unhappy in a public comment period, sometimes that needs to be taken into account, too, and maybe make a decisive difference. I think we still need to clarify what the role of public comment will be in this whole process.

>>RAY FASSETT: I want to follow on that so we can have an objection process that allows any other category, someone to object to a string or object to the party that is requesting the string but there is not an objection process pertaining to whatever the use of the string might be. Is that pretty accurate?

>>AVRI DORIA: So it was the string or who's applying for it but not getting into exactly how they would use it?

>>BRUCE TONKIN: Can I just comment?

>>AVRI DORIA: Please.

>>BRUCE TONKIN: I think that is right, Ray. I think where it goes to the next step is when you are resolving a dispute resolution. So let's say two parties are trying to get through a dispute. One of those parties might say, well, I am not going to use the string in this way and that's how they've resolved the dispute. That might be part of the dispute resolution, if you'd like, or the outcome of that dispute. You are not actually disputing the purpose. You are disputing the string, if that makes sense.

So if I was dealing, say, with a trademark-type dispute and you say I've got this word and you have a trademark on it and you are a shoe manufacturer, you would undertake that I am not going to use that string in any way that relates to the shoe industry as an example.

>>RAY FASSETT: Without going too deep here, that could be real problematic. I know it is just a hypothetical. But next point then was -- I lost it. Sorry, I lost my point.

>>AVRI DORIA: We will come back to you at some point when you got it.

Any more comments on standing at the moment? I am sure we will be coming back to standing frequently as we try to finish up this.

>>RAY FASSETT: I got it. Is the burden of proof, if you will, is the intention here the burden on the party objecting or the party defending? Or is that an unfair question?

>>BRUCE TONKIN: It is objecting.

>>AVRI DORIA: In this, it is standing of who can object so I believe it is objecting.

>>BRUCE TONKIN: It is a bit of a different question. This is a question about standing. But Ray's saying in terms of proving one of those things, then the onus is on the objector to mount their case, I think.

>>AVRI DORIA: Philip.

>>PHILIP SHEPPARD: That's a very good question because it calls into question the difference between making an objection on whatever ground you want to do and then the nature of the expertise of the panel who is assessing the objection. My presumption had been that you might make an objection of something of argumentation there. But then the party objecting isn't going to be a continual petitioner to the panel.

The panel then, I think, would look at that as the expert panel and then make the judgment not necessarily based solely on that application of objection. Otherwise, you would end up in sort of a type of court case scenario which strikes me as probably not the road you want to go down.

That's a very good point, how would staff consider that.

>>KURT PRITZ: Well, there is some -- there is various forms of dispute resolution that exist now. There is mediation or arbitration or just submission of issues and I'm not sure that it's not more like an arbitration in some regards that the objection raises -- and I'll mangle the terms -- but some sort of prima facie case that if true would be valid grounds for objection and a question to be answered but I think there is many scenarios where additional information would have to be required to flesh out the information so that the dispute resolution provider could make a decision.

And I think those are the rules that have to be ferreted out.

>>KRISTINA ROSETTE: I had a follow-up on a comment that Bruce had made, and then I have a more general question. That is -- and maybe I misunderstood. I had thought in our June 7 council call that when Alan had raised the issue about, well, gee, if the applicant says they want the TLD because they're going to do X, are we going to define them to that? That whole idea was fairly sounding rejected. If that's the case, then I think we need to recognize then that we're creating an inconsistency between saying that on the one hand but then saying if someone challenges your string, you can win the challenge by saying you are not going to use it -- challenges on trademark ground, you can win the challenge by saying you're not going to use it in a way that's confusingly similar.

>>BRUCE TONKIN: (inaudible).

>>KRISTINA ROSETTE: I guess you could do it that way. I want to make sure there is some sort of acknowledgment.

>>DAN HALLORAN: Bruce was saying you could resolve the dispute by bilateral settlement to market it in a certain way.

>>BRUCE TONKIN: If I was the dispute owner, I would want something -- either a contract with me or a contract with ICANN.

>>KRISTINA ROSETTE: Absolutely. I guess the other question -- I don't want to get ahead of ourselves, but I was just wondering generally is it anticipated that all of these dispute processes will be -- that there will be provisions made for traditional review?

>>DAN HALLORAN: We have an appeal process built in, but traditional review is kind of a whole other question.

>>KRISTINA ROSETTE: I am thinking more along the lines, for example, I guess it is for-pay in UDRP, they basically say if you initiate a proceeding in a court of competent jurisdiction within ten days, or whatever it is, of our decision, we will hold the decision until that court renders that decision. I just didn't know whether you had anticipated or even talked about...

>>MARILYN CADE: Let me ask a question about that. Right now the accountability mechanisms that ICANN has bound itself to are three, right? The final one being the independent review process which goes to binding arbitration.

>>DAN HALLORAN: What I understood the question was --

>>MARILYN CADE: I know. But my concern is what court?

>>KRISTINA ROSETTE: Well, I mean, again that is definitely once you decide that you need to start thinking about that, that is one of the questions that you need to answer.

>>DAN HALLORAN: I think just like the UDRP, each of these -- we are going have to write every ground of procedure an UDRP and each one will need to have a section about what happens if someone sues just like the UDRP has and you have to set rules in there. What happens if -- somebody else sues who didn't file the objection during -- what if -- lots of things can happen. It is addressed in the UDRP. We can start with that.

>>MARILYN CADE: To follow that to avoid this idea of the court near me, would you like at the idea of a binding arbitration process to leaving it open to try to determine the court of jurisdiction?

>>DAN HALLORAN: I'm worried we are talking about a lot of different things. Binding arbitration on who?

>>MARILYN CADE: In the application process; right? You are basically applying, in the application process. So isn't that where you are going to have --

>>DAN HALLORAN: So we can bind the -- the applicant can agree he is going to go through arbitration, but we can't necessarily bind somebody on the other side of the world who thinks he has rights on the name and restrict that company or whatever from.... So....

>>MIKE RODENBAUGH: It raises two interesting possibilities, which is essentially anybody can stop any application for years by filing a lawsuit in any country if you accept that judicial review has to be applied.

But if you don't, then are you respecting national laws, which we have as a principle throughout our policy also?

>>DAN HALLORAN: I guess it does get very confusing. There are tough questions. And again we will just start with UDRP which does take into account, people might file a lawsuit. And obviously nothing in the UDRP can overwrite international law.

So if a court order comes in to say -- that says "do X," and it's a court of competent jurisdiction, the registrar does X.

>>MIKE RODENBAUGH: But that court order could take years to obtain or work its way through the system. So if somebody gives you a notice that they have sued, will you put the brakes on until that suit is resolved? Again, that could literally stop every application that anybody doesn't like.

>>KURT PRITZ: That's true, but on the other hand I don't think ICANN would violate the order of a court of competent jurisdiction. So there's rules that can be written about that if somebody sues in a court but there's other remedies for people trying to stop or promote applications where they can have to get court orders, that would have to be obeyed.

>>BRUCE TONKIN: Mike, wouldn't that be a similar situation where you can ask the court to order a stay of execution or the equivalent of that.

>>MIKE RODENBAUGH: An injunction, you mean?

>>BRUCE TONKIN: An injunction, yeah. I would say there's a difference between getting an injunction versus simply saying hey, we are taking to you court.

>>MIKE RODENBAUGH: Sure, but even getting an injunction can literally take years, even in the United States. You can try for a preliminary injunction or a temporary restraining order, but a preliminary injunction will take 90 days typically, also. Temporary restraining orders are extremely difficult to get.

>>AVRI DORIA: I don't want to go too far down this one, but I've got Steve and then -- oh, I couldn't even see.

>>STEVEN METALITZ: Steve Metalitz again.

I think the reason we are getting a little hung up on this is because in the UDRP there are circumstances in which simply filing a lawsuit freezes the situation and prevents the UDRP decision from taking effect. Even if there is no court order, if it's filed in a specified jurisdiction.

The question is, and I don't know if we have an answer, do we want to carry that forward into this process.

Maybe we don't because it may have a much bigger impact in this process than in the UDRP, which is literally about one domain name. This is, obviously, more --

>>BRUCE TONKIN: Run that one by me again, Steve. I didn't hear that.

So you are saying for UDRP, if you have a court case -- just tell me, what further process? You notify the registrar, do you, that there's a court case?

>>STEVEN METALITZ: Yeah, if it's filed in the jurisdiction of the registrant or of the registrar; right?

>>MICHAEL PALAGE: Well, what happens is -- this is Mike Palage. When the trademark owner files the UDRP, they need to consent to being sued.

>>STEVEN METALITZ: Right.

>>MICHAEL PALAGE: In one of either two places which is either where the registrar of record is located or the registrant. Now, part of the problem here is in your proposal here --

>>STEVEN METALITZ: I'm not proposing we carry it forward. I'm just saying that's why we have this problem because it doesn't depend on getting an injunction.

>>AVRI DORIA: Patrick.

>>PATRICK JONES: Patrick Jones. If we are going to use the UDRP as an example, there are some UDRP examples where a court case has been filed during a proceeding, the panel has made note of it and they have gone ahead and rendered a decision.

>>MICHAEL PALAGE: Yeah, but I think what Steve is talking about is actually the challenge afterward. He is not talking about where the parties litigate. I think Steve is talking about after a decision has been rendered, the UDRP issues a decision. The agreed registrant would have ten days to go and file to halt the transfer.

>>PATRICK JONES: That's correct, but the filing of a lawsuit immediately after a UDRP case commences doesn't automatically freeze a case from going forward.

>>MIKE RODENBAUGH: But in this situation, the outcome will be a lot more severe if, you know, two years later, after the TLD is launched, suddenly a court decision comes out and says that it should not have.

Then what do we do?

>>AVRI DORIA: It looks like this is something that will need to be worked out in the suggestion on the processes. Definitely an interesting question.

Were there more slides?

>>KURT PRITZ: Let's see.

[Laughter]

>>AVRI DORIA: Seeing as we've got 25 minutes left.

>>KURT PRITZ: We can go to recommendation 20. But gladly, we have sort of discussed this one.

To reiterate, but then bringing up Steve Metalitz's comment that might be to the contrary, staff sees the public comment as being part of the dispute resolution process and not an avenue where ICANN might be asked to take action on an application because of public comment and not an objection.

Otherwise, I think we've discussed these issues.

>>AVRI DORIA: Yes, Chuck.

>>CHUCK GOMES: What are we going to say is the purpose of public comment? Because at some point that question is going to be asked.

>>DAN HALLORAN: I'd start with where we outlined in that chart that we published all the opportunities for public comment every time we publish -- when we post the applications you can put in comment, when we publish draft reports which are basically recommendations to the board on how to handle the applications, there can be comment there.

So I would start by building up from where -- places where we have envisioned where you have public comment. And it's to inform the evaluators, to inform the board, to -- Kurt, you take over.

>>BRUCE TONKIN: My comment would be, just as a suggestion, if you like, that I think if we use public comment as being the process for informing, if you like, or for information as opposed to a formal objection process, because I think that's what gets us into trouble. And I have seen that happening with the WHOIS task force and so on. Because I think your formal process for objection, if you like, in the GNSO as it stands is the constituencies have a vote, and they can vote things down. And that's, if you like, the formal process for objection.

Whereas the public comment process in our normal policy development is about informing those decision-makers of information they, indeed, to make their decision which doesn't need a hundred signatories because each one of them is a piece of information. But I think that's a general problem at ICANN is we haven't really established what a public comment process is for. And I think we need to be clear about one is to say I am informing you, the technical community, that this string is going to cause these technical problems. That's a piece of information. But they are not the decision-makers. The decision-makers would be sort of the technical panel. Versus the objection process, where we're saying this established institution is objecting. That's a different thing.

>>CHUCK GOMES: You said something important and that's being very clear about it. And both in terms of communicating the process publicly, making sure they understand what role the public comment period is going to play in very explicit terms, and then in the request for public comments, also being very clear about that, that's very important.

Thanks.

>>DENISE MICHEL: I think there's two other -- and this will be good for us to go into more detail and come back to you with some very specific comments for penalties. It will also inform the review that we do after the first round of applications. And anything that ultimately goes to the board for action, you know, before it's inserted in the root and the contract is signed also requires public comment. So it will be part of that process as well.

>>AVRI DORIA: Ray?

>>CHUCK GOMES: And to the extent that we can -- obviously a lot of people think that public comments are just ignored, and part of that is because we haven't done a good job of communicating what their purpose is. So this can go a long ways to help there.

>>AVRI DORIA: I had Ray, one other thing is, often the penalties are read, but no feedback is given.

>>BRUCE TONKIN: And that's why people feel they are ignored.

>>AVRI DORIA: Yeah.

>>RAY FASSETT: And I think also that point, when I look at this, it says an application will be rejected. It doesn't say a string will be rejected. And remember, we just discussed that a string can be rejected because, on its face, for whatever reason, or because of the party that is asking for that string.

This one is saying not a string, but an application. And it is saying that if it's from the community it is intended to support, which is use.

So we're opening up, again, an opportunity where public comments could come in objecting to an application, not so much a string, that is about the use of that string for the intended community.

And then if those public comments fall on deaf ears, then the public comment process is deemed not to be, you know, worthwhile to the....

So I just wanted to make those....

>>AVRI DORIA: A lot of issues.
Any other slides?

>>KURT PRITZ: One second.

>>AVRI DORIA: Yes, Allen.

>>ALAN GREENBERG: Just to follow-up on that last comment, we have been talking about to file a formal objection you have to pay a fee.
If someone says, to use our classic example, "I want to start dot bank," does the banking institutions have to pay a fee to say, "We don't know who this person is"?

>>MARILYN CADE: Yes.
>> Yes.
>> They've got the money, though.

>>AVRI DORIA: Well, the banking example --

>>ALAN GREENBERG: Again, I apologize for the example.
[Laughter]

>>ALAN GREENBERG: Dot library. Libraries are poor.

>>AVRI DORIA: Chuck.

>>CHUCK GOMES: Yes, I would like to make a suggestion. And I know the timing isn't the greatest on this, but I think we do need to change the wording on recommendation 20 to eliminate "based on public comments," because that will be very misleading.

>>LIZ WILLIAMS: Chuck, I have been taking notes as the group has been going through and I have opened a new version of part A of the report. Was it the intention of the group that you want to make amendments to the recommendation now, based on the conversation you have just had or --

>>CHUCK GOMES: Whether it happens now or at some point. Certainly, it would probably be good for us to make a decision now because in any public comments that occur on Monday afternoon, it would probably be helpful if we have dealt with this. Because we don't want to lead people down a path to think that we are going to reject applications based on public comments. So I think it would be good to agree, if we can, to delete that now.

>>AVRI DORIA: So you are suggesting we delete that clause "based on public comments or otherwise"?

>>CHUCK GOMES: Yeah.

>>AVRI DORIA: An application will be rejected if it is determined that there is opposition to it from established institutions or from the community it is intended to support.
I would like to look for comments. I guess this is the committee that's meeting. Is there comments on doing that before our Monday meeting?
What are the issues on it?

>>LIZ WILLIAMS: If I just look out that phrase, just in the actual draft, I wonder if it's also not sensible, then, to think about what the subjective but also adjectives add in that recommendation.
For example, "Substantial," significant."

>>BRUCE TONKIN: (Inaudible).

>>LIZ WILLIAMS: Yep.

>>BRUCE TONKIN: (Inaudible).

>>LIZ WILLIAMS: Bruce, you can't be heard.

>>BRUCE TONKIN: I was just going to say, I think the problem is that recommendation confuses public comments which is a generic ICANN term that applies to everything from the actual process of opposition. So here it's saying an application will be rejected if it is determined that there is substantial opposition to it from established institutions. That's really what it should be worded as.
Public comments is part of all of our processes that we're always using public comments as getting information.
But then coming to your question about substantial opposition is the question I raised earlier. And I guess what we're saying to staff is we need you to do some research as to how other institutions have determined that and have some draft guidelines so that we can work that out.
But certainly the term "substantial" is intended to mean it's not just some -- some, you know -- I feel like it's more that there's some barrier there.

>>DAN HALLORAN: So if you are going to work on 20, and I'm not suggesting you do it now, but I would also just want to remind you on the other notes we have on this one. First of all, it has an "or" in there which make it sound like the blog AT&T issue. It says "institutions or community." And so we need to decide if it's "or" or "and" or --

>>BRUCE TONKIN: It should be from established institutions related to the community it is intended to support, I think is what's meant there. So if I am the banking institution, I can't complain about dot library.

>>PHILIP SHEPPARD: Dan, isn't that shorthand at the moment for the full recommendation?

>>DAN HALLORAN: Good point.

>>AVRI DORIA: From a significant established institutions of the economic sector or culture or language community to which. So within the recommendation --

>>PHILIP SHEPPARD: I think and that's why we had linked those two ideas because they are slightly different. And I think that probably still makes sense.

>>DAN HALLORAN: So there is still just an "or" drafting question, I guess. Is it "or the language community"? Established institutions related to the -- Anyway. I can't pull it apart, but it's an issue.

>>BRUCE TONKIN: I think what is meant is it's established institutions of the economic community --

>>AVRI DORIA: Yes.

>>BRUCE TONKIN: Or established institutions of cultural, et cetera.

>>AVRI DORIA: There are three possibly institutions --

>>BRUCE TONKIN: That's intended, yes.

>>AVRI DORIA: Olof and then Steve.

>>OLOF NORDLING: A very, very briefly comment. Olof Nordling. Now, do we have any other means of gauging this substantial opposition than objections?
Well, if we mean objections or the objection, challenges process, then we should say that. Because now it's unclear. How could we be made aware of the substantial opposition?

>>AVRI DORIA: Isn't that going to be in the various dispute processes?
>>OLOF NORDLING: Perhaps.
>>AVRI DORIA: And that will be defined within the UDRP-like processes that mention how the opposition is recorded.
>>OLOF NORDLING: So, actually, launched by an objection or more objections. And then we have the dispute resolution. Steve, you had a comment and then Dan.
>>STEVEN METALITZ: Yeah, Steve Metalitz. The -- I am getting confused here. First, I assume if we are wordsmithing, we are wordsmithing the recommendation and not the slide.
>>BRUCE TONKIN: That's exactly the problem here I think, yes.
>>AVRI DORIA: But that is a quote from the --
>>BRUCE TONKIN: That is not a quote of what's in the recommendation.
>>STEVEN METALITZ: Based on public comments or otherwise is a quote.
>>AVRI DORIA: Right, that phrase is quoted.
>>STEVEN METALITZ: It's just odd to say we'll take that out and then in the way we implement it, we want the dispute provider to take into account public comment.
So we could say based on public comment I determine there's substantial opposition from established institutions, and therefore you don't get the string.
If that's the intention, it just seems odd to take out that phrase.
But if all this is going to be channeled through an objection procedure, I think we just need to be very clear about that up front. As Chuck said, we need to not raise false expectations about public comments or we need to say what role public comment will play in it. Because it seems from the slide as though public comment could still play a role.
>>CHUCK GOMES: But regardless, we don't want to have wording there that they would think that public comment -- public comments will only be used by the dispute providers if they relate to the criteria that they are given to make their decision. Take out first public comment.
>>STEVEN METALITZ: I heard that but I also heard Denise say a few moments ago that public comment would inform the board as the ultimate decision-maker.
>>BRUCE TONKIN: Which is, I think, right. But if I was reading that literally, that's basically saying that there's a substantial opposition from the banking community. And now we're going to decide based on public comments.
It's not based on public comments. It's essentially based on the nature of the opposition, which could include public comments. So I just don't think the wording is right as it currently stands but I agree, in terms of the objection procedure, the role of public comment needs to be defined in that.
>>PHILIP SHEPPARD: Avri, if I could just --
>>AVRI DORIA: I have Ray -- a very long queue with only ten minutes left. Okay.
So Ray, then Philip, then Robin, then Mawaki.
>>RAY FASSETT: Just a brief comment --
>>AVRI DORIA: Oh, yes.
>>RAY FASSETT: Just a real quick comment. I think toward the goal of setting the right expectation levels, it might be better, an application may be rejected instead of the absoluteness of a "will be rejected," since there is going to be some party, alternative panel if you will, that is going to take into consideration, that instead of -- in order to set the right expectations, I think it needs to be not so absolute, will be rejected.
>>AVRI DORIA: It's obvious we are going to have to go back to 20 and look at it. As soon as we opened it up, we started carving at many of the words and I don't want to try to do that in the five to ten minutes.
Dan.
>>DAN HALLORAN: My last thing was on 20, that the last phrase "to which it is targeted or which it is intended to support," if you have got trouble with that, trying to figure out do you take the applicant's word for that, who it is targeting?
>>AVRI DORIA: 20 is the child of 11 and it obviously still needs work.
Okay.
I had, okay, Philip, Robin, Mawaki, and then I think we will -- and then Kurt.
>>PHILIP SHEPPARD: I just want to say I think originally our recommendation was sound in reflecting a comment, having public comments as part of it, because at that time we hadn't envisaged the implementation, which is now going to be objection based. So on that basis I am now supporting that objection and the objection based for this implementation and therefore would support, I think, Chuck in terms of his recommendation, and Bruce to take this out. And would also caution against more wordsmithing, because for me, the "will" was in there and links to the word "substantial."
It's either may be rejected if there's opposition, but it's will if there's a determination that that opposition is substantial. And that, I think, was our intent in putting that in there.
So those two words in my mind link together and it make sense as a recommendation and it is up to the panel to determine it is substantial and that institution is legit.
>>AVRI DORIA: Robin.
>>ROBIN GROSS: Thanks, I think we need to have some kind of limitation on this. In addition to the who can make the objections as in a substantial institution, I think we need to have a limitation on the types of objections that would be appropriate for stalling an application. For example, objections based upon law or objections based upon technical issues.
Otherwise, we've got a completely subjective, arbitrary, open-ended process that people can object, and it does away with all of our other careful narrowing of the criteria.
It just kind of swallows everything else up.
Take, for example, somebody wanting to register dot God. Well, the catholic church would be an established institution that feels it represents that community. Or the Mormon church or the Jewish community.
All of these -- Under this rule here, all of these communities could object to that string application. And it probably wouldn't go through, even though it's not a technical issue. It's not a legal issue. It's, again, completely subjective, completely arbitrary, and swallows up all of the other rules.
>>AVRI DORIA: Okay.
Mawaki is next, and then Kurt.
>>MAWAKI CHANGO: This is to follow up -- Mawaki. This is to follow up on what Steve said earlier on about the purpose. The purpose of public comments, yes. Actually, the way I understood the issue raised by Chuck and the discussion that followed with Bruce and Denise is that the general purpose of -- I mean the purpose of public comment in general. And the GNSO council recommendations are advice to the board.

So I'm not sure whether we need to maintain the role of the public comment on this recommendation in a specific recommendation, but we may need to develop, to clarify the purpose of public comment in general as said, and maybe in the implementation guideline point the public, the community to those -- to that clarification.
But as it is, it is an advice to -- a piece of advice to the board. And the board is also compelled somehow by the bylaws to take the public comment into account. I don't think it's necessary to maintain this here.
Thanks.

>>AVRI DORIA: Kurt.

>>KURT PRITZ: In staff discussions, and running through -- you know, we did play testing and ran through scenarios of different applications. And there's a scenario for a dot library where a library association somewhere in the world applies for dot library and there would be substantial opposition to it from other library associations. But being an appropriate representative of a library, or the library community, I'm not sure that application, you know -- close to what Ray was saying, but I'm not sure that application should be rejected.

And so when we were testing these different strings, we arrived at a test that -- you know, to determine whether the applicant, whether the string -- whether the applicant was an appropriate representative of that community rather than there just being substantial opposition to it.

So I guess a more positive test rather than negative.

>>MICHAEL PALAGE: Kurt, if I can, we never got to the draft contract. We ran out of time. But if I can, two comments. And this is actually a combo statement from Jeff Neuman, who had to leave.

But under the covenants under ICANN, from the base contract and the proposed contract that was included, there are two previous covenants of ICANN that have been removed.

The first is a requirement for ICANN to open -- to operate in an open and transparent manner. The second was the requirement for ICANN to have equitable treatment.

Those two covenants have been removed from the proposed baseline contract.

Could staff perhaps elaborate on why those two provisions, which I think are kind of important, have been removed? Dan?

>>DAN HALLORAN: I'll go back and look at it. Off the top of my head, I don't remember. Sorry.

>>MICHAEL PALAGE: And I guess the other comment is, assuming that the auctions, which definitely are probable to happen in connection with certain highly sought after names, that those auctions are likely to bring in tens of millions of dollars to ICANN, is there any discussion about how those monies, if you will, that windfall of cash will be invested? Perhaps back into the GNSO or -- you know. Again, I think the community, especially the fact that there is probably going to be substantial fees paid by the applicants on the front end, perhaps the back end with the tens of millions of dollars recognized through the auction, how will that be reinvested into the community?

>>KURT PRITZ: Certainly ICANN has revenue targets and we don't intend to exceed those.

But there's also been discussion about a separate stability and security fund that would pay for security initiatives. But that's all very speculative and we haven't really discussed it.

>>AVRI DORIA: Okay. With time pretty much up, had we gotten through all your slides?

>>KURT PRITZ: I hope so.

>>AVRI DORIA: Next steps.

>>KURT PRITZ: So we are going to do all the stuff Bruce talked about.

>>AVRI DORIA: I think most of the things here were talked about. And I know you had an issue you wanted to bring in.

So in terms of the new gTLD committee, we obviously still have more work to do.

There's not that much scheduled time. I mean, we have the meeting that we have, the public meeting has certainly got a full agenda in it. And there will be a public forum on this on Monday, which will pretty much cover a lot of what was covered today again, but for the whole community.

We'll probably need to schedule a phone -- but we have the one luncheon that we can certainly -- a working lunch, I think it was Thursday if I remember the schedule, where we can certainly devote some of it, both to these issues but also to how we proceed and finish.

And then we should use the list and the meetings.

But Chuck, you wanted to --

>>CHUCK GOMES: You are hitting exactly what I thought we should talk about because at least it would be good if we had a preliminary view in the session on Monday afternoon of how we're going to complete our work. And now, is Thursday afternoon -- I think there's something booked all of Thursday afternoon; is that right?

>>AVRI DORIA: We had a lunch scheduled. I don't know what else --

>>CHUCK GOMES: There's a lunch and then I think there's time that afternoon. Is that time that can be used by this committee, I guess?

>>AVRI DORIA: We should look into it.

>>CHUCK GOMES: Yeah, we can. I just wanted us to think a little bit about that before the Monday session.

>>AVRI DORIA: Yeah, discuss input from GNSO public forums and other meetings.

So yeah, we do have a full afternoon through 5:00 scheduled, so....

>>CHUCK GOMES: It would be very good, I think, if we can. I suspect we will have to have a teleconference call afterwards, too.

>>AVRI DORIA: You're right.

>>PHILIP SHEPPARD: Avri, with the two hours in the public forum, if we were swift at reporting progress, highlighting issues still to be discussed, why don't we discuss some of those issues at the end of the public forum? I mean, it's --

>>AVRI DORIA: We've got a lot of stuff -- we have several things to report on and then we have to obviously listen to the public comments during the public forum.

I always think we need to do less talking in the public forum than sometimes we do. But it's really a listening time.

But yeah, but we do have -- as you say. I was missing the fact that we have pretty much all of Thursday afternoon for us to continue working.

So the only other thing I wanted to mention is, before we -- public announcements to make.

That basically if people have been checking their mail, the council members have noticed that the Board Governance Committee has asked us to join them at 6:45 in salon Del Mar in the second floor of the hotel for informal discussions about GNSO improvements, with alcohol.

[Laughter]

>>BRUCE TONKIN: Is that to help the improvements?

>>AVRI DORIA: Certainly to help the discussion.

And that's at 6:45.

At the same time, starting from 7:00 to 9:00, there's the local host social event that I was supposed to mention had finger food. And then both rum and virgin drinks, which is also somewhere on the second floor.

And then there is the council dinner that says goodbye to Bruce, but of course Bruce isn't really going to leave. But anyhow, our taxis depart -- we hope. The taxis depart at 8:00 for that council dinner.

And I am aware that we never got to Mawaki's issue -- general issues on fees, so that will have to be in our next conversation on this. But I do have marker down for it.

And I thank everyone for a wonderful day.

(Applause.)

[6:03 p.m.]