

**Cross Community WG discussing Recommendation 6 of the new gTLD process
(Rec6 CDG-WG)
TRANSCRIPTION
Friday 10 September 2010 at 12:30 UTC**

Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG) meeting on Friday 10th September at 1230 UTC UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gns0/gns0-cwg-20100910.mp3>

ALAC

Cheryl Langdon Orr - ALAC chair
Alan Greenberg – ALAC
Olivier Cr pin-Leblond – ALAC
Evan Leibovitch – ALAC
Dave Kissoondoyal – At Large
Sebastien Bachollet – ALAC

Commercial Stakeholder Group

Philip Sheppard - CBUC
Jon Nevett – CBUC*

Non Commercial Stakeholder group

Konstantinos Komaitis
Mary Wong
Milton Mueller
Avri Doria – Adobe Connect only

Registrars Stakeholder Group

Stephane van Gelder - RrSG - GNSO Council vice chair
Krista Papac

Registries Stakeholder Group

Chuck Gomes – GNSO Council chair*

Individuals

Richard Tindal
Jothan Frakes
Stuart Lawley

GAC

Frank March – GAC - New Zealand representative
Bertrand de la Chapelle – GAC - French representative
Liang Wang – GAC - China

Staff

Amy Stathos – Deputy General Counsel

Margie Milam - Senior Policy Counselor
Marika Konings - Policy Director
Glen de Saint Géry – GNSO Secretariat

Apologies:

Heather Dryden - Interim GAC Chair – Canadian representative
Marc Carvell – GAC – UK representative
Jaime Wagner - ISPC
Caroline Greer – RySG
Marilyn Cade – CBUC
Robin Gross - NCSG
Avri Doria – NCSG
Paul Stahura - Individual
Anthony van Couvering – Individual
Sivasubramanian Muthusamy – At Large
Syed Iftikhar H Shah – GAC – Pakistan
Massimiliano Minisci - Manager, Regional Relations - Europe

Coordinator: This call is now being recorded.

Chuck Gomes: Okay.

Woman: Thank you.

Chuck Gomes: Welcome to all of you who have joined for the Recommendation 6 Community Working Group meeting on Friday the 10 of September. We have a very full agenda. So I'm not going to wait any longer. I'm assuming that other people will join as we get going again.

I hope everyone is in the Adobe Connect room. If you're - if you can't get in that let me know and please feel free to speak up when you want to participate in the discussion.

Glen, would you please notify everyone who's on the call.

Glen de Saint Géry: I will do that. Thank you, Chuck. On the call we have Cheryl Langdon-Orr, Stéphane van Gelder, Chuck Gomes, Sebastian Bachollet, Stuart Lawley, Alan Greenberg, Jon Nevett, Liang Wang Philip Sheppard, Dave

Kissoondyal, Milton Mueller, Jothan Frakes and Richard Tindal. And for staff we have Margie Milam and Marika Konings and Glen de Saint Géry, myself.

And we have apologies from Syed Shah He did ask us to call after him but it is a big holiday in Pakistan. And we have apologies from Marc Carvell who can't be on the call with us.

And I think that's all that I have noted. Thank you very much, Chuck, over to you.

Chuck Gomes: Thank you, Glen.

Olivier Crespin Leblond: And if I could just say Olivier Crespin Leblond here. I've just arrived as well. You can count me...

Chuck Gomes: Okay.

Olivier Crespin Leblond: On that.

Glen de Saint Géry: Okay.

Chuck Gomes: Olivier Crespin Leblond, I see you in the Adobe Connect room there. So welcome again to everyone and want to especially thank those that have been actively contributing in the discussion on the list.

Now to at least spend some time on all of the remaining threads today we're going to have to keep this going pretty quickly without going over our assigned time. So please try to be brief and concise. At the same time I want you to be able to share key contributions.

So we're going continue where we left off on Wednesday. And we were talking about standing for filing objections.

And where are we at on that with regard to standing for filing objections? Right now it's very broad in the applicant guidebook. Anybody can file an objection. And we'll get the quick look hopefully later in our discussion this morning.

There's certainly been a lot of discussion with regard to governments and their ability to file. We know that they have a standing and that the GAC has standing.

There's been a lot of good discussion in terms of fees. And is there reasonable - I think there's strong support if not consensus for the idea that advisory committees -- and probably the most relevant in this discussion is - are the GAC and that ALAC -- would be able to - should be able to file complaints without paying a fee and then any respondents wouldn't have to pay a fee as well. Does anybody disagree with that position - with that recommendation?

Milton Mueller: I think I indicated that I don't understand the reason why the - is it the GAC doesn't have a bank account or something? What is the reason for not...

Chuck Gomes: Well I don't think the GAC does have a bank account to respond...

Man: No.

Chuck Gomes: Question, Milton. So I don't think the ALAC does either.

Woman: Absolutely not.

Chuck Gomes: So does that answer...

Milton Mueller: So the idea is that the advisory committees achieve consensus on raising an objection? I'm sorry.

Chuck Gomes: Yeah. They would use - Milton, they would use - I'd - they would use their processes. And you've seen some of the discussion on the list just like I have that it act - some people have stated that it actually provides some level of accountability in - but that they need to demonstrate the support of their organization behind any such process.

Now one of the latest things I saw was to -- I read that this morning -- is that they would need to be able to demonstrate that their group does think this is a valid concern.

Milton Mueller: Okay. So it's not just one individual government filtering an objection through the GAC but it's some kind of a consensus of the GAC? Is - that's what I'm driving at.

Chuck Gomes: Well I...

Milton Mueller: That would remove my...

Chuck Gomes: That's what I...

Milton Mueller: Most...

Chuck Gomes: Yeah. That...

Milton Mueller: Of my concerns.

Chuck Gomes: That's what I understood. And if you think that the language, whatever language we end up in the report, needs to be cleaned up please suggest that.

But somebody else want to comment on that? Please raise your hand in the Adobe Connect room. Make it a lot easier for me to do that. Margie?

Margie Milam: Oh yes. I just wanted to point out that if you look at the document that's posted, Item 13, there's a Recommendation 13 too with some language you can focus on to see if that language should be clarified.

Chuck Gomes: And thanks to Margie for preparing that document to help us today. So you may want to keep that handy. Do you have that, Milton?

Milton Mueller: No. I haven't - in the 200 emails I haven't found the one with the link to the - I'm - but I'm looking for it now.

Chuck Gomes: Yeah. Look for a message from Margie from yesterday.

But here's the recommendation that's in there. ICANN advisory group should be able to file an objection based on Recommendation 6 without paying a fee and any responses to such objection would also be allowed without fees and then in brackets, any other governmental objection should be accompanied with the same filing responding fees as applicable to other objections.

And we know that the GAC still has concerns. GAC members still have concerns with regard to any government filing fees. And there's been some exchange on the list in that regard.

Philip?

Philip Sheppard: Thanks, Chuck. Yeah. I'd just like to speak in favor I think of where we are on 13.2. I think we've already discussed that advisory groups should be advisory committees just for edit.

And I personally support the statement also that's currently in square brackets. I think that discipline of saying, you know, it's free if you've got a good case and you persuade your colleagues and otherwise you're on your own, chum, and you've got to pay is quite a good one.

Chuck Gomes: And one note I want to call to people's attention, that the way the recommendation is worded right now is ICANN advisory groups. It doesn't just specifically say the GAC and the ALAC.

I suspect it would be the GAC and the ALAC that would be most likely to use this. But I think it's probably better to just say advisory groups if nobody objects to that.

Milton Mueller: Well again there's so many advisory groups. Couldn't it be specifically limited to ALAC and GAC?

Chuck Gomes: It could be if that's what we want to recommend. There really aren't that many advisory groups. You have the...

Woman: (Unintelligible).

Chuck Gomes: RSAC and you have the SSAC.

Woman: SSAC.

Chuck Gomes: Would you want to exclude those, Milton?

Milton Mueller: Yeah. I think the SSAC has a more limited focus and has no particular specialization or expertise on ordre publique. I understand the GAC's claim to want to be involved in that. And I understand ALAC's. But I would want to narrow this as much as possible.

Chuck Gomes: Well I - in this particular recommendation I suppose it's possible that it could be applied to all four categories of objections even though most of what - the overwhelming majority of what we're talking about would apply to Recommendation 6 only so.

But others - let me get some other people in queue. Richard?

Richard Tindal: Yeah. I - this is Richard. So I wouldn't object to what Milton proposed there, that we would limit it to the ALAC and the GAC. I don't have any concern with that.

And I wanted to point out that we - we've also - separately we're discussing the notion of an automatic objection trigger on the independent objector at the request of either the ALAC or the GAC. So I feel that's the sort of the same result by a different means to what we're discussing now.

We could do both of those approaches or we could just choose one of them. And we can have a no fee for those parties or we could have a rule where if they're - if the independent objector's approached by either of them that he would be obliged to submit something on their behalf. Or we could have both techniques.

The advantage of the independent objector approach I think is that it takes away the sort of lack of drafting and procedural resources that those - that the ALAC and GAC have. And it puts it in the hands of the independent objector. But I'm happy with both of the approaches.

And then finally we - as to your last point there, Chuck, yeah, we're talking now about the Recommendation 6. Again separately on the list is the notion that a community objection could be under a similar no-fee mechanism or a similar IO trigger mechanism.

I would be opposed to the other forms of objection, however, being subject to this sort of thing. I don't think this would be an appropriate vehicle for a sort of trademark objection. I don't think that's the sort of thing that GAC or ALAC should be getting involved in.

Chuck Gomes: Thank you, Richard. Alan?

Alan Greenberg: Yeah. As I mentioned before the recording started I was offline most of - much of yesterday. So I know this has been discussed to some extent on the list. But the term that's used here is ICANN advisory group. That's not a defined term and therefore is implicitly wider than advisory committees which are defined in the bylaws.

Chuck Gomes: Yeah, good...

Alan Greenberg: So to the extent that that's intentional that's fine. But it really is a much wider group. And the board or anyone, you know, we convene groups that have some level of advisory responsibility all the time. So I'm just noting that.

And the second thing is there's nothing in the wording there which implies - which addresses the concern that Milton had. If the ALAC makes a decision that if any of our community raises an objection we will pass it on, nothing there precludes us from doing that and the same with the GAC.

So if it's in...

Cheryl Langdon-Orr: (Unintelligible). Oh...

Chuck Gomes: Go ahead, Cheryl.

Cheryl Langdon-Orr: Yeah. I was just going to say to Alan on the first point there has been some list discussion on that. And I think that I so no argument against making it clear to be advisory committee, not groups.

Alan Greenberg: Yeah. I noted there was discussion. I didn't know what the outcome was. But I was just lacing it in this discussion.

And, you know, if the GAC decides if any of our members raises it we will pass it on there's nothing in the wording that precludes that. So if our intent is that it be a - if not a consensus then at least a reasonable representation of

that body required to pass it on we should - again we're not writing the bylaw here. But if our advice is that it implies some level of consensus, either - even a minority consensus, then I think we need to have some words there that imply it because right now as a courtesy it could be passed on from a single - from one representative.

Chuck Gomes: Now Margie, I'm assuming you will fix the term groups and change it to committees.

Margie Milam: Yes.

Man: This...

Margie Milam: I will do that, Chuck.

Bertrand de la Chapelle: But (Jeremy) did that call - I'm not able to connect online so I'm not on the Adobe Connect. I just would like to get in the queue for a little bit later.

Chuck Gomes: You can get in right now if you'd like Bertrand.

Bertrand de la Chapelle: Was there nobody before me?

Chuck Gomes: No. Well, Richard, you still have your hand up?

Richard Tindal: No.

Bertrand de la Chapelle: Oh okay. So sorry I joined five minutes late but I could not connect on the Adobe. But I've listened to the beginning.

I think we're touching a very interesting point here. I think it is indeed an interesting concern that the GAC may be in a situation where with the desire

not to offend any GAC member inside there would be some tendency to basically pass it along.

Could we envisage something that would distinguish two avenues like one that allows the GAC as a whole to make not just the endorsement but to make a unanimous statement of objection where it would go directly to the DRSP or whatever? And in the case where there is one government or several governments the GAC could forward this. But then it would have to go through the independent objector which in that case would be able to weigh how the resolution of the GAC is worded like if it is - we pass along the concern of one government is different from - there is no unanimity but there is a very strong concern.

And I think the unanimous objection by the GAC should probably go directly to the DRSP. But if there is a passing along without this unanimity then the independent objector filter somehow would be an interesting additional step maybe.

Chuck Gomes: Thanks for those ideas, Bertrand. (Frank)?

(Frank): Yes. Thanks. I - look, I actually don't want to comment on this. I just wanted to apologize for my very late entering into the call. I kind of slept a little bit actually.

So no I don't want to comment on that. I just wanted to note that I am here and my apologies for being late.

Chuck Gomes: Thanks for joining us, (Frank). We appreciate that. And thanks for letting us know. Milton?

Milton Mueller: Just responding to Bertrand, I think the idea of two tracks for GAC objections is - could be a good one in the sense that the no-cost objection of the GAC should have a higher bar and it should have something that is requiring if not

unanimity at least a - what we call consensus which means that nobody is willing to object within the GAC and that that would go into this no-cost objection process.

Then yeah, I'm - I really think we want to make it clear that the - this no-cost GAC-based objection does not mean that any individual government can simply exploit this to make an objection that has no broad international support. So if GAC could have different procedure which is simply noting an objection and not formally filing one which the - could be passed to the independent objector that might be a way of making some people happy who might not be happy otherwise.

Chuck Gomes: Thanks Milton. Evan, it's glad to - I'm glad to see you in the Adobe Connect room.

Evan Leibovitch: Me too.

Chuck Gomes: I bet.

Woman: He's just like reconfiguring his whole office. But that's all right.

Chuck Gomes: Go ahead, Evan.

Evan Leibovitch: Yes. Could there possibly be wording in this that states that in order for a GAC or ALAC objection to bypass shall we say the quick look and as Bertrand says, make it directly to the board and the DRSP that there be a specific criteria that the advisory committees are expected to apply to those that they submit that would bypass the quick look and the independent objector potentially and go directly, that there would have to be some criteria for something that would be globally recognized as, you know, universally objectionable? I don't know the exact wording but some specific criteria that the ACs would be expected to apply before shall we say fast-tracking these things onward.

Chuck Gomes: And thanks for that suggestion. I think that sounds fairly consistent with what Bertrand and Milton were saying.

Evan Leibovitch: Exactly. I was supporting Bertrand's point and just hoping that we could make that explicit.

Chuck Gomes: Yeah. And I - I'm assuming that we probably can't tell the -- and maybe even ICANN staff can't tell -- the advisory committees what their procedure should be. But we could certainly make a recommendation along that line. And so that's a good suggestion.

Now with regard to this let me - and what I'm going to say next will apply to everything else we discuss today too. All of you can realize that if we try to refine all of these various details -- and by the way there's very good - it's good stuff that's coming out -- but if we try to get agreement on all of those in our report we're going to be two months down the road.

So what I would suggest is on this one we have a recommendation that I think is - that there appears to be pretty good agreement on, that then - we then reference various ideas that are proposed for staff to consider as they're finalizing the implementation plan.

I think that's the only way we can realistically get through these things. If we try to get agreement on every little detail there's no way. It would take on one thread a time that we would have to be able to have a lot more time to do that. So is that okay? Anybody object to that?

Philip, go ahead. Philip, can you hear me? Am I still on?

Man: I hear you.

Woman: Yeah. You are, Chuck.

Chuck Gomes: Okay.

Philip Sheppard: Can you hear me now?

Chuck Gomes: Hi. We hear you, Philip.

Philip Sheppard: Good. Okay.

Woman: Philip.

Philip Sheppard: There's some discussion going on in the chat at the moment on the Adobe about different ways of applications getting to the independent objector and then the IO taking a decision. I'd just like to say I think that sounds like a bad idea because we seem to be then passing the judgment of the service provider back down the line to the independent objector which I think is not the point of the independent objector in the first place. So it just struck me as we were losing sight of the role of the IO there.

Chuck Gomes: Thank you very much, Philip. Okay. What I'd like to do and I'm sorry to...

Bertrand de la Chapelle: (Unintelligible).

Chuck Gomes: Bertrand?

Bertrand de la Chapelle: Yeah. Just an answer to the question you were asking. I think you are heading in the right direction. But I wouldn't disband necessarily immediately the working group after this report because I think we're exactly on the right path to make a report that is sufficient to show that there are positive avenues, that there are real principles that are emerging that are likely to have solved things.

And it will be very good to get immediately afterwards, after the 13th, this will be circulated in the ACs, (SOs) and so on. And so people will ponder whether the orientations are sufficiently balanced.

And I could expect that by the end of the month there will be some discussion in each of the groups that will come back saying more or less the principles are okay and maybe the group can continue to provide a little bit more detail without putting the whole responsibility on - either on the board or the staff.

Because what we do in this group is to discuss among ourselves and find original ideas whereas the staff has a natural obligation of trying to balance objections together and finding a middle ground which usually is not an easy, good solution.

So I would not throw the thing immediately to the staff -- they're doing very good support -- and just make the report as you said at the level of the orientations and principles. Sorry for being long.

Chuck Gomes: Thank you, Bertrand, for that contribution. Let's go on to Guidebook Criterion 4. And there's been some good discussion on what it should be called.

Is there pretty much agreement on that and in terms of using the - what term that should be used there? Who would like to comment on that? Several of you have commented on the list.

Woman: Evan?

Chuck Gomes: Okay. Evan, go ahead.

Evan Leibovitch: All right. I personally would just prefer that if we were doing an otherwise English document that we stay away from language that is unnecessarily legalistic.

If we - if the term is public order that's fine. If you say ordre publique then in the eyes of most...

Chuck Gomes: Did we lose you, Evan?

Glen de Saint Géry: Chuck, he's been disconnected. We'll get him connected again.

Chuck Gomes: Okay. I'll get him back in the queue. Richard, go ahead.

Richard Tindal: Yeah. I propose that we - I think that we're down to about four or perhaps five. I propose that we simply list these along with a brief explanation of what various people think are the pros and cons and simply present their alternatives in our report.

Chuck Gomes: Okay. And Glen, please let me know. I'm not looking at the meeting view right now so please let me know if Evan gets back in.

Glen de Saint Géry: I'll do that.

Chuck Gomes: That - okay, thanks, Richard. Philip?

Philip Sheppard: Thanks, Chuck. Yeah. I'm - in essence I broadly support what Richard said. I think probably just some pros and cons of the different names would be useful.

I think both Konstantinos and myself had suggested that the English translations of ordre publique as either public interest or public order are both ambiguous and therefore are not necessarily helpful in this context where ordre publique does have a specific meaning in law which Konstantinos can probably explain better than I can.

But - and going back to the - to what we can do I think probably Richard's suggestion of, you know, these are options and they need to be looked at but

all of them we think are probably better options than what's currently there is a good way forward.

Chuck Gomes: Thank you, Philip. Mary?

Mary: Yeah. Thanks, Chuck. And I just wanted to agree with what Philip and Konstantinos said on the list and Philip just repeated.

And to Evan's point I'm sorry. I (unintelligible) comment. I think to the extent that this category is clearly something that's international law related it makes sense to have ordre publique rather than the vaguer public order and so forth.

I do have to agree with Richard's suggestion and yours too for both vision of the recommendations with perhaps the addition that where the options are listed if we have time that maybe we could indicate the level of support amongst the members of the group for particular definitions or recommendations. Thanks.

Chuck Gomes: Thanks Mary. And that is exactly what the intent is for the meeting on Monday, to try and determine that.

Now to do that we're going to need, you know, except for cases where we're just providing alternatives and discussion and so forth the main - any main statements or recommendations we want to determine the level of support.

And if I recall correctly in Margie's draft document we had consensus, rough consensus, strong support and no agreement. Is that right, Margie?

Woman: Margie's on mute, Chuck.

Chuck Gomes: Okay.

Glen de Saint Géry: And we have Evan back.

Chuck Gomes: Okay. Evan, I don't know if you were able to hear - were you able to hear anything that was going on after you were knocked off? Probably not.

Evan Leibovitch: I just heard the tail end of Mary's comment at the end. And I wanted to speak to that.

Chuck Gomes: Okay. Go ahead.

Evan Leibovitch: This is - this has to be a document that's got to be parsable by the public at large. And this discussion - the MAPO discussion has never totally been about issues of law.

As Bertrand mentioned from the very beginning and others have mentioned from very - the very beginning this has always been about an ability for somebody to put in an objection about something they considered objectionable against sensitivities. That doesn't necessarily mean that it's going to pass muster as far as getting rejected at the ICANN board level. But there has to - but the nature of the objections have not always been a matter of international law especially since we've demonstrated that there is so little international law on this.

So I'm going to really advocate against using legalisms especially in this particular case where they have an ability to mislead people into thinking that it's something that it's not.

I think it was Konstantinos that already - that mentioned that ordre publique does not immediately translate directly into public order. And that is the instinct that many English speakers are going to use to do this.

And so I'm going to suggest that if the intention behind ordre publique is actually closer to public policy then let's say public policy. And, you know, the

idea of getting to wording in a document that is expected to be understood by non-lawyers should avoid stuff that is deliberately done that way.

If we can't be clear about this I think we've got a problem.

Chuck Gomes: Oh I think that Philip just said when you were off - disconnected that public policy is more ambiguous and - from a legal perspective. And I'm not an attorney so I can't make judgment on that.

Evan Leibovitch: But that...

Chuck Gomes: But then ordre publique. But I just wanted to share that with you since you didn't hear it.

And also I want to share with you, Evan, that Richard made a suggestion that what we do in this case is list -- I think we're down to about four terms -- list those four terms with a little bit of commentary as possible on those four terms without trying to definitely agree on one term because that's probably not going to be feasible.

Margie, you want to respond?

Margie Milam: Oh I was going to respond on the consensus categories when you - whenever you want to get back to that.

Chuck Gomes: Okay. Go ahead and do that please.

Margie Milam: Okay. Okay, so I made an error I guess in my draft. I didn't realize we changed the consensus category.

So this is what we typically do at the GNSO level. We've got full consensus which is a position when no minority disagrees, consensus where there's a small minority disagrees but most agree, no consensus but strong support

and then divergence. So those are the four categories I think we should stick with.

Chuck Gomes: Okay. Thank you. Any problems with that?

Stéphane van Gelder: Chuck, I can't raise my hand. I'm not connected so I'll have to interrupt you. I'm sorry.

Chuck Gomes: That's okay.

Stéphane van Gelder: Isn't there - do we not have mild consensus as well in the GNSO which I don't think Margie mentioned?

Margie Milam: Stéphane, this is from the latest version of the GNSO working group's guidelines. And they've gone through various versions. So the various version doesn't have what you've just said, mild consensus.

Stéphane van Gelder: Okay. Thanks, Margie.

Chuck Gomes: Okay. Konstantinos?

Konstantinos: Yes. I would like to respond to Evan just very quickly. The idea - what I said or the email said was that we should not try to attempt to translate ordre publique for the simple reason that the term has been incorporated in almost all jurisdictions. The European Union uses it as well as Anglo-Saxon jurisdictions.

And I think that maybe Richard hit the nail to the head by saying that we can not avoid some references to international law because we're talking about issues that are highly related to international law. So we really must - and as Milton said, we really must rely on legal issues whenever we can in order to be able and make this process as legitimate as possible. Thank you.

Chuck Gomes: Thanks Konstantinos. Margie, did you still have your hand up?

Margie Milam: No.

Chuck Gomes: Now one of the most important things we need to do on this topic is to discuss, you know, what Recommendation 4 -- whatever we title it -- should say. And there's been a whole lot of discussion on that on our list. So let's spend a little bit of time on that.

The - and let me just read just to bring everybody up to speed in the applicant guidebook right now it says a determination that an applied-for gTLD string would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law.

Now we know that we want to say principles of international law. So I think that language is okay. Well I better not assume that.

So now there's been lots of discussion and suggestions in terms of what should be said in this. Does somebody recall a recent formulation on the list that you would support and want to bring that out?

What changes should we make in the formulation of this because we're going to have to have that in the report? Or is it just the title we're worried about?
Comments?

Milton Mueller: I'm sorry. The question - Chuck, the question was what again?

Chuck Gomes: Okay. We've been - right now and previously on the list we've been talking about the title of this fourth category of criteria: ordre publique, public policy, etcetera. But what we also need to agree on is what description of that category we would recommend underneath that, right? I - what I just read, Milton, was what's in Applicant Guidebook 4 right now.

Milton Mueller: So I guess the reason I'm having trouble is this comes under Number 1 of your description of issues recommendations.

Chuck Gomes: Under Number 1? What are you referring to?

Milton Mueller: On the document that's up there now in the Adobe...

Chuck Gomes: Oh it comes under - yeah, it's the last one. And there's nothing there. It's under number - sorry, not Number 16. It's on Number 15.

Milton Mueller: Okay. So this is instead of morality and public order. It's sort of related to Number 1, is it not?

Chuck Gomes: No, not necessarily. I mean it - all these things of course are connected. But really we've spent a lot of time talking of - there are four categories. In the guidebook there are four categories of - that - of morality and public order criteria.

Milton Mueller: Oh, okay.

Chuck Gomes: The first three are the incitement ones. Okay? And then the fourth one was kind of a broader category. And there's been lots of discussion of what that should say.

We may not want to use the terms morality and public order that are recognized under general principles of international law. I think we've agreed on that part, so I think we definitely need a change there and we've discussed that on the list. In fact, Margie may have a good concept of what that change would mean, but that - does that make - are you with me now Milton?

Milton Mueller: Yes, thanks.

Chuck Gomes: Okay, Margie is your hand still up?

Margie Milam: Yeah, I just wanted to point out from (Carol Dorgan)'s presentation. I think he did address this issue, and I thought he as I recollect - he thought it was preferable to use the term principles of international law rather than international principles of law. What I recall from his presentation.

Chuck Gomes: And that happens to be the term that's used in the Applicant Guidebook right now - principles of international law. So - but I think we probably want to change norms related to morality and public order, but let me let others speak up. Richard.

Richard Tindal: Yeah, thanks Chuck. So my sense was that we had some sort of broad agreement that that specific term reality and public order be sort of broad. You know wherever it appears here, I think it appears twice. I don't even know that you need to add anything in its place in the actual text as opposed to the heading, but we will see what others think there.

And my other sense is that the first three standards, the violent laws action, discrimination, and child pornography apart from some sort of different interpretations or opinions about some of the words or promotion, those actual acts - those three acts if you like that - there seems to me to be a strong agreement or broad agreement in the group that those not be changed.

Chuck Gomes: Okay, well let's - hold on a second because you are jumping ahead in our agenda. Right now, we're talking about the fourth one. Let's not get into the other three. I was just trying to set the context for Milton in terms of what we were talking about.

Richard Tindal: Sure.

Chuck Gomes: So let's talk about criterion four - the order (public) or whatever we're going to call it or you know the different options for calling it there or naming it there and try and get some language that we're comfortable with. Is that right?

Richard Tindal: Yeah, of course. Yes. Yeah, so I mean this is the \$64,000 question here right. I mean I think the group is very strongly divided into those who think that it should strictly remain a standard where the generally accepted principles of law would ever even possibly be the basis of a successful objection.

And I think there are others in the group who would be willing to liberalize that to make it more some sort of I know it when I see profoundly and sort of shocking to the conscience or whatever type words, which wouldn't necessarily be based in international law. But I don't think we're going to get agreement as a group on that because I think the addition of those that believe that it should be strictly according to legal principles - I think that's got a very profound (unintelligible).

So again, I believe that as a group, we should possibly put some options on the table here ranging from one end, a strict legal interpretation of internationally agreed principles, and at the other end some sort of broader language that really talks about an individual's response to a string when they see it.

Chuck Gomes: Okay, thank you Richard and I think you're probably right that that's - this is one where we're going to have to put some alternatives on the table.
Bertrand.

Bertrand de la Chapelle: Yeah, actually I think that the discussion with (Carol) the other idea highlighted two different elements. One is that there indeed are international - global principles of internal law, some of which are being described in the first three items. But what I found was interesting is that the fourth criteria ended up with bringing up the potential use of the community

objection to handle what at one point in time we were calling national law based objections.

And I'm a little bit puzzled because if my memory is correct, we had this discussion about adding the Item 15. And if my recollection again is correct, we had identified that in Recommendation 15 it was this notion that actually the community objection is potentially useful for that.

And I think we said that there were three blocks in this part. One was to recall what corporate had said that government can use the community objection for things that can be (hurting) to their - and we will come back to that later, but it has now spread. Things that might be offensive to certain parts of their community at a national level.

Sorry. The first thing was corporate said governments can use the community objection even against a non-community based string. Second, there is a belief in the group that the community objection can help a certain number of cases that were basically those covered by the Paragraph 4 or the national objection concept before and that we should explore whether it is useful. And that there's a third element, which is have we covered with that all the different possibilities, and this goes back to what we were just discussing before about the use of the GAC as a whole and so on.

So I'm not finding again the Number 15 that we had discussed before, and I also apologize for being a little bit fuzzy because I worked to finish another type of thing up to 5:00 in the morning and woke up at 7:00, so I'm completely fuzzy. I'm not very clear. I'm sorry.

Chuck Gomes: I fully relate to that last comment. Now that's interesting. You raised something there Bertrand that I mean it is this fourth category needed. Let me ask you to briefly respond to that.

Bertrand de la Chapelle: Yeah, you see you are much clearer. This is exactly the point.

I wonder whether we should -worry more about this fourth category - any more about this fourth category and deal with the general title and maybe mentioning above the three items that are mentioned today. Make sure that the expression of general principles of international law is the fundamental ground for what we more or less call the globally objectionable string. And then dig a little bit deeper on the community to see whether they cover all or some only of the things that were more or less understood under the - Paragraph 4.

I agree; you are right. That's the right question. I'm not absolutely sure that it is necessary to have a specific reference to morality and public order. And personally, in exchanges on the list, I felt that the expression morality and public order is basically only likely to be used as a justification by governments for potential exception that would mean blocking a whole TLD, but that's all.

Chuck Gomes: Thank you. Mary.

Mary Wong: Thanks Chuck. I've been trying to follow what Bertrand has said. I'm not sure that I'm seeing that much difference. But returning to your original question - and I think as everybody knows, I would support - and I think it does make it clearer to use principles of international law. Margie, I think that's what (Carol) also said on the call last time and as you've just mentioned to remove the references to the norms relating to morality and public order.

In addition, I think one of the questions that I've had about Criterion 4 - and that's why I said last night that I wasn't sure if there was anything more to be added to something that was - this is a residual category almost kind of like a general catchall category. And I'm mindful of the fact that in the explanatory memo I think a couple of the - a few of the experts that were consulted by ICANN staff had actually said that was the preferred mode. That rather have specific grounds, have an expansive ground.

In which case, a question in my mind has always been when someone whether it's an individual, a group, or a government, or right now any of the (EC)s raises an objection based on Category 4, if it goes through the quick look, then there will be a determination on what is not manifestly unfounded. So there is some uncertainty there. I'm not sure there's anything we can do about it, but I'm just wondering if anybody else had the same thought.

Chuck Gomes: Mary, a question for you. Two questions for you and I will ask this of each person that has their hand up just to get a quick assessment of a few people.

First of all is do you think we need Category 4? Secondly, if we do, would something like the determination of an applied for gTLD string would be contrary to generally accepted - or to principles recognized under general principles of international law. I didn't word that very well, but I just took out all of that middle part about the morality and public order.

Are you able to respond to that, Mary? To those (unintelligible).

Mary Wong: I will try. I will try and those are exactly the questions that I've been wrestling with since the first national (versions) came out. And like I said, I'm not an international law expert, so in answer to your first question, I would say that personally I do not - and I think many of the community do not like the notion of an expansive category. However, I personally defer to international law experts on the desirability thereof.

If that is the case and therefore the fourth criterion is retained and the amended form is suggested, then I think in response to your second question that we can only be as clear as we can try to be. And by removing references to norms thereof and sticking strictly to something that has to be generally recognized as a principle of international law may be the best that we can do.

Chuck Gomes: Thank you very much. Richard.

Richard Tindal: Thanks, Chuck. So yeah, I wanted to respond to your question about whether we need it and also to build a little bit on what Bertrand said.

So yes, as we've discussed, the community objection is in fact a useful tool for objecting to strings, but it's only useful when there is a community invoked in the string. And so you know if we are to delete Point 4 completely, what we are deleting is the ability for someone to object some repugnant term, which does not invoke some specific community - some group.

So for example, I'm not going to give a string, but some sort of profoundly repugnant pornographic term that did not invoke a community. The community objection would not be suitable for that and neither would Points 1, 2, or 3 I don't think. And so I'm not arguing for or against whether those sorts of strings should be rejected or not. But if there's not that Point 4 in there, there is no I think ability for anyone to even make an objection to that sort of term.

Chuck Gomes: Thank you. And then of course that - if they are not able to do that, then there is going to be no evaluation in terms of the standard - whether it reaches whatever standards are in place. Thank you. Alan.

Alan Greenberg: Yeah, I was going to address the same point of do we need it and is the community objection sufficient. In fact, I suspect the community objection might be sufficient if its terms were broadened enough. But if we did that, it may open it to other kinds of objections we don't want.

To use an example we used the other day, the implication right now is for you to object, you have to say you have been using this expression for some amount of time. Now I don't think the Tutsi community in Rwanda used the expression cockroaches to describe themselves, and yet if kill the cockroaches is an expression we are looking at, one of the current requirements is that that thing be affiliated with them.

And if it's only saying our enemies call us that, that's not - you know I don't think it suffices in that case. And if we open up the community one to remove that kind of requirement, it may become too broad. So I suspect we still do need the fourth one, although some things that come under the fourth one might well come under community objections as well.

Chuck Gomes: Okay, thank you Alan. Milton.

Milton Mueller: Yeah, I think - I'm trying to argue that we really don't need the fourth article. And I think - I agree with Mary that if people insist on that we have to narrow it down as much as possible to be based on principles of international law, I think Alan's example just gives you a very good example of why this is kind of a futile exercise. I think some of us are kind of indulging this fantasy that if we limit speech through TLDs that we're somehow making the world a better place. But suppose if there were a cockroach's top-level domain established by an insecticide manufacturer.

And suppose that somebody you know who was anti - you know one of these Rwandan groups that utilize the term in that way. Well you know you cannot conceive of all the possible derogatory uses of terms. You cannot filter them out, and any attempt to do so is simply going to repress all kinds of legitimate speech and engage us in an endless exercise of disputes based on purely hypothetical possibilities. I just think this is a road that makes absolutely no sense to go down. I can't see what's accomplished by it.

You know genocide in Rwanda was neither facilitated nor executed through domain names, and the absence or presence of a domain name contributing to something like that sometime in the future is just - it boggles my mind that we can even think about this kind of a policy doing something like that.

And I think when something like that does happen, if it really is illegal, if it really does contravene national or other kinds of laws, then the people in the

affected jurisdictions can do something about it locally. And if governments are really concerned about establishing new principles to regulate these kinds of expressions at the international level, at the global level, then they simply have to get together and define a treaty.

We can't do this for them through top-level domain policy. We are basically trying to give people rights that they don't already have under international law. And I think that's wrong as a matter of policy, but it's also futile and there are other avenues to give these new rights that are more legitimate and procedurally valid than what we're doing here.

Chuck Gomes: Okay, I want to point out that we're almost an hour into our call. We have 30 minutes left and a lot of ground to cover, so again try to be as brief as possible. I know it's hard. I know these are complicated issues. Margie I think that we're at a point where we're - you know I don't think we're going to reach agreement in the group in terms of one way or another on this. So we're probably going to have to - this is one of those cases where we'll have some alternatives there.

Now Milton if this one - if Category 4 stays in there, how would you word it?

Milton Mueller: Well like I said, I think the - it has to be narrowed down to very specific principles of international law. It has to be global; it can't just be somebody somewhere finds it offensive.

Chuck Gomes: And what I'm asking is specific wording for it. So if you could think about that and come back, that would be great.

Milton Mueller: Okay.

Chuck Gomes: Thanks. Let's go to Bertrand.

Bertrand de la Chapelle: Actually, following what Milton just said, I mean I don't want to continue the exchanges that have been on the list that do not really go much further. The positions are really from different angles.

And what I like is that actually because of the discussion that took place in the conference call with (Carol) that unfortunately Milton was not able to attend, we are finding a solution that leads to satisfying in a certain way Milton. Because this notion that a national government or a global objection is being made against a string, doesn't have to be in this paragraph anymore because we realized maybe a little bit late that as a matter of fact you can have something that would be probably qualified by Milton as an attempt against freedom of speech but that is provided by the community objection.

Because the discussion we had previously in the group on should we allow another (unintelligible) is a very interesting case. Milton is right to feel that it is not necessarily if you look at freedom of speech objectionable in his view according to the general principles of international law because freedom of speech is paramount and so on. So we cannot agree on that.

However, we discovered that actually this would be perfectly objectionable under the existing procedure of the community objection. So I think we can actually recognize that we are making a step forward.

Because if we go in the direction of removing somehow this sort of Paragraph 4, which is supposed to cover the national concerns indirectly and even more the community objection, then we have something that limits the current Recommendation 6 to universal principles as a lot of people want to do or general principles. And covering things that are more connected to national or local concerns and sensitivities for the GAC through the community objection through the geographic objection, which already exists as well.

So basically, we are going in the right direction and I think we should not try to make precisely on this Point 4 and sorry for being long. This position that

there are people against or people in favor because actually even those who care about this - it may be okay to remove it from this part if it is sufficiently covered or if we discover that it is sufficiently covered in the community.

Chuck Gomes: Thanks, Bertrand. Now Margie it seems to me we've got several options that we can include here. One of them of course is to remove it. Another one is to include it. But if it's included, we need to - if you can draft a statement for further discussion on the list and then finalization in terms of support on Monday just removing the reference to the norms of reality and public order part that would be great. And if others come up with other formulations along that line, we can include those in our discussion on Monday as well.

Let's go to Evan.

Evan Leibovitch: Hi, I just wanted to follow up on some things that I've been saying in email over the last couple of days and wonder if they may not be helpful here. In the sense that the original GAC statement on this that sort of led to the creation of this (group) essentially dealt with the desire for countries to be able to launch objections to things that may have been perceived to be against their national interest, but may not be sufficiently broadly based to justify an ICANN ban on a string.

Can we not have a facility within this process that allows us to accept and put on the record national objections while having a very high bar for that small subset of these objections that actually pass through a quick look or whatever other procedure based on being universally or globally objectionable for consideration by the board or the DRSP?

So we have something that's able to take maybe a large number of objections, many of which may show - I don't mean this as insulting, but may be trivially insufficient to be considered for ICANN for blockage, but still ought to go on the record as information for the applicant that this string is objectionable to various jurisdictions. It may not be objectionable enough to

justify banning it at the ICANN level, but there ought to be some way for these things to be registered so the applicants know what they are getting into.

Chuck Gomes: Thank you, Evan. Alan, did you still have your hand up intentionally?

Alan Greenberg: I'm sorry. That's a mistake.

Chuck Gomes: Okay. All right, so Margie do you have any questions? Have you got enough information to put some things down on this for Monday?

Margie Milam: Yeah, I think I do.

Chuck Gomes: Okay, Bertrand very quickly please because we need to move on.

Bertrand de la Chapelle: Yeah, very quickly and I'm putting it on the chart. When I listen to what we just said, what comes to me is that the GAC principles of 2007 was listing geographic, religious, I don't remember what else - four types of geographic sensitivities.

When I look at the way we are discussing it, if you think about the four major objections that are put in place, legal rights, geographic objections, community objections, and if we are restricted to principles of international law instead of morality and public order. We actually have the four legs of the general objections that I would call public policy objections, and this is basically the whole set.

So we have a list of four types of objections that are due to public policy interest, protection of rights, respect of national sovereignty geographic, unacceptable global principles of the global level, or community local, and so the whole thing becomes coherent. Each one has a very specific subset.

Milton is happy because it doesn't go in all directions, and the governments are relatively happy I suppose because it covers the four different - the different dimensions of what was in the principles of the GAC. So I will try to put that in writing in a more coherent manner, but I see some general framework emerging here and that makes it more coherent.

Chuck Gomes: Thank you very much, Bertrand. Now we're going to move on and let me warn you. What I'm going to try to do in the next half hour is to spend at least a few minutes on each one of the remaining threads. That means you know the comments are going to have to be restricted to about a minute. Maybe a little bit more for those who have drafted statements on it so that we can at least get an early assessment.

Now what I'd like to encourage you to do is if you agree with something with what's being said, use the functions - you know the agree, disagree options in Adobe Connect and then maybe you don't have to specifically state it. So just to give us a sense of where the group is very quickly.

Let's go then to the use of the term incitement, which occurs in the first three categories, and both Mary and Konstantinos provided some thoughts on this and not necessarily in the same direction, which is fine. Which one of you would like to start first? Mary. Konstantinos. There we go. Konstantinos.

Konstantinos Komaitis: Yeah, hi. Very, very briefly I think that I explained this on my email as well. We come from a different (unintelligible). I have a problem with the term incitement and possibly my problem comes from the fact that I come from a legal background, but I really cannot say how (unintelligible) in and by itself. I can't advise anyone to do anything because I apply the criteria that applies when it comes to incitement in (similar law).

That's why in the latest emails I circulated this morning and I don't know whether you've had the chance to see, I propose that potentially we can replace this word with a more appropriate one. And I'm trying to find actually

which one to use (if instigation), which always has a negative meaning. And that's all I have to say.

I mean for me, incitement is a term that is used in a very specific circumstance and some very specific criteria should apply which I've listed in my email. Thank you.

Chuck Gomes: Okay, thank you. Mary would you like to comment?

Mary Wong: Hello, can you hear me now?

Chuck Gomes: Yes.

Mary Wong: Okay, good. I am having problems in my mic.

I think - I don't have that much more to add either. It seems to me that this is one of those issues like Richard said where we've got some division of opinion, so it would probably be helpful if our report reflected that.

It seems to me that we have at least maybe three sub-issues. One is the use of the word incitement, second the use of promotion, and third, which is related but a more general question, whether or not these string in and of itself without context, without content can either promote, incite, or whatever the new term might be.

So I'm interested to hear what others have to say. As I said on email, I don't have the same problem to the word incitement simply because it is used in a number of treaties, and the way it's used in the Applicant Guidebook is fairly specific. I do however have a problem with the word promotion because it is much less widely used in international treaty and means more general things.

On whether a particular string can incite, I haven't really thought too deeply about it. But I am troubled by the fact that in many cases it will probably

involve a look at either context or content or both. So that's all I have to say for now.

Chuck Gomes: Thank you very much, Mary. Anybody else want to comment on this one? Okay, so Margie in this case, I think we've got some alternative use that we need to report. Do you have any questions in that regard, Margie?

Margie Milam: I think I've got it. So no consensus and then reflect the two different views on incitement.

Chuck Gomes: Okay, thank you. All right, let's go ahead then to the quick look procedure, and Mary again thanks for taking a stab at that one. Would you like to go ahead and comment?

Mary Wong: Sure and I think it's more of a question because probably everybody has not had a chance to look at it. But if you have, you will notice that I tried to capture an early discussion we had on manifesting and what that means. I've added something else on the question of abusive.

Overall essentially the recommendation simply says that we probably need more specific guidelines on the quick look procedure. Beyond that, I don't really recall any further substantive discussions at least that I was a part of. So if I've missed anything, please let me know.

Chuck Gomes: Thank you, Mary. Bertrand.

Bertrand de la Chapelle: Yeah, very quickly following the last call and your request, I sent to the list a possible formulation for the string only discussion, which was the (DRSP) should conduct its analysis on the basis of the string itself period. It could if needed use additional context if the intended purpose of the TLD as stated in the application.

Chuck Gomes: Yeah, I did see that and...

Bertrand de la Chapelle: I didn't see it proposed in the draft that we're studying now, so I just wanted to recall that because I'd like - I think it might be a formulation that is more or less what we have in the records from (Carol)'s discussion. But maybe it would be good to discuss around this possible formulation.

Chuck Gomes: Yeah, I think that's a good idea and it may have been timing as to when you submitted it - when Margie prepared it.

Bertrand de la Chapelle: Sure. Sure. Absolutely.

Chuck Gomes: So Margie you've got that, right? That suggestion we can include in the quick look.

Margie Milam: Yeah, I think it's in there, but I'm trying to find it.

Chuck Gomes: Well I'm looking at your document. I know there's nothing under quick look.

Margie Milam: No, it's not under quick look. I have it somewhere else. I just have to find it. I didn't understand what the quick look discussion was related to, so I'm trying to find it.

Chuck Gomes: That's the string only Number 8, right?

Bertrand de la Chapelle: That's right.

Chuck Gomes: Yeah, there's something in there from (Carol) that you put, but I don't think I see anything from Bertrand there. So anyway...

Margie Milam: If (it's there), I will put it in the chat, but I meant to include that.

Chuck Gomes: Yeah, okay. Thanks for calling that to our attention Bertrand. Anything else on this one.

Bertrand de la Chapelle: No, no.

Chuck Gomes: And thanks Mary for your work on that and we will use that as the point of discussion going forward to see what kind of agreement in terms of the statement that you made there.

Going on then to the International Center of Expertise of the ICC as the dispute resolution service provider. Again, I think we've seen varying views on this. Let me call on Konstantinos to introduce that one.

Konstantinos Komaitis: Okay, this is Konstantinos. I tried - I didn't have time to listen to the mp3s. I think that from all the previous discussions there were mainly two views. The one that was - that the ICC is not the (appropriate board) because it's affiliated with commercial (unintelligible). And I think that the other view -- and Bertrand please correct me if I'm wrong -- was that the International Center of Expertise is part of the ICC, but not necessarily affiliated and that's the statement.

My recommendation was based - I did a little bit of research myself and as far as I'm concerned, the International Center of Expertise is not only a part of the ICC, but it is - the types of (disputes) that they are dealing with are highly (commercial) in nature. And for me this poses a serious issue.

We are talking about freedom of expression, we are talking about human rights, we are talking about international - public international look here. And I don't think in my view that the International Center of Expertise of the ICC would be the appropriate venue.

In the beginning I was thinking of replacing it possibly with the International Criminal Court or the European Court of Human Rights but that's entirely unlikely that such inquiries, that such bodies will accept these types of disputes.

However I would like to request this group to possibly think whether the Permanent Court of Arbitration which is treaty based organization based in Hague - in the Hague, sorry would be a more appropriate venue considering the type of dispute that they have been dealing, considering the fact that they are interpreting international law in both public and private.

And also the fact that even though - I mean right now they have moved also towards dealing with private bodies. So I think that this is some sort of a compromise but I would really like to hear your own views. Thank you.

Chuck Gomes: Thank you. And thank you Milton for showing support in (Adobe) there and I'll call on you. Bertrand your hand's up?

Bertrand de la Chapelle: Yeah, very quickly to confirm that the - from my understanding the Court of Arbitration is not a - exclusively dealing with issues of - sorry, with issues of commercial aspects.

The second thing is that in looking at the community objection I discovered I had forgotten that it is actually the same DRSP provider that is being considered. Does that mean that people have objection on this one but not on the community objections which in a certain way could be criticized in the same way?

And the third thing regarding what Konstantinos was saying is that we need to look at the distinction. And there is a real choice here between choosing a permanent body like the Court of Human Rights in the European space versus the composition of a panel on another basis.

There are two elements here. In favor of the court it has a more constant jurisprudence and you can choose one that has been dealing with that sort of issues so the jurisprudence will be more harmonized.

On the other hand the setting up of a panel on a (interim) basis through just a DRSP can maybe help pick lawyers and specialists that would be more closely aware of some of the issues at hand. Especially if we are dealing with IDN proposals.

Chuck Gomes: Thank you Bertrand. Again let me ask you to try and keep your comments to about a minute...

Bertrand de la Chapelle: Sorry.

Chuck Gomes: ...so we can keep moving. Let's go to Milton.

Milton Mueller: Yes. Quickly I just want to say that I read this Recommendation 5.3 in the report and it seems to me that the case for using PCA is so much stronger than the case for using ICC that I'm unclear as to why that didn't achieve consensus.

I really support what (Konstantinos said). It really just strikes me as very bizarre that we're using a commercial arbitration service provider to handle disputes over human rights and freedom of expression and morality and public order. And I don't think there's anything behind that other than sort of convenience and established relationships. I had another point that I wanted to make but I'll stop there.

Chuck Gomes: Okay. If you think of it jump back in. The...

Milton Mueller: Oh yes I remember...

Chuck Gomes: ...I think there was - go ahead Milton.

Milton Mueller: Yeah. It just - this is related the issue also of whether the Board makes the final decision or whether the dispute makes a decision and then the Board has to overturn it.

I think, you know, the stakes lower a lot of this is an advisory or sort of an expert opinion as to whether it's actually forming a resolution and it has to be overturned by the Board. I think that's very important related issue that has to be discussed together.

Chuck Gomes: Well I think we already have discussed that and I think we already have a recommendation that says that these are - this is expert advice. We know by law that the Board has to make the ultimate decision. So I believe that's a done issue.

Milton Mueller: Well I saw in brackets - I saw two approaches. One said it's advice and the other said it makes a recommendation.

Chuck Gomes: Well is there any difference? I mean the bottom line is the Board has to make the ultimate decision.

Milton Mueller: No that isn't - it isn't that simple. If the dispute resolution provider says, "We have made a decision, a recommendation that this TLD be vetoed," and then the Board has to overturn that by a two-third majority...

Chuck Gomes: Right.

Milton Mueller: ...that's completely different than the board resolution provider giving them a bunch of expert opinion and then the board saying, "We have to veto this by a two-thirds or three-fourths majority." Completely different.

Chuck Gomes: I understand that but I think - I thought we had come to a position where there seemed to be very strong support for a high threshold for the Board to overturn a position of - a recommendation from the expert panel. Am I wrong on that?

Milton Mueller: In my case you are yes. I thought that we...

Chuck Gomes: You don't think we've come to that position in this group?

Milton Mueller: I don't. I don't recall seeing that much discussion of it.

Chuck Gomes: Well we...

Milton Mueller: We discussed it about a week ago and - on the list but I found that very inconclusive discussion where people...

Chuck Gomes: We actually had a very good discussion on the - I forget which call it was on the high Board threshold and I thought we did come to a decision on that. Let's not belabor that, we can deal with that further. Mary.

Mary Wong: Thanks Chuck. And I don't want to comment on specific DRSP issue but I was just wondering and I don't recall if this has been brought up before. At (WYPO) they're talking about UDRP and so forth they do have a panel of experts that they call on from time to time.

I don't know enough about the International Center for Expertise of the ICC to know if they do that or if they do it by some other means. I just wonder if it would be possible or if it would be advisable to request that there at least be set up a panel of the imminent jurors, judges and so forth that we've seen mentioned in several documents?

Whether or not these names are made public is a different issue but that if at least ICANN and the community were to request that the DRSP whoever that be establish such a panel for whom the expert would usually be drawn. Would that make things better?

Chuck Gomes: Thank you. Now two questions. Number 1, I saw on the list a question as whether staff - the implementation, ICANN Implementation Team had actually contacted some of these alternative providers that are being suggested. Margie were you able - and I think I did this just late last night so were you

able to send off a question in that regard to (Kurt) and the team in that regard?

Margie Milam: Yes. I sent the question off but I haven't heard back.

Chuck Gomes: Okay. So if you'd just let the group know I think that would be helpful information. By the way Milton coming back if you look at Recommendation 14.1 in Margie's document it is in brackets but let me just throw it out. It says, "A super majority Board approval should be required in instances where the Board votes against the recommendations of the third party dispute resolution provider with respect to Recommendation 6 issues."

So on Monday we'll be, you know, deciding whether there's - what level of support there is for that particular recommendation. Certainly I would encourage anybody on the group list to comment on that if you have a comment before our meeting on Monday.

Monday there won't be a lot of time for a lot of discussion. We're just going to get a sense of level of agreement. We'll probably use the Adobe Connect to do that, to facilitate that without requiring everybody to say something. The - so Konstantinos did you take your - I take it your - you dropped out of the queue so we'll go to Milton again.

Milton Mueller: Sorry Chuck I just want to say why are you taking sort of a poll which requires participation in a conference call that many of us can't make? Why don't you just do that on the list?

Chuck Gomes: Well the list participation - my intent was going to be to ask people who cannot participate on the call to do that. So your point's well taken. All right. Going on then to the independent objector. I know Evan's on is (Robin) on as well? Okay. Evan would you like to talk to that?

Evan Leibovitch: Well Chuck did you see the piece that I sent out probably about six hours ago?

Chuck Gomes: Yes I did.

Evan Leibovitch: So...

Chuck Gomes: But everyone may not have seen it so if you could briefly describe the main elements of that, that would be helpful.

Evan Leibovitch: Okay. Essentially I volunteered to try and take on some wording to do with the independent objector. And while I did that I also - I found that some of the - that some of the things that we'd already been talking about such as the quick look procedure and things like that had a lot of loose ends. But in fact some of them fell into place while talking about the independent objector.

So in taking into account the concerns of (Robin)'s and others about, you know the nature of independent objector and others basically, you know, going off, you know, as an unchecked gun basically having the ability to just shoot objections at anything I'm suggesting a modification - a slight modification of the actual function of the independent objector.

And it's a significant change in that in the current day the independent objector is allowed to launch objections even if no community support, or government support, or any external support for an objection has been raised

What I'm suggesting is that we change that rule so that the independent objector ends up being a funnel and a facilitator in fact for community objections but cannot in fact initiate an objection without any kind of external community or government support. I go into a little bit more detail in the letter but I think that would - Chuck would you agree that that's the gist of what I'm suggesting?

Chuck Gomes: Yeah. I think it is. And I know we're just about out of time but I would appreciate it if we had a few 30-second comments, responses to that if anybody would like to do so. Anybody want to respond to that?

I certainly think it's something that it's worthwhile to put on the table for the Implementation Team to consider. Nobody has any thoughts on that right now? And I know that this is all happening very fast. So I'm not unsympathetic to that issue. So Margie let's put Evan's suggestions there on the table in our document to try and just levels of support for it.

Evan Leibovitch: Yeah. Kind of just to go a step further one of the things that I also put on the table that may or may not (unintelligible) in this group is the possibility that for certain kinds of objections that in fact the IO office may in fact be able to apply some of the quick look standards that we've been talking about.

We've been talking in, you know, we've been sort of dancing around some of the quick look provisions. The IO may be one of the places where the objection is first received where some of the quick look criteria can be applied very quickly.

Chuck Gomes: Thank you. Richard?

Richard Tindal: Just a quick question for Evan something that I didn't understand what you wrote. Under what circumstances - what's the mechanism by which you see the IO deciding whether or not to pursue a claim of a particular group that approaches them? Would they have complete discretion to do that or do you foresee some circumstance that they would be obligated to proceed?

Evan Leibovitch: I - basically what I could see is that the IO would be given a very, very specific set of criteria to apply against received applications such that if a government or community wanted to object to something that was locally objectionable but not globally objectionable that objection would be registered but not necessarily passed on to the Board for consideration.

So the idea is that the IO would have a very explicit set of criteria that would essentially set the bar significantly high for things that the IO would pass on for Board and DSRP consideration.

Richard Tindal: When you use the word register I assume that means something different from the submission of an objection.

Evan Leibovitch: The intention is that the IO would be the place where a community group or in fact a local or regional or state or provincial government could go and file an objection that did not pass muster through the GAC or ALAC channels. And so this would be a place where effectively you would have a public record of objections launched against a particular string.

Chuck Gomes: And why wouldn't they just file an objection themselves?

Evan Leibovitch: They could. You have certain circumstances where a group might be bullied by an application or simply lacks either the administrative or financial wherewithal to be able to do this.

And coming - sort of putting on my "at large" hat, you know, this is a situation where a vast majority of the general public knows nothing about ICANN yet is impacted by it. So we have to have a procedure for which community groups that may not know anything about ICANN and yet find, you know, absolutely revulsion in a string that they have a way that they can bring this forward. They may not know all the procedures. The IO would be in a position to assist.

Chuck Gomes: Thank you. Okay. So let's - Margie let's put Evan's suggested statements and recommendations in there for us to evaluate in terms of levels of support. And if nothing else I think they are ideas that become something regardless of whether we're able to determine support or not that could be considered by the Implementation Team.

Let's go on to timing of Recommendation 6, dispute resolution. Bertrand I think you originally brought this up. I also think suggested something on the list where it would, you know, some effort of applicants - encouraging applicants to find - to communicate with members of the community, organizations in the community, governments et. Cetera as they might think best even in advance of applying.

Because I do agree that I think that the sooner these disputes are resolved in the process the better. So would it suffice just to make a general statement to the effect that the Working Group recommends that dispute resolution - disputes be resolved as soon as possible in the overall evaluation process? Nobody volunteered to draft a statement like that but would anybody object to just a general statement or should we drop this one? Bertrand.

Bertrand de la Chapelle: Yeah. Very quickly and I'm trying to verify on the draft applicant guidebook itself. My understanding or my memory is that at the moment in the chart, yeah - the morality and public order proceedings are coming basically after all the initial (unintelligible). As the outcome - and it goes also for community objection proceedings and (unintelligible) legal rights.

What I find very strange is that there is a full evaluation of the capacity, technical and operational capability, financial capability and so on of the applicant. And strangely enough we will wait until relatively late - all this has been done, the applicant is okay, it is strong enough but then we suddenly say, oh there's an objection that basically opposes the very existence of a string.

And so I'm wondering whether in particular for that one which is the former morality and public order but the (audible) principles and so on it shouldn't actually be put in the first layer on the left side with strength similarity, DSN stability and geographical name so that it comes at the very, very early stage.

To avoid the situation where just like we say with the Triple-X although it was not exactly the same case you get a whole amount of time and work and money and so on on both sides and then suddenly there is some contention that (unintelligible).

Chuck Gomes: Yeah. And I think there's - I believe that the rationale for that was the - if it doesn't pass initial evaluation then you don't even need to go to the expense of the dispute process. Now - but Bertrand wouldn't the same argument apply for any objection in all four categories coming earlier? Why just the morality and public order one?

Bertrand de la Chapelle: You're absolutely right and I think it is the trigger for a very, very good question which is in the early stage it would make sense to have in parallel the objections related to the string and the evaluation of the applicant.

So the coherence of the process is already there but you're absolutely the notion of morality and public order and legal rights in particular or string (unintelligible) is clearly likely to be handled as early as possible.

Or even open the filing period maybe earlier on so that if there is really a significant situation and if for instance the quick look procedure says there is a real concern about that then maybe you can proceed in the evaluation of the applicant at a different pace.

I think that it makes sense but it is particularly true when someone is invoking an absolutely unacceptable string especially if we take the approach of more or less string only with only context and not the applicant per se. You see what I...

((Crosstalk))

Chuck Gomes: Now you said that - you said something that really sounded interesting to me and I have to confess that I don't remember exactly where the filing of

complaints or objections, excuse me objections happens relative to some other steps right now I'd have to go back and look that up.

But maybe the solution to what you're suggesting is that the filing of objections happens earlier in the process so it - and it's publicized thereby giving applicants an opportunity to possibly deal with those earlier in the process. I suspect functionally it's pretty difficult to make all these happen at - right at the beginning. Where do you draw the line? You got....

Bertrand de la Chapelle: Just to answer your question I have the chart in front of me. The objection filing period opens very early, immediately after the applications are posted for public comment and the admin check has been done.

However it goes all through the period when the string similarity, the DMS stability, the geographical names and the evaluation of the applicant itself is being done. And it only starts to be examined after that if I understand the chart correctly.

So maybe the notion of the quick look could be used in a certain way so that in particular if there is a real concern about the string itself it probably makes less sense to evaluate and get into the whole evaluation of the applicant before this is being addressed a little bit in more depth.

So it's less the moment - the filing objection period opens as the moment when it actually allows for the quick look procedure for instance. Maybe something to explore.

Chuck Gomes: Is there provision - I'm sorry this - the details on this are not fresh in my mind but is there provision for notifying the applicants of an objection as soon as it's received even if that's done confidentially?

Bertrand de la Chapelle: I don't remember that. Maybe we could ask Richard who usually has the perfect answer knowing this absolutely by heart.

Chuck Gomes: Yeah. Mary.

Mary Wong: Hi. Thanks Chuck. I was trying to look for that section as well but I wanted to raise something related which is what Bertrand said about quick look. Because the way quick look works is that since it's going to be done by the expert the quick look doesn't actually get triggered until not only the objection filed but the response itself is filed and both sides have paid their fees.

((Crosstalk))

Man: (Unintelligible).

Mary Wong: So the timing issue is also pretty significant there. And as you also said procedurally I don't know how that can be moved. But that's kind of how it's written at this point.

Chuck Gomes: Okay. Thanks. And Margie if you could kind of draft up something that covers the gist of what's being suggested here is that possible?

Margie Milam: Can you summarize what you want me to say Chuck? I was focused on something else right now if you don't mind repeating.

Chuck Gomes: Well the overall suggestion I think is to move up the timing of dispute resolution in the process. Okay that's the general idea here. I don't know - I don't think we're going to have time as a group here to come to any kind of consensus on that. But Bertrand maybe can you - would you be willing and I'm sorry to ask you do one more thing here but could you maybe just in a brief - send a brief statement to Margie with some of the thoughts you just shared?

Bertrand de la Chapelle: Well I knew that would come to me. It's a pretty hard day as I'm leaving tomorrow for (Vilmas). I will try to do that but the general idea is that

the first phase of the initial evaluation has two - or the initial evaluation has two dimension, one is the string review and the other one is the applicant review.

And it is somewhat paradoxical that on an element that would contest the very existence of the string. It's not only that you check for geographical names that there is support by government but that for the very existence of the string there is no possibility to have a quick evaluation to for instance push a little bit further down the road the evaluation of the applicant, the (unintelligible) capability, technical and operation capability to focus on the availability basically of the string itself, if you see what I mean.

So I'll try to write down something. But I think the timing of the evaluation on this topic in any case is important because if there is a very strong objection it makes no sense to spends months evaluating the applicant and checking everything else if this is going to kill the string itself in the end.

Chuck Gomes: And of course the same argument would apply if you don't do the technical and other stuff too. So anyway okay Mary. Did you still have your hand up?

Mary Wong: I know time's running short. I was just going to run through the timing of the process. I don't have to do that if we're going to discuss this somewhere else Monday or something.

Chuck Gomes: Well we won't have much time to discuss it on Monday but we can probably discuss it on list so why don't you put something on the list? That would be great. Richard?

Mary Wong: Sure.

Richard Tindal: Yeah. I'm not sure I caught everything on the timing issue there. But of course I'll maybe just state what everyone knows anyone can object at any time after the string becomes public. So there's no limit on when you can

object but you don't have to object until after, you know, until the very end of the evaluation period.

And of course the reason for that is the - well the principle behind that is that the idea that some people may not wish to spend the time and money objecting until after they know if the application has passed all the other requirements. I think that's the rationale for why the objection window...

Chuck Gomes: Yeah.

Richard Tindal: ...goes longer than the application window.

Chuck Gomes: All right. Thanks. Okay well we're going to move on to very quickly I know we're over time. Avri could - you sent a - some possible changes for incitement to discrimination criterion. Could you very quickly for the sake of those - and I know it's very brief what you did was brief too. Could you just describe what categories you suggested being added to the discrimination criteria?

Mary Wong: Chuck this is Mary not Avri. I think Avri wasn't able to get on the call. So...

Chuck Gomes: Oh I saw her in the Adobe Connect so...

Mary Wong: Yeah. She's in Adobe but not on the call. I'll try and see if I can get her on Skype or something.

Chuck Gomes: Yeah. I don't have it in front of me. I did read it this morning. Does somebody else have - look up Avri's e-mail real quick? It would be fairly easy to figure that out.

The - and my general question that maybe - the category that I think we all need to ask because we're wanting all of this to be based on principles of international law, would these additional - I assume that staff checked the

one's that were included as being principles of international law the question would be these added categories?

And I see the message on the list - on the Adobe right now the - you can see it for yourself. So, "Incitement to or promotion incitement," or a new word that's a, you know, if we decide to use a different word than incitement, "of discrimination based on race, color, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion or national origin."

Any quick, very quick comments on that? Any - or you can even do it in Adobe Connect by agreeing or disagreeing or whatever. So I think Margie what we'll have to do on that one is just put it in with the changes and in particular if it's possible to highlight the additions, the actual changes that are being suggested in the draft report recommendations that would be helpful.

Last of all the use of community objections. Let me make a suggestion on that if anybody objects because of the late time. Thanks Richard and Bertrand if - to the extent that that happened. I wonder Margie if we could just put Richard's contribution in that regard in there and then we will discuss it on the list between now and Monday.

And the - keep in mind that we - that Margie put out a draft report that had a lot of the general information.

I haven't seen any discussion on the list in that. If you have any suggested changes in that please put them on the list because we're not going to have time on Monday to go through details on that. Please do that.

In terms of the general information the most important thing will be for everyone to respond in terms of whether you support particular recommendations or statements in the report that will be finalized on Monday.

And in response to Milton's good suggestion Margie if we can as soon as possible - and I feel guilty knowing how busy you are even asking this. But if we can get out as soon as possible a list of the recommendations and statements for each of these items and ask people to weigh in if there's some way of making that easier to tally their responses that would be great.

I don't know if a (doodle) poll works or whatever but whatever makes it easy to categorize the results. And those that aren't able to do that because I know people are traveling. I'm like Bertrand also traveling tomorrow to (Vilmas)...

Man: Yeah.

Chuck Gomes: ...and leave very early. So - but if anything we can do to give people an opportunity to weigh in so that we have a reasonably good idea of the level of support. And it's okay if we have just a mixed decision and we share various ideas. That's not bad. I think that's - that can also be helpful to the Implementation Team. The...

Margie Milam: Can I comment just a moment? Marika and I were chatting earlier and she suggested - what I was thinking I would do is I would send out in about an hour or so an updated recommendation list. If I could get comments whoever can comment fast so that you can catch whatever mistakes I made. And then the next version we can turn into a (doodle) poll to get circulated over the weekend so that on Monday we could have a sense of where people stand on the various recommendations. How does that approach sound?

Chuck Gomes: It sounds good to me. Does anybody object to that? Okay. Great. Now please try to respond. I - Margie I assume - it would be good if Margie can finalize that today - Margie and Marika. So when she sends that out please try to respond in five or six hours at the latest and - so that they can get that finalized.

Now it's not that we can't make tweaks on Monday but if we have those poll results then we can use the meeting Monday to try and refine the results to see if any final changes are needed to the report. That's a very good suggestion in my opinion so I appreciate that.

Anything else before I adjourn at least 15 minutes late? Thanks for your patience and your contributions and especially thanks to those who contributed some suggested recommendations and statements. That really facilitated our work today.

All right have a good day and a good weekend. Some of you I will see in Vilnius. Hopefully most of you I will talk to you on the phone on Monday in our meeting. Okay. Meeting adjourned.

Man: Bye.

Man: Bye.

Woman: Thanks Chuck. Thanks everyone. Safe travels.

Man: Thank you very much.

Woman: Chuck are you still on? No. Bye everybody.

END