

**Ad hoc group on recommendation 6 from the new gTLD recommendations
Teleconference
TRANSCRIPTION
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15:00 UTC

Note: The following is the output of transcribing from an audio recording of the **Ad hoc group on recommendation 6 from the new gTLD recommendations** on July 11, 2007, at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gtld-sg-rec6-11jul07.mp3>

<http://gnso.icann.org/calendar/#jul>

Attendees:

Jon Bing (Nom Com), Caroline Chicoine, (IPC), Jon Nevett (Registrar), Milton Mueller (NCUC), David Maher (GTLD registries), Miriam Sapiro, Consultant.

Staff: Liz Williams, Senior Policy Counselor, Glen de Saint G ery
GNSO Secretariat.

Liz Williams: ...to the call starting. If someone would volunteer to coordinate the group, I'm happy to do it but I did want volunteer someone with there. But given that there's a small number, I'm happy to do it and I'm happy to take the notes as we go along and distribute them after what would everyone prefer to do.

This silence mean assent?

Jon Bing: It does indeed.

Liz Williams: Hell Jon, how are you? That's Jon Bing as well.

Jon Bing: Yup.

Liz Williams: Oh, hi there. Okay. There's been a fair amount of traffic going backwards and forwards. And I just like I'd give a quick overview from - for the group from where we're starting.

Woman: (Unintelligible).

Liz Williams: Sorry. Who joined?

John Nevett: I'm sorry. This is John Nevett. Can we take a roll first?

Liz Williams: Oh. I beg your pardon. Thank you John.

Glen de Saint Gery: Shall I do a roll Liz because I can see who's on.

Liz Williams: Please Glen.

Glen de Saint Gery: We've got Liz Williams, staff. We've got Jon Bing, Milton Mueller, Caroline Chicoine, John Nevett, Miriam Sapiro and David Maher.

Do you need any introductions for any of the people on the call?

Liz Williams: No, that's fine. Thanks Glen.

Glen de Saint Gery: Thanks.

Liz Williams: And let's see if anyone has any questions. And apologies from Tony Harris. And (unintelligible).

Glen de Saint Gery: I have apologies from Tony Harris and from Adrian.

Liz Williams: Yup. Okay. Thank you, John Nevett for reminding me. I sent out an overview on Monday the 9th of July about the recommendation as it was currently drafted just so that everybody had the most current draft in front of them. Then after last week's conference call, the – Becky Burr had sent some suggestions and there had been some traffic from Milton and – no, not from Milton, from Robin and from J. Scott Evans and from others about this.

And Milton asked me today whether there was a mailing list archive on it. There is not. It's just a small group discussion to report back to the general group on for Friday. And for that piece I do want somebody from the group to volunteer, to actually do that on behalf of the group.

So, the intention of today's meeting is to discuss the traffic that has gone on over the last, let me see, since Friday. So it's several days of conversation to seek, to answer two questions. One is whether the group is satisfied with the drafting as it currently stands. And then the second one is to discuss the suggestions which a number of people have made including Becky. And I'm assuming that everybody has read the threads of discussion.

So, perhaps what I'll do is I'll open it up to – somebody, if someone wants to make a queue, then great. But otherwise, just speak up and we'll just do a quick (praisie) around the room first of all and then move on to the substantial discussion of the suggestions.

Anyone want to just put their (orient) first, please?

Milton Mueller: Hi. This is Milton.

Liz Williams: Anyone else for the queue?

Caroline Chicoine: Caroline.

Liz Williams: Yup. Milton, go ahead.

Milton Mueller: Okay. Yeah. We were in Rec. 6 particularly interested in simply striking the words morality and public order as deemed somewhat distorting of the general attempt of - you can say distinction or the contrary of the generally accepted legal norms or to enforceable internationally recognized principles of law. There's no reason to draw out morality and public order in particular.

And we would be quite happy if that were stricken and we don't think that it really caused anybody anything. So, I hope that we could agree on that.

Liz Williams: Caroline – is Milton, were you done? Yes?

Milton Mueller: Yeah.

Liz William: Oh, thank you. Caroline, would you like to go ahead?

Caroline Chicoine: Yeah. I just had a quick question on, and this is something because I've – it just kind of been thrown in to it so I apologize if I don't know. But, whether the Paris convention covers on registered marks? You know. And if not, you know, again, whether we would need to explore that?

Liz Williams: We'll that trademark attorneys. Did you – was that a question Caroline?

Caroline Chicoine: Well, I question just that, you know, in terms of the – because it looks like at the way that – and I want to be sure that I'm reading this, the recommendations only drafted as your number one in your email. But it – that it references specific treaties and, you know, and conventions and things.

And so, I just don't know. Unfortunately, I didn't have the time because I just got (burned) into this to confirm that that's (copper) is at and, you know, so I raised that question. And then whether if it doesn't, then whether there needs to be some - something that addresses unregistered.

Liz William: Sure. David Maher, did you have anything particular to add on that one?

David Maher: No, I don't. That's just that.

Liz Williams: Okay.

Jon Bing: That – Jon Bing.

Liz Williams: Jon, go ahead.

Jon Bing: Yeah. I'm a bit afraid that there'll be sort of creative difference in (unintelligible), in detail. I mean if you - if they're going to go into details. So which restrictions are exemplified both the registered and

unregistered trademarks and so on. It sort of start growing for being more specific in all there matters as well.

So, that – it is not a – I'm just wondering whether one shouldn't try to keep the first and the second part of this recommendations on the same level of generality, you know.

Liz Williams: Jon, it's Liz here. May I just ask you a clarifying question on that one? Becky sent around some suggested tips...

Jon Bing: Yup.

Liz Williams: ...which included things like, and I'll just read it so the group that does not have it in front of them the universal declaration of human rights which we'd already had included.

Jon Bing: Mm-hm.

Liz Williams: The international convention on the elimination of all forms of racial discrimination which we had not included, the international covenant on economic, culture and social rights which was also a new one, the convention on the elimination of all forms of discrimination against women, the international convention of civil and political rights which we had already included.

The convention on the rights of the child, the convention on the rights of person's with disabilities and the Paris Convention for the protection of intellectual property which was heard quite, which is actually industrial property, to be precise.

Jon Bing: Yup. That's correct.

Liz Williams: And Becky had made some suggestions that including those test may well be, and this is where we keep getting on stuck. We have to use these things as a, not as recommendation per se but really as suggestions for how and evaluate and might assess an objection to an application so that they may well use these tests.

Jon Bing: Yup.

Liz Williams: Becky came back to me separately. And I just wanted to double check this with everybody. That said, and I'm just quickly looking for it now. She said, "Convention on the rights of persons with disability is not yet enforced.", so it should come off the list and the reference of the Paris Convention which we've just corrected. And she say, "Technically, conventions are enforceable and declarations are not."

Jon Bing: Yeah. It could means legally binding items.

Liz Williams: Yes.

Jon Bing: Legally binding by the parties. And just...

Liz Williams: And I'm sorry. That's – I'm sorry, that I didn't – I just – the – that was a long winded question. My question about the drafting was, in this respect to Becky's suggestion...

Jon Bing: Mm-hm.

Liz Williams: ...is it useful to include the conventions which are enforceable and take out the things which are not, which are just declarations?

Jon Bing: Sorry. The declarations are not legally binding. I think that is the - it's the different names of these instruments or either references to the constitutional, the different, in fact, all organizations which either have created their instruments or was created by the instruments. Like the Paris convention, it's created by the same convention it's, it operates.

And from those basic, there is the difference of - for instance, the recommendations and the convention. And a declaration, they may be different nuances in that respect.

So I think there is no generally universal inter-organizational vocabulary for what is enforceable and what is not enforceable.

Liz Williams: Okay. Thanks. Thanks Jon. Did anyone have any other questions or comments to make?

Milton Mueller: This is Milton again. On the question of enforceability, as I recall, Becky's comment pointed out that even though the universal declaration of human rights was a declaration that it – some other activities or agreements had made certain parts of that enforceable so that there was a complexity there that she was hoping we could somehow take in to account.

Liz Williams: Yeah. Milton, thanks for that. And I haven't got to the second paragraph of what she has – second sentence of what she said is the second paragraph. She says, "The universal declaration of human

rights was made enforceable through a – through several of the conventions so some tweaking of this language may be in order.”

John Nevett: Hey, Liz. This is John. Can I just ask a gating question?

Liz Williams: Yeah. Sure. Go ahead.

John Nevett: It sounds like folks are in agreement or at least or I'm not hearing much dissension that we should move from the current language to more of the Becky language and then added it to some extent. Is that where we're headed?

Liz Williams: Then there's a second question, gating question John. Milton, can I just get back to you. And because what we're trying to do is address the NCUC's concern, which in part have been addressed by the substitution of freedom of speech with freedom of expression.

And then if I understand you correctly Milton, your second concern is the use of the - to forward morality and public order. Yes, is that right?

Milton Mueller: Right. Mm-hm. Yeah.

Liz Williams: And so then the first gating question is, with the removal of those four words, you would be satisfied with existing drafting would be okay.

Milton Mueller: Yeah, it's a bit redundant. I mean, you're saying generally accepted legal norms that are enforceable under generally accepted and internationally recognized principles of law...

Liz Williams: Mm-hm.

Milton Mueller: ...I mean it could be cleaned up. But basically yeah, and then you have to have the right examples in there.

Liz Williams: Yes, that's right. And that's the second stage if the question.

((Crosstalk))

Milton Mueller: That would make us happy.

John Nevett: But does that combine three and six?

Liz Williams: No. It doesn't John. This – would you mind John if we just went through something for a second. Because I want to test smoothly if we can get to the point where...

John Nevett: Yeah, that's the way. I'll enjoy it.

Liz Williams: Would you mind if just let it go for a second. So Milton, if I understand you correctly, just leaving aside three, because there was general agreement last week that people were happy with that because it included the additional Principle G, and that the others were happy with – everyone was happy with that (unintelligible) for a second.

It seems to me that there are two things here and everyone can jump in immediately if I'm wrong. Is that the mere drafting could rate strings must not be contrary to generally accepted legal norms delete relating to morality and public order, carry on with that are enforceable under generally accepted and internationally recognized principles of law full stop.

And that...

Jon Bing: Yeah, but the cleaning up, that's...

Liz Williams: Yes, and then next piece of cleaning up says, and that's not actually part of the recommendation. This is – because I think this is where we get – this is what we should perhaps do if people are happy with this.

If you wish, it might be helpful to use the examples that are already in the current draft. And take Becky's ones and use them. And Miriam I'm waiting for you to jump in here.

Miriam Sapiro: Okay.

Liz Williams: I heard this to an implementation guideline that might – that staff might use to help with instructions for applicants on the one hand with – and then with the instructions about defeat resolution process as an objection processes and test it out for the evaluated may use in a defeat resolution or objection process.

Man: Yup.

Liz Williams: Is that an accurate characterization of what we're trying to get to here?

Jon Bing: Liz, I - this is Jon Bing again.

Liz Williams: Yup, thank you.

Jon Bing: I think that is correct. I personally think that examples provided by Becky are excellent.

Liz Williams: Yup.

Jon Bing: But they are – they make a textural imbalance because it becomes such a long text. And also (unintelligible) the question if something is left out of this text simplifications. Does it mean that it is excluded or is it just...?

Liz Williams: Yes, I understand what you're saying.

Jon Bing: Yeah. That is my own – but if it was made into an implementation guidelines those problems will probably be – not so obvious.

Liz Williams: (Unintelligible). Yeah. Mm-hm

Jon Bing: And we perhaps should concentrate on the more problematic elements of this recommendation which is the first sentence.

Liz Williams: So, if I could just recap, Milton, if I could just go around the room if I can remember everybody. Milton, would you have an issue with that as it stands.

Milton Mueller: What?

Liz Williams: Just leave it – just leaving aside what could be an implementation guideline, just the first sentence.

Milton Mueller: Strings must not be contrary to generally accepted legal norms that are enforceable under generally accepted and internationally recognized principles of law.

Liz Williams: Are you happy with that?

Milton Mueller: As a personal reason, clear concise language, I'm not. But in terms of substance, I am.

Liz Williams: Thank you. Okay we'll do with the clear and concise language in a second. I want to get to a general level of principle where we seek agreement.

Could I have comments from anybody else about their constituencies' views or their individual views about that text.

David Maher: David, I support it.

Liz Williams: Thank you David. Anybody else?

John Nevett: This is John. I'm always speaking on behalf of myself.

Liz Williams: Yup.

John Nevett: The rest don't have a position on this issue yet.

Liz Williams: Mm-hm.

John Nevett: But I would delete a generally accepted in the first – the first time you use it.

Liz Williams: Yup.

John Nevett: So just to clean it up , I think that may help make it more concise. But other than that, yes, I'm fine with.

Liz Williams: So you all suggest that we draft is delete under internationally recognized...

John Nevett: I mean, nothing contrary to legal norms that are enforceable under generally accepted and internationally recognized principles of law.

Liz Williams: Got it. Thank you.

Milton Mueller: And I support that change also.

Liz Williams: Thank you Milton. Others?

Jon Bing: I – Jon Bing, I have a problem with enforceable. As you know, it might either be seen as of characterization and then, I'm happy with it.

Liz Williams: Yup.

Jon Bing: But if it's taken on (feasible), I mean it has to be enforceable. Then I think it is extremely difficult. I think for instance...

John Nevett: Would you prefer recognize?

Jon Bing: Yes. I'll perhaps if deleted all together. That's our generally accepted and internationally recognized principle of law. But the enforceable

thing I've – for instance (unintelligible) would not be an enforceable internationally recognized principles of law, I think.

Liz Williams: Does anyone have an issue with Jon's friendly amendment?

Milton Mueller: Jon, let me just ask you in your example of blasphemy, right?

Jon Bing: Mm-hm.

Milton Mueller: So if it's not enforceable, that means that that the string can not be - I mean do you want this committees deciding what blasphemy?

Jon Bing: No I don't. But I do want them to have their authority to -- for instance -- to not accept another com. And, (dot Allah) as a complaint with domain.

Milton Mueller: You do want that.

Jon Bing: I do want that yes.

John Nevett: What was that, doc what?

Jon Bing: (Allah).

Liz Williams: (Allah).

Jon Bing: (Unintelligible).

Milton Mueller: What recognized principles of law would that violate?

Jon Bing: That is open to question. I'm not saying that it does while, I did I said that, I'd want them to have the authority to deny it.

Caroline Chicoine: Do you want some subjectivity or some...?

Jon Bing: Yeah. Well, they would then have to decide whether it is in violation of accepted and internationally recognized principles of law. If they decided it is, then they would be able to have the authority to deny it.

Milton Mueller: Then I don't agree with your proposal.

Jon Bing: All right. Then they said different off opinion is right.

Liz Williams: John Nevett and Jon and Milton, may I just ask a secondary question here is to see if we can unravel this because we're making tremendous progress. Just dealing with enforceable for one second, Miriam had made a suggestion to substitute the way the enforceable with enforced.

Miriam Sapiro: Oh, okay.

Liz Williams: As in, in the past enforced. That had been enforced in the past. Miriam, would you mind just providing a little bit of background on that discussion that we have had separately, if you can?

Miriam Sapiro: Yes. Certainly Liz, can you hear me all right?

Liz Williams: Yes we can. Thank you.

Miriam Sapiro: Okay. International law is generally enforced on its state-to-state basis. So I raised the question of whether the counsel means enforceable which suggest more of the radical sense. And also raises the question of enforceable by who against who or by which state against with state. Or did they mean that have been recognized or have been enforced. In the past tense, meaning that they actually in theoretical sense have been right that have been recorded successfully.

Jon Bing: Yeah. I do not want to be difficult because I'm in general in agreement it just on the time I just have grid, if Miriam could help me to understand what enforced would mean. But for instance the popular against some others to be seen as enforcement.

Miriam Sapiro: Could you repeat that?

Milton Mueller: He's saying that the attempt by certain Islamic group to kill some and rescue could be seen as an enforcement of the...

Jon Bing: Not to kill. But that the proper I would say is already (unintelligible) so that this is illegal under Muslim rule.

Milton Mueller: But then it's not generally accepted and internationally recognized.

Miriam Sapiro: Exactly.

((Crosstalk))

Jon Bing: Now, that's a - you're quite right. That's certainly is quite right. But then, my question was with but that could compliment as enforcement?

Milton Mueller: Enforced under generally accepted and that's a phrase, that's not a term taking an isolation.

Jon Bing: No. Sorry but let's take another example I was only thinking on unilateral attempt for it's enforced general accepted and internationally recognized principle of law. Or is my suspicion correct. That is really as my empty word that you wouldn't change the meaning if it stuck enforce or enforceable. And its only can be referred to generally accepted and internationally recognized principle of law.

Milton Mueller: No I think, I think Miriam's proposal from my point of view is quite improvement in the position and eliminating various kind of troubles that might arise with this concept that potentially enforceable. But we do want to say that it is enforced under generally accepted and internationally recognized principles of law and not simply that it is enforced, period.

Jon Bing: Oh yes, I agree. But if it is generally accepted and internationally recognized principle of law, do you also require that it is enforced?

Milton Mueller: I would, yes.

Jon Bing: That is my problem

John Nevett: Can I ask a question? Can I ask some question? How is using your example Jon Bing (dot Allah), has that been enforced? How would that fall in this?

Jon Bing: I don't think that has been enforced as an example but if you could perhaps set it on a more general level. And say that has been

enforced. That's a blasphemy that has been enforced to under internationally. I do not know. I have no knowledge of that.

Miriam Sapiro: Jon is your question that summarized perhaps that are (unintelligible) at the same time is not yet been enforced?

Jon Bing: By example it was copyright. Copyright is the (Burn Convention) is generally accepted and recognized principles of law. But the (Burn Convention) itself is not enforceable or enforced.

Miriam Sapiro: Yeah.

Jon Bing: Otherwise in the lateral relations. So Miriam, that's why I ask the question like this.

Miriam Sapiro: Yes. I mean...

Jon Bing: Miriam solution - maybe the solution to change this enforce?

Miriam Sapiro: Yeah, or I mean the other alternative is up to you all, but haven't recognized also has a concreteness to it that could be helpful in the implementation. I wasn't support for that earlier but then t does get you away from the question at debate which continues which aspects of international law are enforceable by who.

Jon Bing: Yeah. That's something - because it is agreed, isn't it? That enforcing is an example of recognizing. So they maybe ways of recognizing principles of laws which are not enforcement. But if it's enforced, that is certainly is one way of recognizing it.

Milton Mueller: Jon, this is Milton. I find that argument something I could accept however you're thrown a real obstacle into it by using as an example of (.dot Allah).

Jon Bing: Yeah. That's right.

Milton Mueller: Under what condition could say that a (.dot Allah) would be prevented under generally accepted and internationally recognized principles of law.

Jon Bing: Now I couldn't say that. So I maybe completely wrong in using that example I'm looking setting on this.

Milton Mueller: So in that case, I would have no problem if we in drop the whole enforce word, if you're saying that essentially that recognition for enforcement is an example of recognition. But I would have to consult with the other members of my constituency.

Can you give me an example of how dropping the word enforced or enforceable word permit or not permit something that if you left a language in, you know, things would be different. Give me some (unintelligible) define how would things be different.

Caroline Chicoine: For it wouldn't Becky Burr's suggestion if you'd take what a convention versus declaration. But technically if you use enforced, if and only apply to.

((Crosstalk))

Liz Williams: Perhaps I can here, Milton. If you - if we just have a little quick recap on what's acceptable, strings must not be contrary to generally accepted legal norms, relating – sorry -- to strike relating that are internationally recognized principles of law. We may be enforceable.

And then the second paragraph would deal with your sets of examples and we could comeback from the stop side. Because we've done a lot of this work in the implementation planning to put a series of names and Miriam can correct me if I'm wrong here. But I do think that (Allah) was one of them.

Because remember what we are trying to do here is create a series of test that we could provide instructions to evaluate this for internationally recognized and independent evaluated that that would be used to test with us. And objection was sustainable to a string.

Miriam Sapiro: Correct.

Liz Williams: So for example - sorry Miriam. Did you have something to say?

Miriam Sapiro: Well, yes correct in terms on having to scope it up to test for the evaluators. Maybe it's helpful to post the same question to Milton in the sense of - why does the current formulation give you more comfort as opposed to be change.

I think in both cases there is probably subjectivity in here. I think there's definitely is subjectivity here. It's just the question of how can we narrow that.

Milton Mueller: So I think is very clear what my concern is and they could then allocate. I can register the domain name Allah.com in United States or in maybe fifty other countries. It's not illegal. I can name my vegetable company Allah if I want to. And it's not enforceable. The Islamic countries that think I shouldn't do that can not in any way enforce that prescription or provision against me using that word.

Liz Williams: In the United States, Milton yes?

John Nevett: Great. And Milton is there any word that you would think would fall under this provision? Meaning is there any string that would not be accepted under this provision in (Europe)?

Milton Mueller: Oh sure. There would be certain kinds of obscene words and the rationally charge words that under this convention that are being listed that could be invoked.

John Nevett: Correct. So Allah is a bad example whereas, you know, some obscene word would not be.

Milton Mueller: Right.

John Nevett: Okay, what about this? Strings must not be contrary to recognized in generally accepted principles of international law.

Liz Williams: That is the top of the class Mr. Nevett.

Milton Mueller: What? Please say that again.

John Nevett: String must not be contrary to recognized in generally accepted principles of international law.

Milton Mueller: What happen to enforce?

John Nevett: We dropped it. So that we will not decide in between enforce, enforceable. It's recognition that matters, right? I mean a law may be in the book that has not - had an enforcement action yet, that, you know, some obscene work for example in your example. That they may not be in enforcement action on that obscene word but it...

Milton Mueller: But the principle of law is what we are talking about. We know...

John Nevett: Exactly that's why it says, "Strings must not be contrary to recognize in generally accepted of principles of international law."

Enforceability is pretty irrelevant, I guess.

Jon Bing: Yeah.

Milton Mueller: I'm not sure about that. I think, let me just think about this for a second.

Jon Bing: This is Jon Bing. The problem was formulated very well that is maybe generally accepted principles, but we have been so generally accepted that nobody as actually violated them. So at this moment it's not enforced.

Liz Williams: Mm-hm.

Milton Mueller: Yeah. That's not my concern. My concern is...

Jon Bing: Oh, that's right.

Milton Mueller: ...that you can say something is internationally recognized in many countries.

Woman: Okay.

Milton Mueller: But in 20 other countries it's not recognized.

John Nevett: That's why we have generally accepted in that, right?

Miriam Sapiro: Mm-hm.

Milton Mueller: So generally means universally?

Liz Williams: No it doesn't. Generally means in most cases.

Caroline Chicoine: Well, Liz may get to the point as a second part of this where - I don't know, Milton, I want to speak for you. But maybe there is more comfort if you have, but you know, in this and at least and I want current draft that there is a particular limitations to freedom of expression rights.

Milton Mueller: Mm-hm.

Caroline Chicoine: So that you're basically saying and I would say please don't trump one another. So there is some subjectivity that's going to happen. And maybe it will fall back under generally accepted as to which they feel is the general accepted but...

Liz Williams: They have a challenge we've got Milton as we can't design static process. So for example, if this was used for thinking about this in implementation, if this is use for round one, let say, and we had a whole bunch of objections to particular words.

And we've just reminded here for everyone to read J. Scott Evans as posting to which he wasn't able to post...

Milton Mueller: Mm-hm.

Liz Williams: ...to the general list but he sent some more information about.

Milton Mueller: Mm-hm.

Liz Williams: the distinct between speech and messages...

Milton Mueller: Mm-hm.

Liz Williams: ...which is the first member to protection distinction, just maybe not aside for a moment. Milton, if you think about this in implementation then perhaps this is one of the things where we aren't going to get it absolutely, absolutely, correctly right and universal and completely acceptable until we have one go through the process.

And there has already been included in the text that after the closing of the first round and evaluation is done to aid the tightened or relaxed the positions for this. So this could well be another implementation guideline that this group might recommend that on this particular area

specifically, specific analysis is done about how the recommendation is implemented.

And then how it's used within the implementation process for application evaluation and managing an objection process so that we can make sure that we remain flexible because I will hate us to end up with inflexible recommendation that had to be undone because it created so many problems...

Milton Mueller: Mm-hm.

Liz Williams: ...rather than looking for some flexibility in the first round and then amending it and tweaking it out as necessary.

Milton Mueller: Yeah. I think I'm willing to go along with this but I wanted to – can you repeat for me now what it's in Recommendation 3 because I haven't been in that.

Liz Williams: Sure. Shall I read that for you?

Milton Mueller: Yeah.

Liz Williams: Strings must not influence the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Milton Mueller: And then do you have example?

Liz Williams: Yes. The ones that underneath it, they're exactly the same in Section 6, in Recommendation 6 I can read them for you.

Milton Mueller: Okay. Okay, yeah. Mm-hm.

Liz Williams: Examples of these legal rights that are internationally recognize include but are not limited to rights defined in the Paris Convention to the protective industrial property [in particular trademark rights] the universal declaration of human rights and the international covenant on civil and political rights in particular – let me just turn over my page – as it relates to freedom of expression.

Milton Mueller: Good. So that would be a protection against – so I would be happy with Recommendation 6 that says simply strings must not be contrary to legal norms that are generally accepted...

Liz Williams: And then the John left at Lebanon. John, would you mind reading what you were – I think that you had it captured right or did you write something else down Milton?

Milton Mueller: I basically and simply taking risk six as it stands in we're striking the first generally accepted re-striking related to a more morality and public order...

Liz Williams: Mm-hm.

Milton Mueller: ...and we're striking enforceable under.

Caroline Chicoine: They added though, I think to recognize and generally accepted.

John Nevett: What I have a (unintelligible) to the copy contrary to recognize and generally accepted principles of international law. I think the legal

norms that was in – that was related into public morality – and morality and public order.

Milton Mueller: Okay.

Jon Bing: Mm-hm.

Milton Mueller: And essentially, John is okay as I understand it.

Liz Williams: Thank you John and thank you Milton. Then in that case, if we could – is everyone happy with that? Because this is a note that you need to go the broader group to say that the group has reach agreement on the drafting of this Section 6 and I'd be taking the ratification of the broader group.

Caroline Chicoine: Caroline?

Liz Williams: Yup. Caroline - thank you.

Caroline Chicoine: I just had a question now because I – seem like you had in this last round had moved the internationally. So now it's not principles of law but it's principles of international law. And I guess I'm little more comfortable having it at a generally accepted or internationally recognized principles of law.

Liz Williams: I'll just read back the text that I have...

Caroline Chicoine: Okay.

Liz Williams: ...written down. And anyone can correct me. We need to get this correct. Strings must not be contrary to generally accepted and internationally recognized principles of law.

John Nevett: That's fine with me.

Caroline Chicoine: That's fine with me.

Liz Williams: Everyone?

Milton Mueller: Yeah. The only issue now is that we haven't – we have deleted in four...

Miriam Sapiro: Sorry, can you read that back Liz?

Liz Williams: Yes I can, Miriam, one more time for everybody. Strings must not be contrary to generally accepted and internationally recognized principles of law. So it's (unintelligible).

Miriam Sapiro: The question – right. The question, if you're referring to law as opposed to international law...

Liz Williams: Mm-hm.

Miriam Sapiro: Does that – would that enable a country to say, "Well, this is our law and it is widely recognized."

Milton Mueller: Right. I think you have to have international law to do it.

Miriam Sapiro: Basic question.

Liz Williams: Yes. But I did read in internationally recognized principles of law.

Jon Bing: Mm-hm.

Liz Williams: (Unintelligible).

Jon Bing: At least that's what I know (unintelligible) internationally recognized...

Liz Williams: Yup, okay.

Jon Bing: ...principles of law.

Liz Williams: Okay.

Miriam Sapiro: Okay. So why don't we can interpret that as international law?

Liz Williams: Okay. Is everyone happy with that? Here's what I proposed to do if – and then I will just go to the next stage to see if we can take this one little step further.

The second part of the recommendation is including the examples. Well, what I suggest we do is remove the examples from the recommendation but insert a sentence that says, "Refer to implementation guidelines for Recommendation 6 in the implementation guidelines." And then, will this in further work on establishing a fairly robust but also sensible but also consistent list of test that would be used in an objection process to deal with a problematic or controversial string.

Is that satisfactory to everybody?

Milton Mueller: It gives me some pause. I think the – if these recommendations stand bare face on its own without the example...

Liz Williams: Mm-hm.

Milton Mueller: ...those in Rec. 3 and Rec. 6, I feel a little more uncertain about it. I think it doesn't...

Liz Williams: I'm happy to leave it in Milton. I was just making a suggestion because we struggling with the examples the difference between conventions and the difference between enforceable.

((Crosstalk))

Milton Mueller: But if you could leave that in the recommendation, we would feel more comfortable.

Liz Williams: That – how does everybody else feel about leaving it in but then just doing some work on the text there to provide a better list of examples?

Caroline Chicoine: I don't have major objections to it. One I know is (strip) – it was (strips) in there?

Liz Williams: No, but it's on my notes (unintelligible)...

Caroline Chicoine: It's on your note. Okay, all right.

Liz Williams: ...the Burn convention and (strips) is on there.

Caroline Chicoine: Okay.

Liz Williams: It's included.

Caroline Chicoine: Yeah. I mean I think if you make very clear (unintelligible) all the test concerns that this is not, you know, that this is a – and not (unintelligible) list.

Liz Williams: Yeah.

Caroline Chicoine: And that it's just there, (unintelligible) representative to give people a flavor of or what...

Milton Mueller: Mm-hm.

Caroline Chicoine: ...we anticipate.

Liz Williams: That's why the phrase "but are not limited to" is very important in that description.

Caroline Chicoine: Right.

Milton Mueller: Yeah.

Caroline Chicoine: And whether people feel better having, you know, another statement at the end, you know, that says and that was standing whatever, you know, other – whatever are, you know, whatever. I'm fine with what the way it is. But if...

Liz Williams: It's okay.

Caroline Chicoine: ...another language that just says what they already says, people will feel better.

Liz Williams: Milton, are you happy then to make a new just – new paragraph there, tidy up the drafting for the second part of the recommendation and include some more examples?

Milton Mueller: I'm sorry. I'm kind of dropped out of it there. Can you say that again?

Liz Williams: Sorry. Is – are you -- and of course the question is also open to everybody else – are you happy then to – for me to improve the drafting of the second paragraph of it to include some of Becky's language...

Milton Mueller: Mm-hm.

Liz Williams: ...and then send out a new Recommendation 6 because you seemed to want some comfort of having the examples within the recommendation?

Milton Mueller: Right. I think that would be a good idea. And with Becky's examples, you're simply adding the what – the convention on races and...

Liz Williams: Yeah. (Unintelligible) I'll open them up and I'll just read them off quickly because I had them all ready for everybody. Just everything what I'm taking (unintelligible).

Caroline Chicoine: That's – that I can ask question of this. Are you still that – let's say after this call, we'd be sending something out so that I don't have to write this down.

Liz Williams: Oh, absolutely (unintelligible).

Caroline Chicoine: Okay.

Liz Williams: No, no. You don't have to write it down.

Caroline Chicoine: Okay. I need to report back that's why.

Liz Williams: You don't have to write it down and I'll send it around to this group before it goes on the big groups.

Caroline Chicoine: Okay.

Liz Williams: It was the one on disabilities, it was the one on discrimination against women, it was the one on discrimination about (unintelligible).

Milton Mueller: Disabilities have to go off because that's not, you know...

Liz Williams: Very enforceable. Becky included declaration of human rights which we already have.

((Crosstalk))

Miriam Sapiro: That's widely at here – it's widely at here to even though – no matter it's not enforceable.

Liz Williams: Sure. International convention on the elimination of all forms of racial discrimination.

Milton Mueller: Where?

Liz Williams: International covenant on economic culture and social rights.

Miriam Sapiro: That one is not as widely adhere to as some of the others.

Liz Williams: Okay.

Miriam Sapiro: So people know, I mean, so you all can decide what you want to do but it also has a notion inherent in the drafting of progressive implementation. They recognized some of the rights to more aspirational than actual - at the time the country sign it. So you might want to think about whether or not that's the one.

Caroline Chicoine: Yeah. This is Caroline. I was just add too that (unintelligible) start listing a bunch of them though. Again, those would be used by people as example. So if we had discussion about our – you know, that if – so depending I don't know enough about – I have not looked at these declarations and things to know what they involved.

But if they are something that's really not generally and, you know, internationally recognize, that we should be careful about listing them otherwise we'll be used to support for things that don't have generally accepted. Now we just kind of eliminated though.

Milton Mueller: That's right. That's my concern.

Liz Williams: Okay.

Milton Mueller: That's why I want the examples in there.

Liz Williams: Okay, I got it. That's fine. Sorry. Milton, are you going to say something else?

Milton Mueller: I just said what Caroline just said was...

Liz Williams: (Your baby Caroline).

Milton Mueller: ...that's why you brought my concern was that we would – we want examples in there which are very clear examples of generally accepted and internationally recognized (unintelligible).

Liz Williams: For the broader list. What if Miriam and I take an action item? Miriam, I'm dubbing you in. I'm sorry. Miriam, would you mind if you and I had discussion off line. And we'll produce the generally accepted list and then we'll perhaps survive some text on why we wouldn't include particular things for example on your progressive implementation.

And the one about the convention on the rights of persons with disabilities is not actually enforced – agreed yet. So we wouldn't include that.

Miriam Sapiro: Mm-hm.

Liz Williams: But we'll be able to take – perhaps we could take that up separately Miriam?

Miriam Sapiro: Sure.

Liz Williams: Is that all right? Okay.

Miriam Sapiro: If the groups to you that we – it's better to have a list or not.

((Crosstalk))

Liz Williams: Yeah have a list. Okay. All right. I'm amazed. Fantastic! (Unintelligible) want to thank you all so much, that really (fusion). Is there anything else anyone wanted to offer or question or clarify?

Caroline Chicoine: Right. There was a comment earlier and I apologize that I'm not so merge in this site...

Liz Williams: Go ahead Caroline.

Caroline Chicoine: ...about the combination of the recommendations. Could I just pass their emails and are we leaving that to another day?

Liz Williams: Yes. We're leaving three separate. But I'll do is...

Caroline Chicoine: Separate, right. Okay. I just want to make sure.

Liz Williams: Yeah, Caroline. What I'll do on with respect to three is that I'll ensure that the text is consistent.

Caroline Chicoine: Mm-hm.

Liz Williams: So for example, entry there examples of these legal rights. And I'll make them consistent between the two.

Caroline Chicoine: Okay. But I just want to make sure you were keeping them separate.

Liz Williams: Yup. I'm leaving in separate.

Caroline Chicoine: Yeah. Okay.

Liz Williams: Yeah, there was fairly strong language about that in (send one). So I suspect...

Caroline Chicoine: Oh okay.

Liz Williams: ...everyone combined the two. Any other question from anyone?

Miriam Sapiro: Can I just ask a question because it's (unintelligible) implementation (unintelligible) right in front this call? In three when it says does not infringe the existing legal right of others. This – when it was drafted, was the intention mostly trademark or also there – that was specifically discussed. It's just be helpful to know if there were – if there was any additional detail on which rights (unintelligible) issue.

Milton Mueller: Yeah, freedom of expression in addition to trademark.

Jon Bing: Mm-hm.

Milton Mueller: That's one of the big...

Miriam Sapiro: Mm-hm, yup.

Milton Mueller: Concerns that we had.

Miriam Sapiro: But if a string is approved, what's the relationship to freedom of expression?

Milton Mueller: The point is you can't tell somebody that they can't (unintelligible).

Liz Williams: Sorry Milton, come back to the phone, you dropped out.

Milton Mueller: I said you can't tell somebody that they can't use the string simply because it's politically unpopular or when they would have an existing free expression right to use that term. You understand?

Miriam Sapiro: This is waving the question because it says things must done in French so...

((Crosstalk))

Milton Mueller: I thought we fix that. I thought we talked about the string evaluation process for the approval. So the one 6...

Liz Williams: Yes Milton. You keep dropping out so I can perhaps answer for you. That was included by the insertion of a Principle G.

Milton Mueller: Okay. And what is that?

Liz Williams: I knew you're going to ask me that. Wait a sec. I just have to go to a different page. That the string evaluation process leave the applicant's

evaluation process would not – could you just bear with me one second, sorry. Sorry. Could you just bear with me one second, please?

Milton Mueller: Sure, no problem.

Liz Williams: (Unintelligible) like a circus mark or something.

Milton Mueller: But you are.

Liz Williams: Oh yeah. And it's the nasty lines that I'm a bit tied of. Hold on a minute. There you go.

John Nevett: I have to follow the elephant.

Liz Williams: Thanks, John. The Principle G reads – there's a new Principle G which Robin agreed to last week, Milton which is – I'm just opening the file. I'm sorry. I should have had it open already.

Milton Mueller: I'm perfectly willing to wait.

Liz Williams: Thank you. Here we go. New Principle G that says, "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected unto internationally recognized principles of law."

Milton Mueller: Okay.

Liz Williams: And that was the piece that we dealt with. So we didn't have to go back and amend Recommendation 3.

Miriam Sapiro: Mm-hm.

Liz Williams: But that the process concerns were addressed in a principle.

Miriam Sapiro: Mm-hm.

Liz Williams: And there were questions about the “trumping of a principle” against the recommendation but there wasn’t that at all. And there’s no intention at all but just because it’s a principle, it would have any less force. And of course the right to all of these is the board will be responsible for...

Milton Mueller: Mm-hm.

Liz Williams: ...implementing the recommendations and determining which things are actually put into the implementation plan. So that’s have that (unintelligible).

Miriam Sapiro: Mm-hm.

Liz Williams: Any further questions or things that we needed to deal with?

Okay. I’m going to leave on consensus where it is. I will send to this group shortly. No, I won’t do it shortly. Miriam, you would mind if I just had a separate call with you in a second?

Miriam Sapiro: Where to call me, on my cell phone?

Liz Williams: Yeah. Just – I’ll do that in a tick. I won’t hold everybody else up but the action I was (unintelligible) one, send around the amended text which

has the agreement of the group, just to make sure if there's no lost hiccup. And secondly I'll speak Miriam in a minute and we will redraft the examples of the limitations.

Milton Mueller: Yes.

Liz Williams: Is everyone happy with that?

Caroline Chicoine: That's fine.

Milton Mueller: Yup.

Miriam Sapiro: Yeah, okay.

Liz Williams: If there's nothing...

Caroline Chicoine: And you'll include me on the email or you open it to Kristina.

Liz Williams: No (unintelligible), indeed Caroline (unintelligible).

Caroline Chicoine: Okay, okay.

Liz Williams: So you don't have to go searching for.

Caroline Chicoine: Okay.

Liz Williams: I want to thank you very much guys. It's a great step forward. I really appreciate it.

Milton Mueller: Okay.

Liz Williams: Okay.

John Nevett: Thanks guys.

Liz Williams: Thanks everyone.

Caroline Chicoine: Yeah. Thanks very much. Bye.

Liz Williams: Bye.

Miriam Sapiro: Bye.

Milton Mueller: Bye.

Liz Williams: Bye.

Jon Bing: Bye.

END