

**Ad hoc group on recommendation 6 from the new gTLD recommendations
Teleconference
TRANSCRIPTION
Wednesday 18 July 2007**

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 18, 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/new-gtld-rec-6-20070718.mp3>

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

Attendees:

Tony Harris
Philip Sheppard
Jon Bing
Kristina Rosette
Robin Gross
Miriam Sapiro
Avri Doria
Jon Nevett
David Maher

ICANN Staff

Liz Williams - Senior Policy Counselor
Craig Schwartz - Chief gTLD Registry Liaison
Glen de Saint G ery - GNSO Secretariat

Woman: Hello Tony Harris.

Woman: And (Philip) will be on this call now. He has let me know.

Woman: (Philip)?

Woman: Yes.

Woman: Okay.

Man: Hello?

Coordinator: Excuse me, (Jon Bing) now joins.

Woman: Hi (Jon).

(Jon Bing): Hello. (Unintelligible).

(Philip Sheppard): Hi. (Philip) joining.

(Kristina Rosette): Hi (Philip), (Chris).

(Philip Sheppard): Who else have you got?

(Kristina Rosette): Tony, Craig.

Coordinator: Excuse me, (Robin Gross) now joins.

(Kristina Rosette): (Robin), (Jon Bing) and Craig Schwartz. Hello?

Woman: Oh hi (Christina).

(Kristina Rosette): Hi. How are you?

Liz Williams: Pretty good. How are you doing?

(Kristina Rosette): I'm well.

Liz Williams: Good. I just sent you a note to say we'll go ahead with 20 after this for as many as who can join.

(Kristina Rosette): Okay.

Liz Williams: And I've got a note from...

Coordinator: Excuse me, Avri Doria now joins.

Liz Williams: Hi. Avri.

Avri Doria: Hi.

Woman: Hi Avri.

Liz Williams: Sorry about the date change Avri. What a dummy.

Avri Doria: That's quite all right. I'm writing this in Swedish style which also allows for easy sorting.

Liz Williams: Oh really. Oh okay. I knew there was a reason for that.

We've got 1, 2, 3, 4, 5, 6, 7, 8, 9. Let me count me or Craig, so seven.
Shall we just wait for 30 seconds more to see who else is going to
join? Oh who's that?

(Jon Nevett): This is (Jon Nevett).

Liz Williams: Hi (Jon). How are you doing?

(Jon Nevett): Good. How are you?

Liz Williams: Okay. Shall we kick off because we seem to have somebody from
each of the constituencies.

Woman: Sorry. Can you send me a list of participants? I see...

Liz Williams: We are writing it down here.

Woman: Okay.

Liz Williams: I don't have a registry. I think that (David Maher) was going - was part
of this group last week and...

Woman: Yes.

Liz Williams: ...we - I don't know whether he will join. (Chuck) sent him the details.
Shall we just wait a little second?

Man: We've got (unintelligible) because we don't know who is calling (giving) at least half an hour.

Liz Williams: You're such a bossy old thing (Philip). Public school boy honestly. So (David Maher) work? Did he mention anything about (unintelligible)?

Woman: He was sent the notices.

Liz Williams: Yes, yes, he was. I know. Okay, I suggest because we've got limited time and another call and people are on the phone from the Hoover's call and of course after the Hoover's call everyone's in the mood for consensus so it should be easy.

They're laughing (Philip). Okay, Glen do you want to do a roll call or shall I because I've been writing it down?

Glen De Saint Gery: Could you please. I haven't been...

Liz Williams: Sure. (Jon Nevett)?

(Jon Nevett): Here.

Liz Williams: Thanks. Avri?

Avri Doria: Yes.

Liz Williams: (Kristina Rosette)?

(Kristina Rosette): Yes.

Liz Williams: (Philip Sheppard)?

(Philip Sheppard): Yes.

Liz Williams: (Jon Bing):?

(Jon Bing): Yes.

Liz Williams: Craig Schwartz?

Craig Schwartz: Yes.

Liz Williams: Tony Harris?

Tony Harris: Here.

Liz Williams: Anybody else?

(Robin Gross): (Robin Gross).

Liz Williams: Thank you (Robin). I did have you on my list. Thank you very much (Robin Gross). And me Liz Williams and Glen De Saint Gery.

Would anyone like to volunteer to coordinate the call? I did it last week and it's actually quite a challenge taking notes and coordinating at the same time. So I'm happy for somebody else to do it but I'm also happy to do it at the same time.

Thank you volunteers. I'll take silence is an I'll do it which is fine.

The call is being recorded. And I'll just start - I've taken the roll call before the call is being recorded. I'll just do it now. Sorry, bear with me 1 second.

Man: Liz? Liz?

Woman: I think she just disappeared in the operator line. (Eerie) when that happens.

Liz Williams: That didn't seem to work.

(Jon): Hey Liz, this is (Jon). I have a quick question before you start the recording.

Liz Williams: Yes sure.

(Jon): There seems to be an inconsistency in this subgroup, you call it a subgroup in that the emails are not being publicly available or not publicly available. But the recordings are still being made. You know, is there a reason to have one way or the other?

Liz Williams: Oh we don't - sorry (Jon), go ahead.

(Jon): Sorry. I said the email traffic that we had on this topic is not publicly available but we're still recording. So my question is, is that a deliberate inconsistency or am I mistaken?

Liz Williams: No it's certainly not. And (Jon), frankly, the recordings and the MP3 recordings are mostly for my benefit so I can go back and check things from what people say.

What is your preference? Because we don't have to record it, but Glen has been very kindly doing that because it gives me the chance to revise things after I've been participating in the call. But I have no issues if you don't wish them to be available.

They are available on - they are posted on the (GNSO)'s Web site if you wish to have them after. What would you prefer?

(Jon): I'll just leave it up to the group. But there seems to be an inconsistency so...

Liz Williams: Yes, but I can explain. The other part of the inconsistency (Jon), was that there was such a small group of volunteers. And Glen had suggested that it wasn't very practical setup separated recommendation six and recommendation 20 mailing list for the small grids for the short period of time that we were going to use them.

And much of the traffic has been coming back on to the main list for the GTLD council, the community list anyway.

Is there something that you thought you'd missed or you didn't have or was it a different concern?

(Jon): No. I guess my concern was the inconsistent treatment. And if you have substantive conversations on (Mel) that aren't available, were probably available, maybe...

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

(Jon): ...probably shouldn't be probably available either.

Avri Doria: This is Avri. It's probably something we should look at in terms of sort of doing these new quick spin-off discussions where it's been kind of new. And we probably should look at what's the right way to do it.

Liz Williams: Yes.

Avri Doria: I think the inconsistency just comes from some stuff got done and some stuff didn't while we're figuring out how to do these.

Coordinator: Excuse me, (David Maher) joins.

Woman: Thank you (David).

Man: (Unintelligible). I've been posting all my relevant comments of the small group to the main list anyway because we're all on that.

Liz Williams: Yes. And also (Jon), I've also been posting any of the updates that have been - have either come out of the recommendation six or recommendation 20. You'll have seen the continual update, update, update. This is what the small group did. This is what the (text) happened. This is how it was done. This is what was discussed.

So yes, I understand your point. And we'll try to deal with that differently in the future. But I think if your point is about transparency and access and decisions being made appropriately, then I think that everyone's doing their best efforts to try to get work done.

And of course, anyone can listen to the MP3 recording if they wish later, even though it's torture to listen to them.

(Jon): Okay, thanks.

Liz Williams: Is that all right, yes?

(Jon): Yes. No, I just wanted to raise that as an issue. But obviously people are thinking about it (unintelligible).

Liz Williams: Yes, definitely. (David), welcome. You've arrived just in time. And I'll quickly whiz around. And in a minute, I'm going to start the recording and then I'll just do a very quick recording for the benefit of MP3 for all of the (men). Just hold one second and I'll just start with the operator.

Coordinator: The conference is now being recorded.

Liz Williams: Thank you operator.

Thank you very much everybody for joining. I'll just for the purposes of recording, read back the roll call.

(David Maher), (Jon Nevett), me, Liz Williams, Avri Doria, (Kristina Rosette), (Robin Gross), (Philip Sheppard), (Jon Bing), Craig Schwartz and Tony Harris. I think that's everybody.

Thank you very much for coming. And I really appreciate everybody. I know it's a very busy schedule.

This is the Recommendation 6 Call which is about the strengths must not be contrary to a generally accepted legal norms.

This is the second just to set out what I think perhaps might be the purpose of the call. This is the second chance that we're having to see if we can get to a point of consensus on Recommendation 6.

(Philip) just sent around to the general list, a resend of the current stable text. And I just wanted to be sure that everybody had that in front of them. And I can just read it.

(Jon): Do you also have the - I'm sorry, this is (Jon). Do you also have the language that we agreed upon last week?

Liz Williams: Yes I do (Jon), yes. And that went around to everybody also in the - and I'll read both if you wish (Jon).

(Philip Sheppard): I think my text was taking that language and going on from the discussion we had, wasn't it? I mean that was his intention.

(Jon): You didn't participate in last week's discussion. So what I'm asking for is I see this language is that you're proposing. I'd just like to see the language that those of us on the call last week had come up with to compare.

Liz Williams: Yes, just one second and I'll get that (unintelligible).

(Jon): That'd be great. Thanks.

Liz Williams: Yes, (Philip), just to be clear, we're talking about two separate groups. The subgroups last week came up with some text that was agreed. And then that was taken back to the committee meeting last week on Friday.

(Philip Sheppard): Oh so - and I participate in the committee meeting, quite right. Yes.

Liz Williams: Yes, so...

(Philip Sheppard): Got it.

Liz Williams: Yes, got that?

(Philip Sheppard): Yes.

Liz Williams: And I'll just get the Recommendation 6 text up.

What I might do (Jon), for the purposes of the last week's small group -- because everybody who was on that is now on this call -- I'll read that first. And then I'll read the historically agreed text.

So the small group text reads as follows. Strings must not be contrary to generally accepted and internationally recognized principles of law. It's not.

And then there's an illustrative second paragraph which goes with that which says examples of such principles of law include but are not limited to the universal declaration of human rights, the Paris convention on the effects of intellectual property.

We really don't trade with any asset of international property which is (trips). To ban convention on the protection of (literature) and artistic works, the international covenant on civil and political rights, the convention on the (Women) actual (moral) forms of discrimination against women. And the international convention on the elimination of moral forms of racial discrimination.

Just leaving aside for a moment, the first sentence, a couple of improvements were made on the descriptive examples which was to include text as (Philip) suggested about the intellectual property treaties that are administered by (WIPO) which would have removed the reference to the specific thing on the Paris convention and on trips. The...

(Philip Sheppard): That was...

Liz Williams: ...convention. Sorry, (Philip), did you have something to say?

(Philip Sheppard): Yes, the two (unintelligible) by (WIPO) removed the reference to...

Liz Williams: Paris...

(Philip Sheppard): Paris and (Bern) but not to (Trips).

Avri Doria: I can read what I recorded as a revision of that during the meeting if you like.

Liz Williams: Avri, it's okay actually, because what I think we need to is focus on the first sentence because that's the nub of the issue. And then we can deal with the examples later if you don't mind.

And then for today this is what (Philip) thinks is the stable text that we should add based on our latest discussions. And I'm not going to read the examples. I'm going to just read the first line which is...

(Philip Sheppard): Well...

Liz Williams: ...not in the country. Yes (Philip), go ahead?

(Philip Sheppard): Let me just get the group's understanding and buy off to the examples list.

Avri Doria: Do you want to work backwards then?

(Philip Sheppard): Yes.

Avri Doria: Well I mean it's basically - yes. So...

(Philip Sheppard): If it's easy to do.

Liz Williams: Yes I'm pretty sure - and I'm pretty sure that's okay because I have got that in front of me and I was going to read that there.

And the examples of such principles of (law) include but are not limited to the universe of declaration of human rights, intellectual property treated administered by the world intellectual property organization, the WTO agreement upon trade weighted aspects of intellectual property rights which is (TRIP)s, the international covenant on civil and political rights, the convention on the elimination of all forms of discrimination

against women, and the international convention on the elimination of all forms of racial discrimination.

So that was the agreed set of examples which was deleting Paris and (Berm).

(Philip Sheppard): Yes.

Liz Williams: Is that - you're happy with that then (Philip)?

(Philip Sheppard): Yes.

Liz Williams: All right...

(Philip Sheppard): Yes, that was the same location, yes.

Liz Williams: Yes. So let's leave the second paragraph aside and then...

(Jon): Wait. Let me just ask one - could I ask one question on that?

Liz Williams: Yes (Jon). Go ahead.

(Jon): I think (Philip) raised it on the account or the task force calls. I think he - I forget what term (Philip), you used about potentially a bunch of novices looking at this kind of thing.

So I guess my question is, should we run this by some international law expert just to get some buy off from someone who's not a novice?

Liz Williams: Oh (Jon), I can answer that question for you. A request has gone out for a very specific legal advice on international law including human rights and freedom of expression. So that actually will be done.

(Jon): Great. Great.

Liz Williams: It's actually under preparation at this very moment. And so that list -- and it is an illustrative list -- can be concerned in implementation. But we're waiting on that later advice. So yes, that is indeed taking place.

(Robin Gross): But who's doing that legal advice?

Liz Williams: Sorry (Robin), who - sorry, I didn't hear you.

(Robin Gross): I'm asking who have we asked to do this advice?

Liz Williams: There's been a couple of requests put out to different firms. And we're just waiting to receive their proposal back from them.

(Robin Gross): Law firm?

Liz Williams: Beg your pardon?

(Robin Gross): Yes said is this coming from law firms?

Liz Williams: Yes it is.

Craig Schwartz: Liz, hi. It's Craig.

Liz Williams: Oh hi Craig.

Craig Schwartz: Jones Day is going to be doing the first round of research for us so people know who the firm is.

Liz Williams: Thanks Craig. I've forgotten actually. I thought that was the other one that we were doing.

Craig Schwartz: Yes.

(Jon Bing): Sorry Liz, this is (Jon Bing).

Liz Williams: Hi (Jon). Yes?

(Jon Bing): There was one point made with the reference to the examples list. And that was that the sequences, the order in which they remain - were named would be revised when it was stable.

Liz Williams: Oh yes. I was actually going to do it alphabetically.

Woman: I thought that that revision was indeed the order that Liz read.

(Jon Bing): Well...

Woman: ...because it needed further revision. And I don't know that we need to do that in this group. But we can.

(Jon Bing): I was only thinking that it seemed they come (several were) helter skelter there. It would I think be perhaps, convenient to have the intellectual property referenced as (grouped) together on the freedom of expression examples grouped together.

But this was on - if there's a disagreement, that's on an editorial point.
So there's not no importance.

Liz Williams: Yes. Thanks (Jon). I'll work with that one. So (Jon), that answered your question. (Robin), you know who it is. Thank you Craig, for providing that. And (Jon), I've got your point about grouping them incorrectly in a logical order.

Woman: Liz, if I can - if we can do that before tomorrow's meeting.

Liz Williams: Yes, that's fine.

Woman: So that when we go (toward) it tomorrow's meeting, it can revise the order.

Liz Williams: Yes. Sure. I'll just retake it - the (note) on this. Just stay with me 1 second if you wouldn't mind. And I'm going to do it in (Jon)'s example of human rights and then freedom of expression.

Yes, okay. That brings us to the rather harder question which is essentially -- and I don't know how the group wants to characterize this, but essentially a choice between two formulations.

The one is really - (Jim)'s must not be contrary to generally accepted norms relating to morality and public order that are recognized under international principles of law and the other one which we had from last week.

And that says strings must not be contrary to generally accepted and internationally recognized principles of law.

I don't quite know how the group wants to handle the conversation. Perhaps we can just have an open floor for the moment for people to just express opinions. And then we'll see if we can reach some decisions.

I've got the call scheduled for an hour. And we're already 19 minutes into it. And we'll do recommendation 20 call after this. So we've got perhaps an hour and a half.

Man: Perhaps I'll have it to kick off and explain the question we had on the main committee last week on this. First and foremost, I think the whole origin of this recommendation with (doing) morality and public order. So I can see no logic at all in removing the words morality and public order.

If that's the decision of the subgroup, then I think we just scrap the recommendation first off is the first point.

But secondly, I think more importantly, unless you have that narrowing caveat in in that recommendation is (only) referring to this part, then the principles of examples that we give suddenly grow to enormous and unmanageable lengths in terms of the international principles of law that we're trying to factor in which makes (presentation) impossible.

So just to reiterate, that I think it's essential we have the limiting and clarifying intent (unintelligible) and public order wording as part of it.

(Jon Bing): This is (Jon Bing). I agree to that. It seems to me that the norms on the morality of public order is a subset of the wider formulation. So they are included there only not by explicit difference.

And it's - I believe I thought that it would be an argument on the basis of freedom of expression that we shouldn't have that broad reference, but have the reference narrowed down to principles of morality and public order. Or there might be a difficulty with the exact choice of words. And there may be different choice of words which have more or less to say an implication for instance, using the word ethical.

But I'm not - the ethical rather than morality. But I have - this is - that would be a language question in the time (certainly) are not qualified. Thank you.

Liz Williams: Anyone else wanted to just be part of the open floor for a second please?

(Kristina Rosette): (Unintelligible) this is (Christina). I agree with (Philip) and (Jon) in that I think we do need to have that narrowing language of morality and public order. Although I should note that I'm still not clear as to whether we want mortality or public order.

And that if you're not willing to have that language, then I think we either do need to scrap the recommendation or come up with other wording that clearly limits the scope of this recommendation.

Because we mean it at kind of the original submission as it's set out on Avri's chart is just so incredibly broad that frankly I don't think we're doing anyone any good.

Avri Doria: This is Avri. Can I add a comment?

Liz Williams: Go ahead Avri.

Avri Doria: From a personal perspective.

Liz Williams: Just a bit (unintelligible) Avri, it's a bit hard to hear you.

Avri Doria: Oh okay. From a personal perspective, I mean looking at this, I understand the arguments about the limitation. And I kind of like something (Christina) said about not knowing about either morality or public order.

And if I were to look at it in terms of wanting to limit it, when we think about public order, we are speaking about things that for better or worse, people have codified into laws and we're stuck living with it.

When we speak about morality or ethics, both of which are such general terms and not indeed codified anywhere except in theological and ethical work, it seems to me much more problematic.

So I'm wondering whether people are willing to consider removing public order but dropping morality. And so we're still limiting it. In fact, we're limiting it further to that which is definable in law.

(Philip Sheppard): (Philip). I'd like to make a response to that. I think you're actually wrong. The reason that we came up with that phrasing in the first place, managing public order is precisely is because it is found in international law.

Avri Doria: Yes, I know it's found in for example, Article 29. And I believe that's all we stuck in because there are those that want religious books to govern. However, I don't know that we need to make that same commitment. Now if you need to make the commitment...

(Philip Sheppard): I'm not party to the interpretation of those who drafted the UDRP. So I couldn't comment on that. All we were trying to do was not to do anything different to where international law is at the moment.

Avri Doria: I just had a clarify question to ask to pose to the group if you don't mind. I'm just - one of the challenges that I'm having with this discussion is that it sounds like people disagree both sides of the coin and prove their point either way.

One of the things that I'd like to think - to ask the group to think about is what this would look like in implementation. So for example, there is no doubt that we will receive an application from somebody somewhere in the world that would raise a small M and small P and small O, public morality and public order question or an ethical question or a religious question that we're going to have to deal with somehow.

So if you used the one example which was to scrap the recommendation altogether, then from ICANN's point of view, we have no guidance about how to deal with those applications that we know

we will - that we know will come in and that we know we'll receive objections from. So we'd have no guidance about how to deal with that from a policy perspective.

The middle ground is then - the one - the other - so that's removing it altogether. The next step is including morality and public order as a limiting set of calibrating parameters that enable us to deal in some way with some things.

And then the last page is removing the phrase morality and public order altogether which opens it right up and I think it creates a - from the last call, that that would open it up to any (unintelligible), implementation test.

So I just thought while they're discussing this to think about not necessarily what the recommendation actually says, but how one would implement it and then what we would do with it in the application evaluation process.

Because these are a set of recommendations about an application process that ICANN needs to administer.

(Jon): This is (Jon). Is the staff recommendation then to go with the current language based on implementation?

Avri Doria: I'm not making any recommendation at all about the language (Jon). I'm just urging the group to think about the impact of it in implementation.

(Jon): Okay, well I guess from my perspective, I agree with you that number 3, meaning scrap the whole thing doesn't make any sense. And where I am is on the fence between including the language or not, the language being the clause public order and morality. Because that - the concern of including it.

Because I think either way we get to it with the second - with the broader language and with the examples. So what I'm trying to weight is (Philip)'s statement that the - essentially the broadness of the comments would overwhelm the issue and essentially make it difficult on implementation verse the lightning rod that we'll see by having that clause in there.

And so that's where I'm coming down from it. And I look to other's comments on that. Because you know it's going to be a cause of (Abrey) for folks that ICANN's deciding issues of public morality and public order.

Avri Doria: I just had one additional - thank you very much (Jon). I just had one additional question to make - to - parameter setting statement really is that I think that from my analysis of what the committees challenge is, that this is only going to be one piece in a very large puzzle of other inputs that the board is going to have to make a final decision on in terms of approving the policy and then putting it into implementation.

And the challenge that I've got is with respect to writing the final report to explain what we end up doing is - and (Robin) you need to confirm this for me if you can. It has been fairly clear that the (NTUC) for example was going to submit minority report which would be included as a normal part of the course of the writing up of the report.

I would suggest to the group that if we can reach some kind of consensus, it makes the (unintelligible) work much stronger in terms of representing that to the board and then discussing it with the (Gaginan).

We need to run a public comment period. So even though we might be turning ourselves inside out on the correct formulation of this exact recommendation, how it looks in implementation may well be entirely different. So I just wanted to put that little frame around what's going to happen to these particular piece of work.

Did anyone else want to make any general comments? And then we can go to the specifics I think of drafting?

Man: I would like to.

Liz Williams: Sorry, that was a (unintelligible) (Robin)?

(Robin Gross): Yes.

Liz Williams: Craig.

And anyone else?

(Philip Sheppard): (Philip).

Liz Williams: (Philip). Anyone?

(Jon Bing): (Jon Bing).

Liz Williams: (Jon Bing). (Christina)?

Tony Harris: Tony Harris.

Liz Williams: Tony Harris.

Tony Harris: Tony Harris.

Liz Williams: Yes, got it. Anyone else? Okay, that's everyone. (Robin), go ahead please.

(Robin Gross): Yeah, I think that the nightmare on implementation that you're concerned about by removing those words is already there. We already have the nightmare of implementation with those words there and removing them isn't going to make it any more of a nightmare.

I mean, we already have the situation to deal with where there are conflicting laws, conflicting ideas about morality and whether or not those words are there or not doesn't change the fact that we have a nightmare in terms of implementation with this recommendation.

Liz Williams: Thanks, (Robin). Craig, go ahead.

Craig Schwartz: Yeah, actually I think (Christina) pretty much just made a comment that was similar to what I was going to say. And although on last week's call I voiced concern about removing morality in public order and then it becoming this free for all, I wonder – and this question is probably more directed at the lawyers on the call than anything because I'm not one.

But if we didn't remove – if we remove morality and public order and it was more broad – what other – if you will, functional areas might fall under the guise of generally accepted norms that are recognized under international principles of law?

You know, morality is under that. Public order is under that. What other elements might be, you know, objectionable under a broader defined wording for this?

And if we can't come up with any, then maybe it's not – maybe removing those words is not a big a concern as I thought it was last week.

(Philip Sheppard): (Philip) here. I'm happy to reply to that.

Liz Williams: You were next in the queue, (Philip), so could you reply and go on with your (unintelligible).

(Philip Sheppard): Okay, well in terms of a reply, yes. Absolutely any intellectual property right, copyright, also the name – personal name – something similar to a personal name, a country name, a language – absolutely, you know, you've got a list as long as your arm, Craig.

So it's a disaster to have the (unintelligible) wording in.

Craig Schwartz: Okay.

Man: (Uncle).

(Philip Sheppard): But I just – yeah, like I said before, I did – the whole purpose of this was to avoid abusive names and to give ICANN a mechanism to have an objection process for those. And I think we just need to be clear that that is our intent.

And this distracting – distraction to try to take out the (pleading) managing public order, I just find bizarre discussions, frankly because the objective is to avoid abusive names.

And I'm not on a recorded conversation going to give you examples of these names, but I'm sure all of us could do so in our own minds.

Man: Thanks, (Philip). That was really helpful.

Liz Williams: (Philip)? Was that your contribution as well as your reply?

(Philip Sheppard): Yes, it was.

Liz Williams: Thank you. (Jon Bing)?

(Jon Bing): Yes, I'd like to add to (Philip)'s list all the principles have all been (prepaid) or we try and (unintelligible) the WTO contacts which easily could be developed on that international principles.

So I can't really see (unintelligible) that would violate – over domain name is violated.

It seems to me that it is quite true that so many of (unintelligible) argue that ICANN is deciding on morality on public order. It's a problem. But I

can certainly see – I certainly have (personal) (mobile) trouble. It's not (unintelligible) but the opposite also would be true.

It's (you there) said that ICANN is not recognizing the limitations for morality and public order for top level domains. That should be seen as slightly – or be looked upon as either rather negative perspective.

And I almost think that that is – for me – a rather major concern – the standing of ICANN in the international community. And I think that (whomever) does this – you look at it, it will raise problem.

But I think that to recognize that this is a responsibility we take upon us is to be – will be seen as important.

(David Maher): This is (David). Could I get in the queue?

Liz Williams: Yes, (David). (Christina), you were next. Thank you.

(Kristina Rosette): I just wanted to clarify that my suggestion that if we don't keep the words, we need to scrap them – that's frankly my third choice preference.

I would much prefer that we keep those words in and in lieu of that, then come up with some alternate descriptors that would have the same limiting effect. But I just wanted to be clear on that.

Liz Williams: Thanks, (Christina). Tony Harris?

Tony Harris: Yes, I agree with what (Philip) said and also (Jon Bing). And I also with the opinion that it's (rather) (unintelligible) discussion. I don't think that

worrying about ICANN as being perceived as a deciding on morality and public order – what it means is really a relevant question.

I mean, you have children accessing the Internet in every country and I think every country protects children from all – from exposure to any sort of morality concerns in different manners – in different ways.

But it's – I think it's pretty much prevalent in most countries. So to completely leave that open and anybody can register – can apply for a string which would be – as (Philip) said, we can imagine different names that could be applied for.

And ICANN – in the name of free speech and, you know, we don't interfere with what people want to say – just to sit on the sidelines and say this is okay – that doesn't sound right to me.

Liz Williams: Thank you, Tony. And (David Maher)? You were in the queue.

(David Maher): Yeah. I just wanted to add a perspective on this. But you should remember that ICANN is incorporated in the state of California and its charter provides that ICANN is dedicated to promoting the global public interest in the Internet.

And public interest is a phrase that has become really from – partly from US law, although I believe it has connotations that are translatable into other languages. But in US law, it comes from administrative law – things like the (Federal Sanitation) Commission, license and radio and television stations serve the public interest.

So we – in the US – we (unintelligible) the public interest as a concept and we're – even though ICANN has an international board of directors – it still operates in this context of trying to meet the public interest and avoiding doing things that are (unintelligible) public interest – which certainly includes some concept of morality – for instance, protection of children from abuse.

Liz Williams: Tony – or (David)? Were you done?

(David Maher): Yeah.

Liz Williams: I don't know whether you're on a mobile, but if you're not I wondered if you could sit still while you're speaking. It was very crackly when – but I could hear what you said – but it wasn't very clear.

Does anyone have any – I wanted to wrap up the sort of general discussion. Did anyone have anything else they wish to add because there's quite a diversity of views there?

Miriam Sapiro: (Unintelligible) question. It's Miriam.

Liz Williams: Yes. Oh hi, Miriam. I didn't even know you were there.

Miriam Sapiro: Hi. Yeah, I joined earlier, but I didn't want (unintelligible). A few speakers expressed some concern that if the broader language was (adopted), there might be otherwise – it would be difficult to know exactly what – how broad it could be interpreted.

And my question is, how does that – is that concern – how does that concern relate to the current text of recommendations? I'm not trying to

open (three) in any way, but just if (three) is accepted as currently written and it refers to the legal rights of others – recognized under international law – how is the broader fix, I’m wondering, different from current recommendation three?

Liz Williams: (Unintelligible) would like to take that on. Thank you, Miriam.

(Philip Sheppard): Well, (Philip) here. I think it’s a very good question and the point that they start to fudge because once you remove from recommendation six the intent that we have – which is a stopping of – or the potential of stopping abusive words – then suggested or alternative phrasing becomes very similar to – it become sufficiently broad to accommodate recommendation three.

But I wouldn’t advise going back to recommendation three because we’ve already managed to produce focus there. And I hope we can do the same with recommendation six.

Miriam Sapiro: My question goes to the fact that if six is seen as too broad, then what does that do to three?

(Philip Sheppard): Well six is only too broad if we take out managing public order. If we manage public order in, it remains narrower.

Miriam Sapiro: So the concern – what I’m trying to understand is the concerns that we’re expected that having three and how it might lead to – might be a dangerous path because there will be rights – unclear rights could be asserted. Does that concern also relate to current (unintelligible) three?

(Philip Sheppard): Not in my view because we've narrowed three sufficiently to be clear as to the intent.

Liz Williams: Thanks, Miriam. Thank you, (Philip). I'd like to now turn to the job at hand, which is – now that we've got everybody's views in place – what do we do with the text? And I – the – one of the things that perhaps might help us make a decision about this – and I wanted to echo some of the concerns that (David Maher) had raised – is that this is about an application process for enabling us to deal with particular kinds of applications to which people may object – or groups may object – or governments may object.

And if we have no recommendation in place, then it's going to make it quite difficult for us to deal with those in a transparent and pre-published way.

So I wonder if we could then turn – and I don't know whether it – first of all, a question to the group. Is it helpful to think about the drafting or is it more helpful to ask the question about which formulations – either individual or constituency support – as it stands? And if there's two quite different formulations...

Avri Doria: Can I ask a question before that?

Liz Williams: Yes, go ahead Avri.

Avri Doria: Okay, hi. During the meeting, a hybrid had developed because one of the things that was being dealt with was while leaving in – and I just wanted to put this on the table – while leaving in the language about

morality and public order, there had been the question about the enforceability.

And so I don't know whether we're dealing with the original language or dealing with the hybrid that was sort of evolving during the last meeting, which I had recorded as, "strings must not be contrary to generally accepted legal norms relating to morality and public order that are generally accepted and internationally recognized principles of law."

And it left out the enforceability work which has also been a problem. So I just wanted to make sure that that was still on the table.

Liz Williams: Yes, that's right.

Man: Yeah.

(Philip Sheppard): Avri, yes in response – the wording that I sent (ground) had indeed picked up that same point and dropped in four.

Avri Doria: Okay, sorry. I didn't see that, so I just wanted to...

(Philip Sheppard): Yeah, it was a slightly different phrasing because you had generally accepted twice, but enforce is gone.

Avri Doria: Okay.

Liz Williams: And that was partly a contribution of last week of (Jon Bing) and others.

Man: Yeah.

Liz Williams: So I wonder then if I could just come back to my question. Is it now a point at which one chooses one of either formulation? Or is there a preliminary step that we do a little more work on the phrasing?

And the supplementary question to that is, (Robin), with respect to the piece that included managing public order – it was the (NTUC)'s – still the (NTUC)'s intention – or anyone else's on the constituency's intention – to submit a minority report on whatever formulation?

Tony Harris: Can I ask a question, Liz? Tony Harris.

Liz Williams: Yes, please – Tony.

Tony Harris: How do you – how do these options you've just mentioned relate to the schedule we have to fulfill – the timeline?

Liz Williams: At some point we have to – Tony – stop the discussion and come down with what the majority supports. And I'm trying to determine what the majority supports through this call so we can report back to the bigger group on – tomorrow afternoon.

Woman: Right.

Tony Harris: Well can't we do that, now?

Liz Williams: That's – if that's for the will of group, then that's what I'd like to do.

Woman: Yeah, and then basically I'll take whatever this group comes up with into tomorrow's meeting.

Tony Harris: Yeah.

Woman: And then we have to settle on the language that goes in. And then those of us that are still at variance with it – or any part of it – can contribute our variance statements.

Liz Williams: Yes, exactly. Is that clear, Tony?

Tony Harris: Yeah, that's fine with me.

Liz Williams: Okay, so then if nobody objects – then it actually comes down to a choice between two formulations.

The first one is the one that was agreed by the small group last week and I'll read it again: Strings must not be contrary to generally accepted and internationally recognized principles of law.

The second formulation has: Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

Whichever formulation is chosen, the list of examples – which will be put in the correct order and grouped properly – will remain the same for the moment.

So, given that we have members from each of the constituencies and from the nominating committee, is it useful to just go around the room?

Woman: Sure.

Tony Harris: Sure. Yes. Good.

Liz Williams: Okay, Tony Harris. Which do you prefer?

Tony Harris: Number two.

Liz Williams: Which is including morality and public order. So number two is the morality and public order.

Tony Harris: Yes.

Liz Williams: And that's the ISP's position or it's Tony Harris' position.

Tony Harris: ISP position.

Liz Williams: Thank you. (Philip)?

(Philip Sheppard): Two – and the BC's position.

Liz Williams: I'm just typing this up as I'm going, so just bare with me one second. (Jon Bing)?

(Jon Bing): I'm also for two. I don't feel that you have explored alternatives from relations on morality and public order, but that (unintelligible) I support two.

Liz Williams: Thank you, (Jon). (Robin)?

(Robin Gross): Yes, if the recommendations specifically assert (unintelligible) minority report.

Liz Williams: Sorry, (Robin). There was a big squeak on your line. Would you just say what you said again, please?

(Robin Gross): Sure, if the recommendations assert jurisdiction over morality or (unintelligible).

Liz Williams: Sorry, we'll – operator? Could you just mute that line please until we sort out what the problem is, please? (Robin), can you hear me?

(Robin Gross): Yes. Do you want me to try to said that again?

Liz Williams: Good one. Please, if you can. It keeps squeaking. Do you have a mobile phone on near your phone?

(Robin Gross): No, I'm on my regular landline.

Liz Williams: Try again, then.

(Robin Gross): Yeah. If the recommendations assert jurisdiction over morality and public order – specifically those words – then we'll file a minority report.

Liz Williams: Okay, wait a second. Do you support the: Strings must not be contrary to generally accepted and internationally recognized principles (unintelligible).

Do you support that one?

(Robin Gross): Right. Because the words morality...

Man: That's number one.

Liz Williams: That's number one, (Robin).

(Robin Gross): Right.

Woman: Number one does not include morality...

Liz Williams: Does not include morality and public order. It just – and I'll read it again for you: Strings must not be contrary to generally accepted and internationally recognized principles of law.

(Robin Gross): Exactly. Yeah, we...

Liz Williams: And does (UTUC) support that?

(Robin Gross): To what was agreed to in last week's call, yeah.

Liz Williams: That's right. Thank you. Okay, just to be very clearly. (Christina)?

(Kristina Rosette): I personally favor recommendation – the formulation two and I'm waiting for formal IPC sign-off, but I expect to get that.

Liz Williams: So I could put, (Christina), question mark IPC, yeah?

(Kristina Rosette): Correct.

Liz Williams: Thank you. Oops, IPC. Sorry, bare with me one second. Avri?

Avri Doria: I personally don't support either formulation. I've closed – I mean, because they don't include the word morality. So I don't support either, but I'll follow through it with (either). In other words...

Liz Williams: Sorry, just to be very clear because we are reaching the very (unintelligible) end of this discussion...

Avri Doria: Right, you're right. So basically I'm not (unintelligible).

Liz Williams: So do you support formulation one?

Avri Doria: No. (Unintelligible)

Liz Williams: Okay, and you don't support formulation two?

Avri Doria: No.

Liz Williams: Okay. And then for...

Man: So it's an abstention then?

Avri Doria: Yeah, I'm an abstention. I don't support either of them as currently written. But I realize I'm alone (unintelligible).

Liz Williams: Okay, that's fine. Okay. Just put that aside and presumably, Avri, you'll deal with that in your (unintelligible)...

Avri Doria: (Unintelligible). I will be – right. At the end of it all, I'll be putting out a list of things that I accept, but I have concerns about.

Liz Williams: Okay, thank you. (Jon Nevett)?

(Jon Nevett): (Unintelligible).

Liz Williams: (Jon Nevett) – come back off mute, if you can? I'll move on from (Jon) and have him come back in a second. (David Maher)? Glen, are you still on the line?

Man: No, I think Glen left a long time ago.

Liz Williams: Did she? Oh gosh. I know she did. She's gone to the doctors.

Man: She said she needed to go.

Tony Harris: Liz, could I make a suggestions?

Liz Williams: Yes, please Tony.

Tony Harris: I think if people dropped off the line perhaps one thing you could do is send them an email. We all see the email and ask the question, you know, do you want one or two?

Liz Williams: Yes, that's what I will do, Tony. I was just hoping to hear from – I'm pretty sure that (David) supports the second formulation for the (RYC) and I'm just going to double check that with him directly - and with (Jon Nevett).

I'm just going to make a note here and I can send a note to those two immediately after we finish the call.

(Jon Nevett): I'm sorry. This is (Jon). I just stepped out.

Liz Williams: Oh thank you, (Jon). Sorry about that.

(Jon Nevett): Sorry. I stepped out. Are we just still voting on...

Liz Williams: Yes we are. I'd like you to express a preference for either formation. One, which is without morality and public order – formulation two which is the generally accepted legal knowledge relating to morality and public order. Please?

(Jon Nevett): We don't have our (registrar) position on this yet, so we don't have a vote from a (registrar) perspective. From my personal perspective, I think ICANN needs the ability to reject a string application based on morality and public order.

I just – I'm still unconvinced – or still on the fence of whether we need to put the actual language in or not. So I'll abstain as well.

Liz Williams: Thank you, (Jon). Would you mind then confirming for me when the registrars would have a position please? Because it's a very important piece of the work and we're trying to work towards having...

(Jon Nevett): No, I'm – I don't – I'm not going to put that to a vote – this one issue to a vote.

Liz Williams: Oh, right.

(Jon Nevett): We're going to take the whole thing as a whole.

Liz Williams: Oh, great. Okay, that's fine. In that case – because of the – what I'm trying to do as I'm taking these notes is to think about how I'm going to speak about this in the final report that will be acceptable to everybody – to represent everyone's position correctly.

(David Maher)? Are you back off mute? Okay. That leaves us with the ISPs, the business concept would be (Jon Bing). The IPC subject to (Christina)'s confirmation. All – and to my knowledge, the registries supporting that position. The registrars will come back to us if and when they need to.

And it leaves the – leaves us with Avri and her personal statement. And the (NCUC)'s submitting a minority report on the basis of those two different formulations.

Is there anything else anyone wanted to add? Or question? Or bring up?

(Philip Sheppard): (Philip) here. I need to say (unintelligible) this call I'm afraid that – I hope that this formulation 20 is looked at later today than ...

Liz Williams: Yes, 6:30, (Philip).

(Philip Sheppard): ...the wording that I put into that could be considered. I hope – I still have some good comments in (chalk) so there seems to be some (unintelligible)...

Liz Williams: Does that mean you won't be on the call?

(Philip Sheppard): No, I can't. Exactly.

Liz Williams: Okay, no problem. That's fine. I've got it anyways.

(Philip Sheppard): Yeah. Thank you.

Liz Williams: I can be there to do that for you. Thanks, (Philip).

(Philip Sheppard): Bye.

Liz Williams: Okay. Is there anything else anyone wanted to bring up before we end the call?

Avri Doria: I got to say I think this has been really useful.

Liz Williams: Sorry.

((Crosstalk))

Avri Doria: I got to say, I think this has been really useful...

Man: Oh, right.

Avri Doria: ...in making sure that everybody's points of views were actually discussed in detail. And I really appreciate the effort everyone's been putting in.

Liz Williams: Thank you, Avri. If there's nothing else anyone wants – wishes to bring up, I think the next step for me is to send around a consolidated email which I have been writing as people have been speaking – and I'll just now (clear) it – sorry – clean it up so that it makes sense. Because I've been taking notes whilst I've been speaking.

And (Robin), I think we discussed last week on the bigger committee call that the minority statement would be available for the group by the 20th and I realize that's very short timeframe for you, but presumably this is nothing new for the (NCUC) and you will have already had most of your material prepared.

Is that going to cause you any issue?

(Robin Gross): No, I don't think so. It may be of – more of an issue on 20 because that seems to be somewhat more of a moving target than six.

Liz Williams: Okay.

(Robin Gross): Yeah.

Liz Williams: But leaving aside 20 for a second, you are going to be okay with this for the variant statement by Friday?

(Robin Gross): Yes.

Liz Williams: Lovely, thank you. If there's nothing else for everybody – could I thank you all very much for coming. (Christina), if you could please confirm for me as soon as possible...

(Kristina Rosette): Sure.

Liz Williams: ...so I can correctly characterize the IPC.

(Kristina Rosette): That's right.

Liz Williams: (Jon), I understand the registrar's position. And will get in touch with (David Maher) immediately and the registries constituency and just ask them to confirm their support for the second formulation, which is where I think they sit.

And if there's nothing further, then we can finish the call. Okay. Thanks very much everybody.

(Kristina Rosette): Sorry, Liz?

Liz Williams: Yes?

(Kristina Rosette): For people doing 20, are we just staying on or do I...

Liz Williams: No, we're not, (Christina). In half an hour. I just need to clean this up, get it out...

(Kristina Rosette): Okay, okay.

Liz Williams: ... and then start the 20 call.

(Kristina Rosette): Okay, all right.

Liz Williams: Thank you.

(Kristina Rosette): Bye.

Liz Williams: Thanks, everyone. Bye.

END