

Cross Community WG discussing Recommendation 6 of the new gTLD process (Rec6
CDG-WG)

TRANSCRIPTION

Tuesday 7 September 2010 at 17:00 UTC

Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG) meeting on Tuesday 7 September at 1700 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:

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ALAC

Cheryl Langdon Orr - ALAC chair

Alan Greenberg - ALAC

Olivier Crépin-Leblond – ALAC

Sivasubramanian Muthusamy – At Large

Evan Leibovitch – ALAC

Commercial Stakeholder Group

Marilyn Cade – CBUC

Jon Nevett - CBUC

Non Commercial Stakeholder group

Konstantinos Komaitis

Mary Wong

Robin Gross

Registrars Stakeholder Group

Krista Papac

Registries Stakeholder Group

Chuck Gomes – GNSO Council chair

Individuals

Richard Tindal

Jothan Frakes

Stuart Lawley

Dirk Krischenowski

Steve Pinkos

GAC

Marc Carvell – GAC – UK representative

Frank March – GAC - New Zealand representative

Bertrand de la Chapelle – GAC - French representative

Liang Wang – GAC - China

Guest

Caroll Dorgan – Jones Day

Staff

Kurt Pritz - Senior Vice President, Services
Dan Halloran – Deputy General Counsel
Amy Stathos - Deputy General Counsel
David Olive - VP Policy Development
Liz Gasster - Senior Policy Counselor, ICANN Policy Support
Margie Milam - Senior Policy Counselor
Marika Konings - Policy Director
Glen de Saint Géry – GNSO Secretariat

Apologies:

Heather Dryden - Interim GAC Chair – Canadian representative
Stephane van Gelder - RrSG - GNSO Council vice chair
Caroline Greer – RySG
Avri Doria
Paul Stahura
Anthony van Couvering
Sebastien Bachollet – ALAC
Massimiliano Minisci - Manager, Regional Relations - Europe

Coordinator: Welcome and thank you for standing by. I'd like to remind participants that today's conference is being recorded, if you have any objections you may disconnect at this time. You may begin.

Chuck Gomes: Thank you very much and welcome to everyone to our Tuesday, the 7th of September Community Working Group for Recommendation 6 for New gTLDs. And I would like to ask Glen to do a quick summary of the people who are on the call.

Glen de Saint Géry: Thank you Chuck. I will do that. Good morning, good afternoon, good evening everyone.

On the call we have Evan Leibovitch who is ALAC; Bertrand de la Chappelle, GAC; French representative John Nevitt; Commercial and

Business Users Constituency Richard Tindal, Individual; (Leanne Wong) from GAC China; (Chris Depepeck), Registrar Stakeholder Group; Mark Carvell, United Kingdom GAC; Robin Gross, Non-Commercial Stakeholder Group; (Steve Pinkus), Individual; Liz Gasster, Staff; Alan Greenberg, ALAC; (Constentinas Comarty), Non-Commercial Stakeholder Group; Jonathan Frakes Individual; Charles Gomes, GNSO Chair and Co-Chair of this group; Frank Marsh, New Zealand GAC representative; Stuart Lawley, Individual; and (Sivas Subrema Menion), ALAC; Cheryl Langdon-Orr, ALAC Chair; and we have our guest speaker Carroll Dorgan.

As well as for staff we have Amy Stathos, David Olive, Liz Gasster, (Gann Halloran), Marika Konings, Margie Milam, and I think - yes, and myself, Glen de Saint G ry.

And we have just had joining the call, Marilyn Cade from the - who is Chair to the Business Constituency, (Olivier Carpenter Blanch) who is ALAC, and Mary Wong who is the Non-Commercial Stakeholder Group representative on the Council.

Thank you Chuck.

Chuck Gomes: Thank you Glen and I see your hand Amy, I'll call you in just - on you in just second.

I want to remind everybody that most everybody participating in this group is participating in their individual capacity. So unless they say differently assume that; that they're not necessarily representing the groups or a group or groups that they're a part of. Amy?

Amy Stathos: Yeah. Hi Chuck thanks. I just wanted to do a quick intro for Carroll if that's ok to do that?

Chuck Gomes: Yeah that would be very good Amy. Why don't you go ahead and do that right now.

Amy Stathos: Okay, terrific. So Carroll Dorgan - Carroll, I know you're on the phone. I heard your voice a little earlier.

Carroll Dorgan: Yes.

Amy Stathos: In this group, I just wanted to let everyone know, you can see Carroll's bio up on the screen there, but Carroll has been working with us. He works out of the Jones Day office in Paris. And he's been working as - with us since the beginning when we started the implementation process for Recommendation Number 6.

And so Carroll's very fully versed and he's been following the discussion (script) online. And so with that I just wanted to introduce you all to Carroll Dorgan. And Carroll thanks for being here today.

Carroll Dorgan: Well, thank you for inviting me.

Amy Stathos: And so I just wanted let everyone know that what I asked Carroll to do is come on the call, give a very short statement and kind of a presentation of what it was, the process that we followed and how we got to standards that are now set out in Applicant Guidebook 4. And then to take questions from the group.

Chuck Gomes: Okay, thank you Amy for doing that. Carroll, I'll turn it over to you right now.

Carroll Dorgan: Okay, thank you Chuck. And thank you all for inviting me. I really am quite honored to take part in this -- and quite interested too. As Amy said I have been, "Working on this and following it over the last, I guess three years now."

I've been invited to make a presentation. I haven't really been given any other terms of reference for the presentation, so I've - based on what I've been hearing you folks and write, and seen what you've written in the couple of weeks I tried to shape what I'm going to say to fit where you are.

I'm concerned that I may end up going on too long. So you know, feel free to say, "It's time to stop," and just take - start discussing or answering questions.

The topics that I thought I would address, and then as Amy suggested, kind of lead you through some of the process and the reasoning and what lay behind some of the decisions would be to focus on the international principles of law in the context of Recommendation 6 and the use of the terms Morality and Public Order, which I know are hot topics.

And if there's time or as we move on, or even on another call if you wish, I'd be happy to talk about what you've been calling, "The outsourcing of the dispute resolution process," the issue of standing for filing objections, the quick look procedure, independent objector or

anything else. But I know those are some of the topics you're also looking at.

So turning to international principles of law; Recommendation 6 of course, focuses upon these and as maybe we could all agree, it's - Recommendation 6 has rather complicated syntax and turns around in circles a little bit.

And I'm picking up on something that I know was talked about last night; I think I would definitely agree that the way to - the expression that should be used here is, "Principles of international law," rather than, "International Principles of Law."

And that point was made to me by one, for example by one of the - a judge on the International Court of Justice who said he'd - you know, "In principles of international law, or general principles there's certainly a well established term of art, whereas international principles of law don't really have a particular meaning in the same sense.

And if you look at the DAG, the latest version, I think in Paragraph 3.4.3 we do use the term, "Principles of international law." But in - also there's a problem with consistency, so that could be clarified.

Turning - moving on, in Recommendation 6 of course, if you want to implement it - or analyze and implement it, you have to take in consideration other important governance of the GNSO report of three years ago, and in particular Principle G -- which is I'm - I know quite familiar to everybody.

And also other elements such as the Public Policy Principles that were issued by the GAC; in particular, Paragraph 2.1 where they talk about, "Respecting sensitivities reading terms with national, cultural, geographic and religious significance."

And I think also one has to, you know, consider everything. And in - certainly the - as well, the minority statement on Recommendation 6 that was issued by the NCUC, as well as other, you know, materials and comments. So as - you know we've looked at all of these things in our research and thinking and drafting and consideration and so forth.

So the questions is one could - phrase it, or the way we approached this thing was, you know, "What generally accepted legal norms relating to morality and public order are recognized under principles of international law?"

And since this is the basis for saying whether or not a string is accepted and would - in other words, whether or not it's contrary to such norms, the issue is of course essentially one of freedom of expression. Or that's an important issue; there are other issues too, but that's there.

And certainly the principles of international law do recognize and protect freedom of expression. And in addition, one must also note that they - these principle of knowledge certain limits upon that freedom.

And you can look of course at the Universal Declaration of Human Rights, in Articles 19 and 20 sub-2 in particular; the International Covenant on Civil and Political Rights in Articles 19 and 20. And then certain regional human rights conventions are very important in this

anyway as well, such as the European Convention on Human Rights -- I believe it's Article 10 -- and the American Convention on Human Right, Article 13.

And I'm not going to - obviously don't want to take time, you know, reading all this stuff but I think you can see and you probably already know most of you, that you know all these instruments do state in one form or another, the principles of freedom of expression. And they also make it clear in various terms, that there are limits but that the limitations upon freedom of expression should be construed narrowly.

You know, and the various ways of putting that, a limitation must be necessary in order to protect other important rights and interests. And I think it's the whole of judges and other who construe and apply these provisions to decide whether or not a limitation is in fact necessary, or you know - or rather too broad or disproportionate.

So the work that we did and, you know, lead us to the conclusion that you can identify certain general principles of international law in this area; one being that everyone has the right to freedom of expression; another being that the freedom of expression may be subject to certain limits that are necessary to protect other important rights.

And I would add that these two principles, in my opinion, are fully consistent with GNSO Principle G, which states that, "Freedom of expression rights to be as protected under internationally recognized principles of law and internationally recognized principles of law recognize freedom of expression and also certain limitations upon that freedom."

Now one could stop here and just come to that conclusion, and leave it to experts or ICANN, or somebody else to decide case by case, you know, whether or not this is, you know, particular string is entitled to the freedom of expression, or whether it falls within the scope of a limitation upon that.

However, I think that that would leave a very broad scope for objections, and also it would be very unpredictable and likely to be quite subjective and objectionable and unsatisfactory in that respect. And I think in accordance with Recommendation 6, one should chose instead - or one can choose instead, to identify certain specific legal norms that are generally accepted. That seems to be the direction in which Recommendation 6 takes us.

And by identifying such legal norms such - in that way, there would be a narrower more defined scope for objections; the procedure, the standards and the results that come out of that procedure in accordance to those standards would be more predictable and more in accordance with, one hopes, with principles of - proper balance between freedom of expression and the limits that may be imposed upon that.

So that is the - sort of the quick review of how one can look at international law, and the principles of international law in this context. The question then is - at least I'll jump now to the question, although there may be more to say on that topic.

But the question, turning to the use of the terms Morality and Public Order, which of course from my perspective, looking into this, you know, we inherited from GNSO Recommendation 6. But as you - as

seen by - if you looked at some of those international instruments that I mentioned and others, there are - they all do in fact refer to morality and public order, among other things, as the basis for certain limits upon freedom of expression.

One could - and this is - I've sort of thought about this some more today after listening to last night's conversation, one could instead refer to public policy or look to order publique instead of morality and public order. It's a long - it's a public policy or order publique are well established, long established legal concepts.

I found a reference to an old House of Lords case from 1853 that gave a definition that people still refer to in English Law as Order Publique, or public policy as a principle of law that holds that, "No subject can lawfully do that which has a tendency to be injurious to the public or against public good."

And it's a term also that's used in modern treaties and laws. In my own field I am - you got my profile up there for better or worse, I work a lot in international arbitration and so I'm very conscious of abuse of the term, Public Policy, which is the basis - can be the basis for refusing a portion of a foreign arbiter award under the New York Convention, and it's also the basis for refusing enforcement and also overturning awards under the UNCITRAL Model Law on Commercial Arbitration, which has been adopted in I think some 50 states around the world.

So public policy has some meaning. Public policy in order publique is sometimes considered to be, you know, translations that are with each other but in other contexts they are different. And they indeed include morality or morals when they try to give meaning to this. So it's not a,

you know, a rock hard, you know, clear bright line sort of concept, but it does have I think, you know, some real meaning in law.

And I would say also, that it's - you know, while its public policy is fuzzy around the edges, it's still more precise and grounded in legal concepts than the concept of the phrase, Public Interest. Which is much, I think much more emphasized in general.

Turning back to some of the work we were doing, we - and I won't go through the details here. A lot of it is described in the explanatory memoranda that ICANN has published and you've read. But you know, examining these principles of international law in the case law of certain tribunals that operate under the treaties I mentioned.

For example the European Court of Human Right has been an abundant case law under Article 10. And there are also cases decided under the American Convention on Human Rights, and within the Human Rights Commission of the - operating under the covenant of civil and political rights.

We also had the opportunity to consult with judges who are presently sitting -- or former judges on certain international tribunals such as the International Court of Justice and the Inter-American Court of Human Rights, and the Criminal Tribunal for the former Yugoslavia, Criminal Tribunal for Rwanda -- you know, various judges who are really quite established and well experienced in human rights laws in particular.

And we also consulted local lawyers to learn about public policy limits upon freedom of expression under national laws.

And the conclusions from this research, and these consultations enabled us, I think, to identify certain categories of expression that are, you know limited in one way or another in virtually all jurisdictions. And so they are, in that sense, you know legal norms that are generally accepted in the world.

And those are, as you're very familiar I think, the Incitement - one's been identified as the incitement to a promotion of violent lawless action; the incitement and promotion of discrimination based on race, color, gender, ethnicity, religion or national origin; and incitement or promotion of child pornography or other sexual abuse of children.

And so that was - the result then was - were the dispute resolution standards for morality and public order objections that were presented in the Draft Applicant Guidebook in Section 3.4.3.

But in addition to the three specific grounds I just mentioned, there's a fourth category that you're aware of, which is more general, which is to allow scope for the exercise of discretion within the framework of Recommendation 6, and - or within the same sort of - or class of - category of legal norms as they are specifically identified there.

But I think most, you know, a lot of people we talked with, and in our own thinking and ICANN's thinking there's a feeling that you can't just have an exclusive list of categories that you - that there's needs to be some broader scope than that.

And I think maybe what you're - the whole thing that has produced this working group -- namely the objections or comments from the GAC --

show that that fourth category is really where one needs to maybe be thinking and focusing attention.

So the current issue as I understand it is whether or not - or if I would say this is the current issue, is whether or not these standards that are identified in the DAG, are appropriate or are sufficient.

And I know that some people criticized the standards or maybe the whole process, but these standards in particular, from the point of view that ICANN should not bar any string on any morality, a public order or a public policy basis outside its scope of activities.

There's another perspective and I think the GACs criticism as I understand it, comes from another direction. And that is that these standards are insufficient to block some strings that, while falling short of the incitement standards that are identified specifically, nonetheless send certain sensitivities. And so as I see it, that's really the heart of your terms of reference, or your task.

Now one thing I would mention in this context is that to stress that governments do have the right under the current version of the DAG and so forth, governments do have the right to file objections under Recommendation 6 procedure. There is never - not any question that they would not have that right. So there's no question of them not having the right to bring their views and concerns forward.

The question is I guess two-fold;

One is, "Are governments willing to play that game?" Are they willing to go into the dispute procedure, the - you know, filing objections and in

the discrete procedure? And I think that there may be some questions about that;

The second issues is, "Are the governments satisfied with the standards that are set out there? Or do they feel that you know, certain important sensitivities -- using that term again -- will not be admitted or not be accepted as the grounds for an objection under the current procure and standards?"

And of course one could ask you know, "What standards would a panel or ICANN eventually apply in deciding whether to accept or reject an objection from a single government for example, regarding a string that offends it's so called sensitivities or you know, it's national law?"

And we know that could be quite a wide range of sensitivities. If you look around the world and all kinds of rejections that can be made.

I think I'll - I probably should conclude soon and I - but you know, pose a few more you know, examples of the kind of problematic cases once you move away from some of those narrowly - more narrowly defined categories.

There's a big debate, you know or a big issue over say, "The distinction between incitement to violent lawless action, and what might be called Near-Hate Speech."

And in some places with a very strong tradition of protecting freedom of expression there is still, you know, statues, criminal laws against hate speech. Whereas in other jurisdictions or places, you know hate speech is protected speech, and only incitement to violent lawless

action which satisfied certain, you know criteria, would be considered unacceptable and barred.

There are other kinds of examples of problematic cases, you can imagine. You know - as you know, holocaust denial will be illegal in - where I'm sitting right now for example, in France, but it would not be illegal elsewhere. Would that be one of the sensitivities that should be brought within the standards of Recommendation 6, or not?

And there may be, you know, you can - I probably I think it's inappropriate - it's not part of the etiquette around here to give too many specific examples. But you can imagine, you know a group that is considered by one government to be subversive, a terrorist or whatever, you know applying for a string that you know, would otherwise you know, pass muster.

So those are the - I see those are the issues that are before you. I hope that maybe through our - sort of our quick review of our research and our thinking and analysis helps to focus on the issues on those points, or helps you in any way in the discussion.

As I said, "I could also go on and talk about other topics," but maybe it would be best now for me to shut up and let you ask questions or discuss or whatever else.

Chuck Gomes: Thank you very much Carroll. I appreciate that very much. For those of you who have questions whether - any types of question, clarification or other types of questions, I ask you to be concise because I suspect there will be lot's of them.

And while people are raising their hand, Carroll could you talk just a little bit about the term Incitement. There have been, as you've probably seen, some concerns about the use of that term in the first three categories in the Applicant Guidebook.

Carroll Dorgan: Right. Well one of - I mean, I think some - I've seen some of those concerns and I think some of them are coming from the perspective of, you know, criminal law, you know where incitement to do something, certain kinds of incitement are a crime.

I mean, there's incitement to direct in public, incitement to commit genocide is a crime under international law. It's established directly under the Genocide Convention, it has been picked up in the statutes of the criminal courts - criminal tribunals for the former Yugoslavia and Rwanda and it's been - it's an important case law on the subject.

And so you can, you know, you can tackle it from that direction. And the problem in there of course, normally a crime such as that requires both some action, as well as intent. And so people are saying, "Well you know, how does that fit within the, you know gTLD strings?"

And may - what - but one answer to that is that, "Well, we're not talking about criminalizing anything, we're talking about whether or not the applicant who presents this string should get it."

And so, you know, it's a different analysis perhaps, than the question of proving intent, which is very important in criminal law. Incitement for something, is not necessarily the same or even necessary here.

You know, it could be as others I know of have pointed and discussed, there's a question of context. And would that, you know in the context of that's - we - as we read this, would that constitute a kind of incitement or promotion?

I mean the, you know, the terms are used two ways. It's you know, a little bit of, you know, maybe a discussion of whether or not the two words - how much they overlap and so forth, there is a distinction.

And incitement is a more precise legal term I think. But I think that you have to make sure that you're not just looking at this only in the strict, you know criminal law terms of the elements required to establish the offense which is the - what is required criminal law.

But it's more, "Do we see this as promoting, encouraging, leading to this problem (unintelligible) violence or child pornography or whatever." Is that helpful?

Chuck Gomes: Yeah. I think so. But let me do this, to try and keep us, at least for a few minutes, on specific strings, let's see if anybody has any questions regarding the use of the term, Incitement. Because there's been quite a bit of this discussion on - regarding that term.

And so Mary did you want to talk about the term, Incitement?

Mary Wong: Okay Chuck. No I didn't. So I can hold my question for...

Chuck Gomes: Okay, thanks. Just stay in queue, keep your hand up. You don't need to take your hand down.

Is there anyone who has a question regarding the use of the term Incitement in the first three categories? (Olivier)?

(Olivier Carpenter Blanch): No Chuck, I didn't. I was going to make a comment. So I'll stay in queue. And I'll remain quiet for the time being.

Chuck Gomes: Okay, okay. Very good. Bertrand?

Bertrand de la Chappelle: Yes, good evening. This is just a question because on the list there was a very interesting question that basically asks whether a term in itself can be considered an incitement -- like just having the string itself.

Can it be considered as an incitement, or is there a need for something more proactive or content attached to it, and so on? This is a very delicate topic that was right from the list and I don't have a precise answer.

Chuck Gomes: Thank you Bertrand. Carroll can you respond to that?

Carroll Dorgan: Well, I can, I mean I'm not going to have sort of, you know, an answer that puts this issue to rest, but first of all I would say, "I think that the answer is yes, in some circumstances."

In this context it may be worth remembering that strings can run up to 63 characters. So you can put a - you know, a practically a speech into one of those. And it can certainly have a, you know, a subject, a verb and an object, and you know, more than one. And so you know, the expression of a strong idea like that can be, you know, pretty well encapsulated in a string.

I was reading, in preparation for this call, parts of some of the judgments that were rendered in what's called the, "Media trial in Rwanda," where the people responsible for what we called, Radio Mille Collines, which was a Hutu extremist radio, and which it was very - it had a great responsibility in promoting, inciting the genocide in Rwanda in 1994.

And the courts - the trial chamber and then an appeal chamber grappled a lot with what constituted incitements. And they focused -- of course these were radio broadcasts which were more than just a string -- but they also were focusing on specific terms that were being used.

And you know, there were certain terms that were - that had become, you know like, "Kill the cockroaches," was one of the, you know expressions that was used and is understood in context obviously, as an encouragement and incitement to go out and murder Tutsis. And there were people who were convicted of - under the statute of the tribunal of directing public incitement to genocide - to commit genocide.

So I think words do, you know, can be an incitement and it, you know, there can be a lot of them in a string. And they're also to the question of context, and it would be I think open to an expert panel or ICANN to decide that, you know, under the circumstances this is an incitement to violent and lawless action. And conclude that it therefore should not enter the route.

And I was thinking of some other examples, and you imagine some slogan from the Nazi area, and which, you know, conveys a certain meaning and it's been well established. And it raises the question, you

know, "Are we on the - in the hate speech - in the region of hate speech, or in the area of direct incitement?" And that's a reasonable issue, but there's certainly a case could made that it was incitement.

Chuck Gomes: All right, thank.

((Crosstalk))

Chuck Gomes: Cheryl did you want to talk about incitement?

Cheryl Langdon-Orr: No. My hand's up as a placeholder for Evan.

Carroll Dorgan: Okay, yeah.

Chuck Gomes: Okay Evan would you like to talk about - go ahead.

Evan Leibovitch: Actually, I just wanted to ask about the issue of, you know, to what extent is incitement in the eye of the beholder? So for instance, could something like Free Tibet, that is absolutely benign in the eyes of an awful lot of people. In the eyes of some could that not be seen as coding - code word for something that they would consider to be lawless action?

And where do you draw the line between something that may seem obvious and something that isn't obvious but can and often is in general sense perceived to be, code for something that incites? Where - I mean the problem I've had with this whole thing is where you draw the line and the arbitrariness of what determines what is inciting.

Chuck Gomes: Carroll, would you like to respond to that?

Carroll Dorgan: I mean I - my feeling is that an expert panel would find it, you know, no trouble in dismissing an objection to Free Tibet. I mean it's - simply because somebody might, you know, read into that some other, you know, some objections, we're getting into the problem of sensitivities of certain governments perhaps.

But, I mean I suppose you could say also that, you know, "Kill the cockroaches," to take that example which is right out of case. Sort of awful, I hate saying it, but I mean this was, you know, a big issues in one of these cases.

I mean you could imagine some company that sells, you know, insecticide, you know, might be promoting that. But in - so you do have an issue of context. But I think, you know, one could decide that that was a, you know, that was over the line.

The one I was thinking about from the Nazi period is sort of a - is an interesting issue, you know, hypothetical. You know, Julius Streicher was the publisher of the Der Strumer which is the most notorious Jew baiting, pornographic Nazi newspaper, and it's - and he was trailed and eventually convicted and hanged for amounted to incitement to commit genocide.

He himself not committed, but he was tried in Nuremburg and convicted of that - of him being accomplice, and you know, the banner -- the standard banner which was the slogan, which you know, epitomized the Nazi message and his message was, "Die Juden sind unser ungluck, the Jews are our misfortune."

You know, imagine a string that had that as that's the string, you know, or you could add, (unintelligible) at the end, and there's still - and would that be incitement to some violent lawless action? It's - and I think that - you can see that as being more likely to be over the line than Free Tibet.

So, but it's definitely an area where you have judges making, you know, determinations and not everyone agrees upon every decision. But that doesn't mean that you can't sort of articulate a certain standard and try to find good thoughtful reasonable jurists who will then decide on them.

Evan Leibovitch: Yeah, I think that - I think the main issue is that it's getting into context, which is a whole different thing, we need to swing into later.

Carroll Dorgan: Yeah.

Chuck Gomes: Yes. Well we might swing into that sooner rather than later, but first let me give a specific example that was mentioned in the chat. Do you think that a panel of experts would fine - and I know you're just venturing an opinion, but a string, "Kill Hindus," would be considered incitement.

Evan Leibovitch: I think so. I think strings that say, "Kill anybody," is likely to be considered unacceptable. That's my personal feeling that that could be treated as incitement, yes.

Chuck Gomes: Well now let's - I think Evan is right, you mentioned context and I was thinking the same thing as you were talking about context. As you are well aware, ICANN doesn't have in - as part of its mission, any

governance over content of Web sites et cetera, but rather coordination of identifiers like domain names.

How do you - how does context come into the - in to play without getting into content and how a domain name is used? Is it possible to consider context without exceeding ICANN's mission?

Carroll Dorgan: I think that you try. I think so - the point, yeah this point has come up for example in context of the problem - the issue of say, incitement or promotion of child pornography and so forth. And the position ICANN has taken and the approach they've taken here is that, "When we consider this standard and this context with objections, we're looking at the string and not the content." And of course the content is whole separate issue.

And of course we know that there can be a sense, you know, not just sense of, but a criminal sort of abuse of children and pornography and so forth within a site that has a perfectly benign sort of name. And that's a separate issue and there are separate, you know, remedies against that and so forth.

So we're trying to focus here on the string, and identify - decide whether or not there's any, you know, aspect of the string itself which is objectionable. And if there are other problems that arise in, you know, from content, that can be - that would have to be dealt with separately I think.

Chuck Gomes: Okay, thank you. I don't want to keep Mary and (Olivier) waiting any longer, so Mary why don't you go ahead.

Mary Wong: Thanks Chuck. And this is somewhat related in terms of what the answer might be. Carroll thanks for presentation. And my question was, "If even if we're talking about principles of international law and the findings of an expert panel."

One of my difficulties is that when we're talking about that, you're really talking about whether a nation-state does or does not fulfill its obligations say, "Under international treaty," and they establish dispute mechanisms and frameworks for that with particular consequences.

How does that translate to (unintelligible) basically a private ordering? Where we're talking about private applicants and ICANN as a non-profit corporation, particularly given that the decision of the panel would appear to be something that ICANN Board would accept and currently there's no appeal mechanism. Thanks.

Carroll Dorgan: Well I'm not sure I have that whole question fully within my grasp. But I mean, first of all I think - as I understand it the Board will remain free to accept or not a determination by the panel. But with the panel's determination is important for Board, and important to - and normally would taken it into account.

Then apart from that, the heart of your question, if I understand it, is, you know, how do we transfer or translate or adapt public law issues to a private law context. And I think the answer is in a way, maybe it's too simple, but I think it's maybe powerful enough, and that is that, you know, here's a private actor, ICANN. So trying to decide what it will do - what kind of standards it will apply to certain issues.

And, you know, it's free to - they're free to adapt whatever standards they find useful and appropriate. And just as you know, private parties do quite often, choose in their contracts the - to adopt as the applicable law, general principles of law.

If one of my clients were to propose that in their contract, I'd say, "Well that alone is going to - got - might not be a good choice because then they'll be - it'll be costly and difficult to identify what those general principles of law are," but they can do it. You know, and they can adopt, you know, a certain standard if they wish.

And so ICANN can say, "Well, we see in the - and since we are a - we're not just any old private actor, we are you know, a entity that's active around the world, global, you know, activities and interests and, you know, stakeholders and all the rest.

It's appropriate for us to look to international law standards and they do exist, and sort of domesticate them. So that - I think that they're taking - they are just in fact taking public law standards and translating them to or adapting them in a private law context.

Chuck Gomes: Mary did that answer your question?

Mary Wong: Yes it does. I may have some follow up later, but thank you again Carroll.

Carroll Dorgan: You're welcome, and these answers, they may not be satisfactory. I don't know, but that's the way I see it.

Chuck Gomes: Thanks. Okay (Olivier).

(Olivier Carpenter Blanch): Thank you Chuck. So far I'm pretty happy with what I've heard from Carroll, but I do have one question which keeps on bugging me. And it's the one where if ICANN doesn't base it's decisions on each national law, and effectively bases them on the objections made by specific countries, does ICANN take then, the responsibility of blocking - if it does take the responsibility of blocking a sub-level of the main application, does it open itself potentially, to litigation?

Carroll Dorgan: Well I don't see how they would be doing that. They, I mean, they make - they may be opening themselves to litigation if they allow it into the group. But I don't see that, that should prosper either.

I don't think the - that ICANN is, as you said, "Rather than adopting international law they are a (unintelligible) a national law." You know, it's not really what they would be doing under the current scheme of things. Instead they are looking to little norms that are widely excepted around the world.

In fact, you know, we looked at I think - what was it? Someone counted recently, I think eight jurisdictions. And that's not a heck of a lot, you know, in the grand scheme of things, but it's - it was a diverse group of countries, cultures, different geographic regions and also - but also countries with, you know, more or less the rule of law that, you know, applied.

But I'm sure we could have double or tripled that number and come up with similar results. So it's not really a question of applying a national law.

And I would also add that international tribunals look to municipal law, to national laws in certain context to give meaning to the general principles of law. The general principle of law is a term that you - in one place you'll find its very important place is in the statute of the International Court of Justice, in article 38, which defines the sources of international law as applied by the International Court of Justice.

And one of those sources is the general principles of law as applied by civilized nations, as they put it in those days. And when the court turns to general principle law, they may well look at the more detailed rules of national law. But they won't destroy the DAG1 national law, they look for you know, certain practice and a certain consent - a certain consensus.

Depending on issues it's often in procedural matters, not so much - as much substance, but - so that's I think what we're doing here with the process that lead to the identification of those three standards.

(Olivier Carpenter Blanch): But the plan that...

Chuck Gomes: Make it (unintelligible) with it.

(Olivier Carpenter Blanch): Sorry Chuck, can I respond to that?

Chuck Gomes: Yes, you may. Go ahead.

(Olivier Carpenter Blanch): Thank you. The problem though is that you're dealing specifically, and I mean correct me if I'm wrong, you're dealing with commercial issues. But one deals here with potentially political issues

which have a much further reaching hand than just commercial issues of being right or wrong on the commercial space.

Carroll Dorgan: Well, you see I'm dealing with much issues, in what context? You mean the...

(Olivier Carpenter Blanch): In the context of the decisions being made here are - some decisions will be highly political. And some of the objections that will be filed by some countries will be only politically motivated.

And the concern I have is that ICANN gets drawn in these political fights -- international, geopolitical fights -- that are taking place and by making a decision itself. I just wonder whether there is...

Carroll Dorgan: Well...

(Olivier Carpenter Blanch): ...a danger of that.

Carroll Dorgan: I think that - there may - certainly, I suppose there's a danger with that. I mean that's partly what was, you know - well let's put it this way, you know, if you look at the standards that have been identified or set out by ICANN in the draft applicant guidebook, they are you know, focused upon certain types of expression that, where there's a large consensus they should be barred.

Now if you broaden the standards to say that, you know, "Any person," or say, "Any government," or whatever can bring any objection forward saying, "This string would violate our national law here in, you know in where ever we are," or, "It will really offend the sensibilities of the particular group that lives out there in the Southwest of our country," or

whatever; that yeah, will certainly invite greater politicization of the process than what we have set out here.

(Olivier Carpenter Blanch): Okay, thanks.

Chuck Gomes: Okay?

(Olivier Carpenter Blanch): Sure.

Chuck Gomes: Cheryl.

Cheryl Langdon-Orr: Thank you Chuck, that's in fact (unintelligible) hand for Evan again. Go ahead Evan.

Evan Leibovitch: Hi Chuck. And in fact, I'm taking off my personal hat now and speaking as the Chair of the gTLD working group within ALAC, which has been over the issue of context many, many times and really has come to the opinion that this is a extreme hornet's nest.

Not only that, but many of the kind of context that we're discussing and that may come up, could be addressed through the existing community objection process.

If somebody proposes a string, "Kill the blah," whatever blah is, likely whatever community of blah is going to be able to have a community objection that this particular string is inappropriate in reference to its community.

That objection process already exists; it's not part of the existing morality and public order regime, and can tackle a lot of the more

odious versions of this without sucking ICANN into the pit of having to deal with context.

And so I guess my own issue here is I'm hoping to narrow the focus rather than to broaden it. And I really hope that there is a consideration for the fact that the community process of objections -- that's already been very well thought through and very, I think, effective -- has the ability to deal with a lot of them without having to bring them into this particular corner of the objection process.

Chuck Gomes: Thank you Evan.

Carroll Dorgan: I'll - could I respond to that?

Cheryl Langdon-Orr: And just for the record that is an ALAC view.

Chuck Gomes: Thank you Cheryl. And go ahead Carroll.

Carroll Dorgan: Yes well, first of all, I mean as things are setup now, and of course one could add that they can always be changed. But as things are setup right now, one can only file a community objection to a community application.

And so there's a certain - there are certain requirements for applications for a community gTLD, certain category of gTLDs that ICANN has setup -- and it is only another - somebody from the community, defined community withstanding, that can file an objection against a community gTLD.

So a person or a group or whatever entity that applies for a general gTLD, you know, which not a community gTLD, would not be subject to a community objection at all. You could change that, but that's the way it is right now.

And then it - to say that anybody can file what they call a Community Objection against any gTLD would have some repercussions probably on the whole system, so...

Evan Leibovitch: Well for instance, the context that we were talking about is not only, you know for instance, .nazi being run by the Wiesenthal Center but also the reverse; a benign string like .jew being applied for by Hamas is the one that was bandied around before.

So the problem is not just - you know, then you get far afield from the issue of strings that on their own could be objectionable and get into benign strings that could have a very nasty effect. If you get into context, isn't that opening up just a whole barrel of problem?

Carroll Dorgan: It probably is. I mean okay let's say, "Hamas applies for .jew; they're not applying for it as a community gTLD because they wouldn't satisfy the requirements for that. So they just jumped in, and then so you know, could you then object?

I mean a person - it's not going to satisfy the requirements of the morality and public order objection as now defined, you can then broaden the standards and say that, you know a group that feels that its - that they are entitled to this string or that it's a you know, a great offense against their own interest or rights and safety or whatever, I mean that could be then added to the standards.

But it does of course open up quite a broad range of standards. And you're not - whether you have these objections that come through a modified version of the community system or through morality public order with another name if you wish, you - one way or another, there's a dispute that's going to have to be resolved through some sort of process. And whether it's the objection process that you have now, or going straight to the board, or some other.

And you know, you're not going to get away from that, you know what you've described, unless you just say that, you know, "There's got - going to be some sort of general wide ranging veto over applications," I guess. But otherwise it is possible. You certainly have the prospect of objectionable strings being applied for.

((Crosstalk))

Chuck Gomes: Let me try and get to some clarity on the direction we're going right now. What I'm thinking right now, and I may be wrong, is that this area that we're exploring now actually provides, I think in my view, some legitimacy to the GACs concern in the sense that there may not be a way to dispute strings like Carroll just illustrated -- for example, Hamas applying for .q.

If they did that as a general TLD, am I correct that there aren't grounds right now in the dispute processes for dealing with that?

Carroll Dorgan: I don't think there are. I think on the other hand, a Jewish group could apply for .jew as a community gTLD and as they would likely get it. So

Hamas would not. So but that depends of course upon there being that group.

And of course, another thing that can happen is that you know, there are - as we know, there are different religious communities within - under the same rubric -- there might be a Jewish group in New York that applies for it and another one in - you know and orthodox and conservative and/or reformed and all that -- and they may themselves have a quite a dispute over who's entitled to .jew but there's a procedure for that.

You know, there's a way of resolving those kinds of disputes within the system ICANN is proposing to setup. So that would, you know, assuming that someone else is going to apply for that string, then that would resolve it. But of course Hamas can, you know, can always think of something else if they want to or you know, or some other group could think of something else that would raise the issue.

I mean it's - this - it seems like this that you know, you probably do want to have some discretion and flexibility in the system. I mean I have a feeling that, you know if I can just give my own personal view here and I'm not speaking for ICANN right now, I have to say because we haven't discussed this and I don't have any, you know instructions from them.

But I - my feeling is that the - you know, a useful approach for resolving the issues that GAC has raised is to be - is to work on that fourth criterion under the - what's now called the Morality and Public Order Objection. And the name, you know, overall could be changed too.

But maybe that could be formulated in a way that would give some comfort to the GAC and others who feel that, you know, that they're concerns are not satisfied under the three very, rather strictly defined categories - other - the criteria for that.

Chuck Gomes: Thank you Carroll. Bertrand, you're next.

Bertrand de la Chappelle: Yeah, thank you. And thanks to Evan to have raised the notion of community objection. Because the more I listen to the discussion online and now in the call, I would like to remind people -- and I have to go back to the DAG myself -- the community objection actually provides a very interesting framework.

Because as you know, there are four criteria that the community objector must conceal, first of all it needs to be a program community, the - and there is an ambiguity because the text says, "The portion of the community to which the string may be targeted."

So it seems to apply for a community string that wants to serve a community, but it doesn't apply in this formulation to a string that would target in the wrong way a community. But the objector must be a representative of the community, there must be substantial opposition.

But the two - the third element is targeting a strong association between the applied for gTLD string and the community represented. And there are many aspects that can be statements contained in the application, public statements by the applicant, associations by the public, which gives and covers in part, the notion of context.

But the most important one is the notion of detriment. And it says, "The objector must prove that there is a likelihood of detriment, the right (unintelligible) interest of its associated communities." And there's a list of - there is like, damage to the reputation, not acting in accordance with the interest of the community, and so on.

And so as a matter of fact, I think the comments that we've been making on the list are right. This is probably enough to cover any of the .killthe whatever that we've been discussion.

So I think in the discussion in the group we should explore a little bit further, how and whether the community objection can be leveraged for the things that are not universally objectionable. So I think it's very useful as far as I'm concerned.

Man: But let's - I think it's very important that we're all on the same page with regard to when a community based application applies. And I think Carroll said this, "Is that it - they can - a community based dispute can only be filed against a community based gTLD." If...

Man: I think some...

Man: And keep in mind, there is nothing that prevents someone from applying for a TLD that might on its surface be oriented toward the community, but they elect to go the general route instead of the community based route, and in that case -- if I'm understanding it correctly -- then the community based dispute doesn't apply, can't be used. Is everybody - am I - did I say that right?

Cheryl Langdon-Orr: Can you jump to (Kurt) please?

Chuck Gomes: Sure.

Cheryl Langdon-Orr: Sorry, Chuck it's - (Kurt) has an important intervention here.

Chuck Gomes: Thank you Cheryl. Yes, (Kurt).

(Kurt): Hey Cheryl, hey Chuck. How are you guys doing? Thank you. Yes, I typed it in and first of all, this is my first chance to thank Carroll for all of the hard work that went into this and all of the questions he's had to answer from a group that is used to firing questions (unintelligible). So Carroll, please accept my thanks.

And I guess, I just want to add the clarification that a community based objection does not have to be - can be launched at any TLD application, not just community based applications.

Chuck Gomes: Okay, sorry quick...

(Kurt): And the thought behind that is to prevent a misappropriation of a (unintelligible). And so, you know that's clear in the guidebook and might modify the discussion we're having here.

Chuck Gomes: Thank you very much (Kurt), that's critical. Appreciate it.

Cheryl Langdon-Orr: Chuck?

Carroll Dorgan: I apologize for getting it wrong there. So I was misinformed myself.

Cheryl Langdon-Orr: No problem. Chuck, I've asked (Kurt) to ping something to - a copy to each of us and the list so we can make sure it goes back to our ACS and of course use of a gNSO that also that we're all working on the same sex based page.

Chuck Gomes: And so Bertrand then, I think that your comments fit right in then. And so we do have an avenue there; thank you for that. And thanks (Kurt) for the clarification. Did you have anything else to say on that (Kurt)?

(Kurt): No thanks; unless there's questions.

Chuck Gomes: Yeah, okay. Thanks a lot. Richard, you're next.

Richard Tindal: Yeah hey, it's Richard. Yeah just to add to what (Kurt) said there as well; the objecting party doesn't themselves have to have applied for, you know that string or in fact any string at all in order to be able to object.

Chuck Gomes: Right. And I assume though, that if their objection is based on a - the interest of a community they would have to meet the four criterion that Bertrand mentioned. Is that correct (Kurt)?

(Kurt): That's correct.

Chuck Gomes: I didn't get that (Kurt).

(Kurt): I said, "That's correct." There are standing requirements (unintelligible).

Chuck Gomes: It is correct? Okay, okay. Thank you. Any - okay we have another - Richard?

Richard Tindal: Yeah, again just to add a little bit; it is of course correct, you know, the objecting party has to meet the, sort of the same standard. But as Bertrand said a minute ago, the objecting party has to go even a little bit further and that is, "Prove there would be detriment resulting from the other party having the TLD."

Chuck Gomes: Right. Thank you Richard. Any other questions or comments for Carroll?

Woman: For Carroll?

Bertrand de la Chappelle: First of all, Chuck?

Chuck Gomes: Yes, go ahead Bertrand.

Bertrand de la Chappelle: Yeah, so just the precision on what Richard was saying, "It is not so much to prevent somebody else from using the TLD and getting it for the person who makes the objection, de facto, you can have some making - if I understand correctly, you can have an actor doing a community based objection just to prevent that specific TLD for being given at all and he will not apply.

I mean I cannot imagine the Hindus applying for .killhindus, for instance. But I think in that case, the community objection is fully applicable to .killhindus.

Chuck Gomes: Right. Okay, thank you. Alan.

Alan Greenberg: I don't have a question on my own behalf. But we got into this whole discussion largely driven by statements from the GAC or at least from GAC members that the existing words in the morality and public order objection process were not implemented; that is, there were not international laws and established principles, and therefore, it was not something that was likely to be workable.

And I would - I guess I would like to hear something back from the GAC members who are on this group of do they - have they - is there something new that's come out in this discussion? Or do they believe that they or other GAC members still feel -- despite what Carroll has said -- that it's not something that could be actually implemented?

Chuck Gomes: Yeah and Mark's in the queue; I don't know if Mark wants to respond to that, but I'll find out first. Mark?

Mark Carvell: Thanks Chuck and thanks Carroll for a very useful survey of the issues that you've covered.

I have learned a good point about the possibility of incitement being captured within the string. I think that's a very important point for us to note. I wasn't sure about that and I think it's valuable for us in the GAC to take account of that.

Actually I - my question was related to that really because we have talked about incitement. There is this word, "Promotion," of activities or interests which create sensitivities.

My question to Carroll was, "Whether there is any useful steer from him or from practice or legal practice internationally or at national level,

with regard to promotion, that - the intention of a string not to get people to do something but to promote a stand on something which is going to be to the detriment of the interests of communities or nation states or so on - and so on.

Is there some guidance you can provide us with regard to that? I'm assuming there is a distinction here which I've tried to sort of capture in a rather crude way maybe, between what promotion is and what incitement is. So that was my question with regard to that.

My overall sense, is I'm getting a feeling that there is valuable influence coming from international law here which I had - and I'm not a lawyer so I don't know all territory that I'm not familiar with. I'm getting a valuable inference that's coming from this discussion about the relevance of international public law. Thanks.

Carroll Dorgan: Well I have a - I don't have a good answer to take off-the-shelf. I mean I think you've raised a good point. And to some extent, you know, it - using those two words instead of just one of them kind of gives an idea of a broader rule than saying simply, "Incitement."

I think my understanding - I don't have a - you know, a case law to support this with off the top of my head, but my understanding of promotion as being a broader, less precise term. You do see promotion in various legal texts.

One that I happen to have in front of me is you know, "The elements of the international convention on the elimination of all forms of racial discrimination," which has a very broad set of standards for limiting

speech -- much broader than some of the others and not accepted I think in a lot of places -- which condemns all propaganda.

It's Article 4, organizations are based on ideas of racial superiority and so forth shall, in 4B - 4A, declare it's an offense punishable by law, all dissemination of ideas based on racial superiority or hatred. So hate speech would be, you know, simply criminalized here.

But they also - then they do mention in this - in sub-B there, "declare it's illegal," and prohibits organizations and so forth which, "promote and incite racial discrimination." I mean so promotion perhaps would be one that simply favors it as opposed to inciting which is supposed to produce action, you know, in response.

I think that may be the distinction is there's a greater focus upon the action that follows incitement. As - and that's sometimes the distinction I see between incitement and what's sometimes - to distinguish it called, "Near hate speech." You know, which is not in some context or in some systems criminalized.

I don't think that's the full and satisfactory answer for you. But it's something, you know, one could work on some more if you'd like.

Chuck Gomes: Does that help Mark?

Mark Carvell: Yes, thanks very much. I think that's - that is a helpful introduction to that distinction between the two. I mean, coming from a government perspective, references made earlier on to geopolitical issues and the fear of the - of ICANN and individual GAC members being caught up in geopolitical disputes over territory.

And promotion of sovereignty and so on, strikes me as one example of where a difficulty would arise from a string which is advocating, you know a sovereignty claim, whether it's Falklands...

Man: Yes.

Mark Carvell: ...(unintelligible) endeavor. I mean my - U.K. is caught up in a lot of these through various historical legacies that survive into our current political environment.

So yeah, I guess that's what I wanted to say on that. I mean yeah so, I think it's worth thinking about further, certainly. And I tend - I also appreciate the steer to the fourth bullet in the DAG4 on Morality and Public Order, we need to look at that a lot more I think.

((Crosstalk))

Chuck Gomes: Yes I think you're right there. Go ahead.

Mark Carvell: I was going to say, "Because some of the community issues that we're just discussing could fit there, maybe just as well. And of course it's not only communities that, you know have the sensitivities, there are other kinds of issues. But yeah, as we said, "That might be a useful thing to look at."

Chuck Gomes: Okay, now Alan asked a question of any GAC members that might be able to respond. Alan could you just very quickly restate your question?

Alan Greenberg: It was just that, a lot of this session that started the MAPO discussion was that the current wording was not really implementable; that there were no such international principles. And you know, there is no mechanism of doing what the applicant guidebook says.

And my question was, "Is there any indication that based on this discussion, those governments may have been wrong, and indeed it is implementable or does that position stand?" Again, I'm not asking for formal answers from governments here, but I'm just - is there any belief that there was sufficient misunderstanding that has been clarified now or is that position still stand?

Again, I'm not advocating one or the other. I'd just like to really understand.

Woman: (Unintelligible) today?

Man: Yeah, just for our meeting.

Woman: Perhaps that needs to be a question on - a question of notice.

Alan Greenberg: Yes, that's essentially what I was trying to do. Thank you for the better words.

Chuck Gomes: Okay.

Woman: Frank, we might take that on notice and see what might trickle back.

Frank Marsh: Yeah thanks.

Chuck Gomes: Okay.

Frank Marsh: Certainly we'll take that up. I mean, the GAC concern was that there was no firm definition as it was put forward, and that governments were entitled to take reservations from existing and from treaty positions on that ground.

That was the point; that it was a - governments could reserve positions on the grounds of morality and public order. And that there were no established principles in treaty text about what that meant -- it was for individual national interpretation.

Now, if Carroll's position is that that's not the case, then that is new information for me certainly, and would need to investigate that and go back and take another look at it. But Carroll, perhaps you could assist us by actually dealing with that point particularly.

What - the information that we have is that there - that the term Morality and Public Order is one which is used for national governments within their own jurisdictions to take reservations from treaty text. But that - so in other words, it's a sort of a negative exception condition, rather than a positive standard - international standard. Thank you.

Carroll Dorgan: Well, yeah was - I saw that. And I really have to tell you, "I thought that the people that were making that point at the GAC were missing some important aspects of international law and the international instruments that, you know, raise this - address this topic.

We're not only talking about the Paris treaty with, you know, with patents and whether or not a state can decline to enforce a patent on grounds of its Morality and Public Order rules. But in fact we have, in instruments such as The Universal Declaration of Human Rights and the International Covenant on similar political rights, which state, "On the one hand there is a - everyone has the right to freedom of expression."

And then they go on to say, "But these rights may be subject to certain restrictions which are based upon morality and public," order or other reasons as well. And so it's stating, you know two aspects of one - you know, or the full dimensions of this freedom. It's not sort of saying, "We're out here," you know, some international instrument saying its freedom of expression and then you can derogate from that freedom.

I mean I think the content itself is saying, you know, "Freedom of expression is a right which is important." It has, you know, a tremendous amount of importance and, "But it is not absolute."

So freedom of expression as it is defined in international instruments, such as the Universal Declaration of Human Rights and the others, as it is defined, it is defined with, you know, certain qualifications. And those qualifications are stressed in different ways.

But you see the terms or the notion of the public order and morals come up. And then you know, as everyone has seen, you know many of these - the content of order (unintelligible), public order and so forth, may be defined nationally.

But the - they can also be judged against international standards, which is what the European Court of Human Rights does in many, many cases. They're looking at an international standard of the scope of freedom of expression in accordance with Article 10 of the European Convention, which also refers to, "Prevention of disorder," and "Protection of health and morals."

Chuck Gomes: Is that helpful?

Frank Marsh: Yeah I -

Chuck Gomes: Anybody?

Frank Marsh: It's Frank here again. I think I am going to follow this up and seek further clarification from - and because the - with all due - absolute due respect Carroll, and like Mark, I am not a lawyer, and I'm certainly no knowledge at all of international law and precedent.

But this is a different - very different point of view from the one that I've been informed of. So I would like to follow-up and see if in fact this is a debatable point or not.

Chuck Gomes: And I don't - I'm not - I don't have any authority of course, to volunteer ICANN resources and so forth. But I'm going to throw this out and let ICANN staff deal with it however they feel appropriate. But is - could there be some value in a consultation with interested GAC members and Carroll and ICANN staff on this to make sure there's a common understanding here?

I'll leave that (Kurt), with your team, in terms of whether you want to follow-up on that or not and with the GAC leadership in terms of whether they would like to follow-up. But I appreciate that - the discussion in this regard.

Are there any other questions or comments for Carroll before we run out of time? While people are thinking; good points have been made again on Category 4, the one that we've been spending a lot of time on the list, you know, with regard to terminology.

Maybe while - and I see Bertrand's hand up. But a question I was going to throw out, Cheryl is, okay, you've seen the discussion of calling that category, just titling it, "Public Interest Objections." Do you have any thoughts on that?

Man: Yes I do. As I briefly mentioned at the beginning of this chat, I think that public interest is quite a broad, and maybe perhaps a nebulous concept in this context.

And certainly it could just mean any, you know, any executive of any government saying, "This is - we care about this." I think public policy has a little bit more meaning and is probably consistent with what you are trying - you, you know every - all of you are trying to do.

So if you were going to suggest a change, I think it would be a better idea to propose public policy, maybe parenthesis or to link with - the two are sometimes linked and it's in many countries, not just Frankish countries; they use the term Order Publique as more or less equivalent.

And that would perhaps be - that would be my recommendation anyway, rather than public interest.

Chuck Gomes: Thank you. Bertrand?

Bertrand de la Chappelle: I certainly would be very happy if a French word or expression were to get into that, but...

((Crosstalk))

Bertrand de la Chappelle: ...that aside, I just wanted to highlight something that Carroll alluded to in the Universal Declaration of Human Rights, the exceptions to various liberties and freedoms have very specific requirements; they have to be adopted by law -- and this means at the national level -- by law to ensure the fulfillment of the freedoms of others; and there's a general principle of proportionality.

I think that, and I've mentioned that earlier, "That in the general scheme of things, there is a parallel principle that we have not discussed really." But there is a general agreement that if a TLD is accepted by ICANN, in principle, it should not be blocked unless there are very specific exceptions at the national level -- i.e., it has been done by law -- with a motivation and an explicit formulation of the reasons why the TLD is being blocked completely.

The notion of granularity that I have mentioned in previous posts, means - in proportionality, means that in the same way that we try to prevent the blocking of the whole content hosting site, like YouTube, and accept more easily if ever, the notion that a specific content -- according to national law and due process with court appeals -- is put

in place, means that at a global level, it should more or less be the same.

In general, hopefully, a TLD should not be blocked in its entirety. And hopefully the process we have here would mean that the TLD itself would be - would have passed a certain number of possible objections.

And so the notion of morality and public order could potentially come -- if we want to do that -- as a case where national governments as an exception to the notion that the TLD's not being blocked, could be doing it provided that it is through appropriate legal means for very specific purposes or for specific reasons of morality and public order.

So I think that the expression Morality and Public Order is probably the only place where it fits appropriately as an exception to the general principle, yet unformulated, that as a matter of principle a TLD as a whole should not be blocked if it has been entered into the word.

Chuck Gomes: Thank you Bertrand. Any other questions or comments? Okay, not seeing any hands or hearing anyone.

Thank you very, very much Carroll for taking the time with us here today. We very much appreciate that. And thank you to (Margie) and Amy and any others who were involved in arranging this today. I think it was very helpful -- as several people have expressed. So that's much appreciated.

Carroll Dorgan: Well thank you, I enjoyed it. And if you want to invite me again, I'm happy to participate again.

Amy Stathos: Carroll, thanks so much.

Carroll Dorgan: Yeah.

Amy Stathos: This is Amy. I really appreciate it.

Carroll Dorgan: You're welcome.

Chuck Gomes: Okay, well thanks a lot. Now, just to wrap up our meeting, and we're just about out of time; a doodle poll has been put out for possible meeting times, a few on - a few possible times on Wednesday and Thursday and one on Friday I think. Please respond to that.

We have a report that we have to deliver on Monday, regardless of whether we have consensus recommendations or not, so that the board has some information. So (Margie) has - is trying, by the end of the day today, to put around a skeleton report that has some basic information, not specific recommendations, so that we can at least have a framework to build upon as we do reach any agreements this week.

My thinking is -- and Cheryl and Frank, please tell me if you think I'm off base on this, and others as well -- that we should have our regular call, the call that we've been having on Monday. But that it would be very helpful if we could have a couple more calls this week if there are enough parties that can make it.

For those who have responded, I think there are, so far, quite a few that can make two or three of the times. So if we're going to have a call tomorrow, Glen will have to get the information out that right away.

So if you haven't responded to that Doodle Poll, please do so. And if anyone wants to share a comment with regard to my suggestion that we try to have a couple more meetings this week and then the one on Monday, please comment right now before I adjourn the call.

And let's continue the discussion on the list. And let's focus on, you know, maybe we - with the information we have today we - I think we got some information with regard to determine incitement; we got some - you know, from several directions I think we see the need to work on Category 4, which we were already working on. Let's continue the work on that and see if we can get closer to something that we can all live with.

And then several people have made some good suggestions in that regard. So any questions or comments before I adjourn? Okay, thank you everybody for your...

END