

New gTLD Committee Teleconference

Thursday 5 October 2006 at 12:00 UTC

Bruce Tonkin chaired the meeting

Committee members present

Bruce Tonkin and Tom Keller - Registrars C., Marilyn Cade and Philip Sheppard CBUC, Ute Decker - Intellectual Property Interests C, Antonio Harris - ISCPC , Ken Stubbs and Cary Karp - gTLD registries, Avri Doria - Nominating Committee appointee GNSO Council Liaisons - Bret Fausett - ALAC Liaison

Observers:

Werner Staub - Core
Chuck Gomes - Verisign
Alexander Schubert - dotBERLIN
Dirk Krischenowski - dotBERLIN
Ray Fassett - dotJOBS

ICANN Staff

Dan Halloran - Deputy General Counsel
Denise Michel - Vice President Policy Development
Kurt Pritz - Vice President, Business Operations
Olof Nordling - Manager, Policy Development Coordination
Liz Williams - Senior Policy Counselor
Tina Dam - IDN Program Director
Craig Schwartz - Chief gTLD Registry Liaison
Maria Farrell - GNSO Policy officer
Glen de Saint Géry - GNSO Secretariat

Note: The following is the output of transcribing from an audio recording of the New gTLD Committee meeting on 5 October 2006. 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://gnso-audio.icann.org/GTLD-Council-20061005.mp3>

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

(Bruce): Okay. Well, I think we'll get started. Just - I just sent an email to the gTLD mailing list...

<http://forum.icann.org/lists/gtld-council/msg00221.html>

(Bruce): ...just indicating where we are in the policy development process. That's essentially an initial report was published some time ago. We had public comments from that report within (meet) in Amsterdam.

So I've got three of those comments and then as an outcome of the Amsterdam meeting, we, I guess, updated or revised the recommendations and so Liz is in the process of creating the final report, for the purposes of this call. And then the final report will then go to the council for a vote.

And unlike – if people have been involved in task forces in the past, the difference between the task force process and a community process is a task force normally has sort of formal membership from each constituency and then there's a vote at the task force level.

When we form a committee, it's not actually a committee vote. So the committee simply presents its report through to the council and the

vote happens at council and the outcome of that vote is presented to the board.

So what I had hoped to do, I guess, where we are on the process is I wanted to be - get a very clear set of what our recommendations are and that work was published a few weeks ago with numbers and then Liz will be kind of putting all the background behind those recommendations which is all the material that we've been working on and, I guess, the rationale behind each of those recommendations.

In terms of the feedback that we've received so far, it hasn't been a great deal. The only place that I could to take that was on a public mailing list came from Chuck Gomes Has there been anything else, Liz?

Liz Williams: No (Bruce). I just did send you a note back about the consolidated list of comments that - which I think is a good idea for me to be able to see anyone who's involved in the Amsterdam meeting has the full set of public comments that we got which we considered prior to the which were considered in the Amsterdam meeting.

The only thing that has come in since then were things from Chuck and then from me; I've been talking with various people on clarifying what they mean about certain things, discussing with Werner and Dirk discussing with these and then the other.

So there is not a post-Amsterdam consolidated list of comments, but the other things that would formally needed to be added to that document are (Chuck's) amendments.

(Bruce): Okay. Let's just go through those suggestions that (Chuck) made, have a quick look at them, and that makes sense

The first one, (Chuck) I think is in terms of the process for string checks which would be - the 3.5.1.1.

I guess what you have done in the first one is suggest that there's some time limit supporting this just to bend the timeframe that the process would take.

So you've suggested that when the staff make an initial determination on whether the strings made the criteria, you've suggested 14 days. Is that consistent with the registry services process? I think it might be a similar timeframe in it.

(Chuck): I didn't try to match it to that. The intent was to make sure that there's some sort of a target. So that it doesn't extend the process. It's really easy when we do things like this to let it slip away and all of a sudden, we're back to an objective that we're trying to avoid where the process stretches out over an excessively long period of time.

(Bruce): Yes.

(Kurt): (Bruce), is there -- this is (Kurt) -- is there an equivalent for, you know, some sort of intellectual property check, you know, if there are standards in industry where our name rights are checked by entities when they submit a name for a trademark approval or something like that?

Chuck I don't know myself.

((Crosstalk))

Bruce: Yeah, I think - you probably saw that - it will vary depending on the trademark office Kurt; but yeah, it's probably longer than 14 days (would be my idea).

((Crosstalk))

Bruce: ...Trade mark process I don't think is quick for the most parts of the world; but I'm now thinking that in the dotEU experience, the Benelux trademarks I think there have been a lot of trademarks apparently where I would be released very quickly while in other parts of the world, it takes a long time.

Chuck: I mean, it seems to me that you can - you don't want to be overly rigid than any requirement. So there could be means for exceptions in cases as long as that's communicated and there's some sort of check on it because there could be some special circumstances and the idea seemed to be rigid, but to try and keep the process moving forward and not get hang up at any one point excessively.

Kurt: Yeah, from the case of, you know, many different countries, the check might be a little more complicated than in just one country. So the problem might be actually more complicated. I just want to build that into expectation.

Bruce: Yes. I think my sense of what you're trying to achieve (Chuck) is unpredictability.

(Chuck): Right.

Bruce: You know, it's not a six-month exercise. It's expanded and you put an eg. 14 days, it might be the way to express that in the policy is that there will be a conference specified, you know, as part of the RFP and then just put eg. 14 days so that the staff can then sort of go and work out within reasonable time.

(Chuck): And there could be an additional clause in there that says special circumstances that would be communicated at a time. This could be extended and because I think that's right there may be some complicated situations where, you know, even a fairly several times, may not be able to (act on), target may not be able to be met, but again, I'm not suggesting that we'd be rigid that we just have reasonable predictability.

Liz Williams : Just before we go on, would you mind to add - notes from the call; would you mind just doing a quick roll call so I'll know who's here because I've got some questions for other people and if they're not on the call then I'll send them to them by email.

Bruce: When I came on to the call we're supposed to ask the operator (Chris) just to start recording of it. If the operator is (here), if he can start the recording please.

Coordinator: Thank you, sir. The recording has started.

(Bruce): Thank you.

Okay, the - I was just trying to take notes as people came on. So the people I had so far was Dirk, Olof Nordling, Liz Williams, Kurt Pritz,

Chuck Gomes, Ken Stubbs, Craig Schwartz, Werner Staub, and Avri Doria. Is there anyone else that I've missed there?

(Tony Harris): (Tony Harris).

(Bruce): Hi (Tony Harris), (good to see you).

Bret Fausett

Dan Halloran: Dan Halloran.

(Bruce): Who was that? That was Ute Decker.

Ute Decker: Yes.

(Bruce): Okay.

And, that was Dan Halloran, was it?

Dan Halloran: Correct.

(Bruce): Thank you Dan, anyone else?

Denise Michel: And this Denise.

(Bruce): Hello Denise.

(Maria Farrell): (Maria Farrell).

(Bruce): And (Maria).

Well, I'm sure we're almost outnumbered by the staff and so, anyone and we have Glen presumably from de saint Gery

Glen: Yes.

(Bruce): Okay. Thank you Chuck

Anyone else I've missed?

(Chuck): You got me, I assume.

(Bruce): (Chuck)?

(Chuck): (Chuck), yes.

Woman: And you've got Dirk, Bruce?

(Bruce): Yes, I had Dirk.

Woman: Okay.

(Bruce): Okay...

Coordinator: Sorry about the interruption. Thank you.

((Crosstalk))

(Bruce): No. It was the same question I was hoping to get up to the conference list of the people if they not registered because that helps...

((Crosstalk))

Glen: ...and it's not up yet (Bruce).

(Bruce): So, okay.

Yeah. So, I think I'll just try to find one of the problems for those in the ICANN staff. And since you've changed the design of the ICANN Web site; I don't seem to be able to find anything anymore.

Ken: Me as well, (Bruce). Hear, hear.

Denise: If you go down to the bottom, the old index is linked there and if you were able to find something under the old Web site, then you'll have a better luck if you use that index.

(Bruce): Because it used to be a section with consensus policy. And I just wanted to say what - under the new registry services what the, because it sets timeframe there which we could use as a starting point.

(Ken): While (Bruce) is looking around me, I'll make a suggestion. I would suggest that you put a link to the index at the top of the pages as well as the bottom.

It's amazing how many people do not get all the way down at the bottom of the page and I can assure you significant numbers of us have used that Web site since it was changed and probably are not aware the index is there because we never get all the way to the bottom of the page.

Liz: They are trying to make use of the new index (Ken).

(Ken): Yes, well.

(Bruce): Okay.

So, the registry services process had 15 days in it. So that's probably not a bad benchmark to start with.

So I suggest we just - but something along the lines that the preliminary determination will come out within a time limit, for example, 15 days.

The staff found is - it sort of comes with the RFP and comes to the policy and implementation, but that's not long enough so I can add a bit to it, but it gives a sense of how long we're expecting and also, I don't see - that it is staff role to do a full trademark check across the world.

I think the more sort of thing that we're expecting staff instead of looking for string conflicts, knowing the string looks the same in the existing string and things like that which is - so, in the early days, it should be - I think it could be reasonably cheap.

And then, the next comment you had (Chuck) was on the public comment too; and how long that should be? You had suggested seven days. My feeling is that it's probably long enough and probably should at least as long as that other one.

So I guess that those two periods were in parallel and we're talking about a 15-day period...if step one and step two are happening in parallel.

Chuck: What did you suggest again?

(Bruce): Well, you've got sort of staff who will make a determination after that, say 14 days or 15 days.

And then, you were concerned that the public comment process that the staff might use to - yeah, identifying any issues with - you had suggested keeping it very brief -- seven days.

I'm thinking that's not long enough. Just give them enough time so they will know that - (the new) set of strings have been proposed and what those strings are.

(Chuck): Yes and I -- that's okay. Again, note that I'm assuming that all of this is happening before the full evaluation process. So I'm not limiting comment period - the ultimate comment period.

I'm thinking -- and maybe I'm wrong here -- that comments on those any strings - specific strings would be separate from the general comment period.

So that's why I would...

(Bruce): Yes, specific to strings, yeah.

(Chuck): Yeah. So - yeah, and I'm okay. There's nothing magic about seven. I just don't think it needs to be too long in this case because there will be a broader comment period once you get further into the process.

(Tony Harris): I agree with (Chuck).

Marilyn Cade: And I'm sorry - (Bruce), it's Marilyn, I just joined late; but I - so I just want to be clear that I understood your comment, but I didn't necessarily understand (Chuck) and then I wasn't sure who spoke in support of (Chuck), so...

(Tony Harris): (Tony Harris) spoke.

Marilyn Cade: Hi (Tony).

The - I was concerned about limiting - cutting it back to seven days, but the way that you're describing it, (Chuck), you were assuming it would not be limited to seven days?

(Chuck): No. What I was saying earlier, and this is the - I distinguished this public comment period from the general public comment on the proposal.

Marilyn Cade: Uh-huh.

(Chuck): And I was just checking to make sure that I was right in that assumption.

In other words, this would only be comment on the string itself not the overall proposal.

Marilyn Cade: Right.

(Chuck): With a much more - a very restricted request for comments.

Marilyn Cade: They're restrictive, but the purpose of it is to keep someone from - I thought we were trying to give an early sort of alert to someone that...

(Chuck): Yes.

Marilyn Cade: Yes. That therefore, we wouldn't, if we had too short a comment period, we would overlook...

(Chuck): And again, I said there's nothing magic about seven days.

Marilyn Cade: Yes.

((Crosstalk))

(Bruce): Well, I think we can probably - 15 would be a better initial number, it gives time for people to know about it and do some checks...

Marilyn Cade: Yes.

((Crosstalk))

(Chuck): That's fine.

(Bruce): ...but they would know about it in these checks and...

(Chuck): That is fine.

(Ken): I think it gets important if we could give additional time.

Liz Williams: Sorry. I didn't hear whoever that was.

(Ken): It was (Ken), Liz.

Liz Williams: Oh, Ken, sorry. Thank you.

Marilyn Cade: And besides, just would like to note that one reason I think that additional time needed is that some of the names that maybe most controversial may be most controversial to government and it will take more...

(Bruce): That's what I was thinking too and I'm trying to think of it in the context of (IDNs) as well.

(Chuck): Right.

(Bruce): And so, (IDN)names you start to write a few other variables there So I do think 15 days is better than seven.

((Crosstalk))

Liz Williams: We've got a clarifying question, when you're ready please.

(Bruce): Yes.

And I think, the other part in all of this of it, taking the government variables specifically is enough notice to governments about the whole process, so that governments that think there may be concerned are ready to receive that list of strings when they publish and ready to do something about it.

Because part of it - I found that a lot of these processes - it's not - doesn't actually really take 15 days to make a decision it's that because they're not ready for the information.

Yes, 15 days just to get the information and to to the right people before they can ever start to make a decision.

So I think if people know you're on such and such a date, you know, there's going to be a list of strings published. And they given about three months notice that that's going to happen as part of an overall RFP. And so an RFP says, you know, "On such and such a date we're issuing the RFP on such and such a date.

The application is closed on such and such a date. The strings are going to be listed and so, if your government or organization is concerned about that, be ready on that day to get the list and start working on it.

(Chuck): Yes, and those kind of thoughts, (Bruce), are consistent with the rest of my suggestions in this particular item that I sent, you know, I think it's first of all, really important that the strings be posted as soon as possible at the beginning of the process and I suggest that, you know, as soon as there's some administrative application requirements

fulfilled, once we know that paid application fees, necessary information, et cetera.

Not evaluation of the proposal, but that the strings be posted and sent to the GAC for comments (if possible) and then a short deadline for comments if it's 15 days, that's fine. And that ICANN check of the strings could be going on simultaneous to that. It doesn't need to be - in fact, it probably shouldn't be serial.

(Bruce): Yes.

(Chuck): And then the checks would go to the panel of experts as needed.

(Bruce): Okay. And Liz, you had a clarifying question?

Liz Williams: Yes I did, and this came out of my discussions earlier in the week with Werner and Dirk.

I've been doing some work and looking at the way in which reserve lists are constructed. And a couple of the comments that I've had back from different people on, for example, the - and I'm just going to use the generic category of reserved list which is local host or XE the names of government and the names of the prior rights, you know, those kinds of things.

I think that it might be useful and I wanted to check with the group whether it would be helpful to include quite a comprehensive listing of already, things that are not registerable. For example, ISO and code elements, for example, country areas and names...

(Bruce): Yeah, but I guess that's the issue, Liz, that they have already in that category yet.

Liz Williams: What I'm trying to do is to give in an application process some guidance to potential applicants about things that are just not on in the first place. No doubt we're going to get controversial applications (along with any) list. But I wonder if the group things as well to...

(Bruce): Yes. I guess - I think we do need a reserve list; but I'm saying, the starting point essentially quite small, I think. And that's where we're looking for input from the GAC on, you know, what things actually taking to should be on the...

Tony Harris: (Bruce)?

(Bruce): Yes. Yeah, go ahead.

(Tony Harris): Yes. This is (Tony Harris). About what's just been said, is there a - is this posted on any URL from like WIPO or something or the - what would the exclusions in principle?

Marilyn : (Bruce), can I get in the queue to talk about the reserved name process that we're working on?

(Bruce): Yes.

So, to answer your question, (Tony), what exists at the moment is in the current registry agreement or the most recently signed one. There is a list of words that are reserved to the second level and they are in a few different categories.

One category, for example, is words that or strings at the second level that could be used in the future for (IDN). So it's, you know, reserving strings that have (dash-dash) and they have third and fourth characters.

(Tony Harris): Okay, but that's not the - let's say, the case of a sponsored TLD.

(Chuck): Why is that (Tony)?

(Tony Harris): (Chuck), I'm just wondering. I'm trying to understand it.

(Chuck): Oh no. I think it - that applies to both sponsored and non-sponsored.

Marilyn Yeah, the reserved category...

(Tony Harris): It's the second level I'm (struggling) with.

(Bruce): Yes.

So what I'm saying (Tony) is it's not really matched. We're talking about the top level and I'm saying there's not much an existence at the top level. There is a couple of RFCs and it's really a pretty small list.

It's something like, I don't think you're going to have that example. I don't think you're going to have dot local host I'm not sure what the others are But it's not very long. It's less than 10.

And then when you look at the second level, the most recent registry agreements that are being signed; we've got a much more extensive list.

Okay.

Marilyn : In addition, can I just say something else...

Bruce: Yeah, go ahead.

Marilyn: We agreed in - on our last meeting that we would checking out together as small brainstorming session to try to identify the issues on reserved names.

And we did have a first call and I'm drowning in other opportunities that have to publish the note to the group who - I think we'll have something to come back to everyone on. But - and that will describe, (Tony), the different kinds of reserved names that are today, as (Bruce) said, generally applicable to second level.

There will be questions about whether or not they should be - how these names should be reserved at the top level and should there be consistent. Or identifying questions like if they reserve it to second level, are they automatically then reserved at the top level?

There's another category of reserved names that registries established through their contract with ICANN that varies from registry to registry.

((Crosstalk))

Bruce ICANN, for example, is a reserved name.

Marilyn: Right, okay.

(Tony Harris): What was that, I'm sorry?

Bruce ICANN is an example of a reserved name.

Marilyn: ICANN, WIPO, etcetera.

(Tony Harris): Yes, ITU.

(Bruce): Yes, it's probably.

So, the - I think the issue is that I think from the policy point of view, I think what we're saying is that there should be a reserved list published in advance so it's not just something we've used kind of place holder checks here and saying, you know, the string must not be on a reserved list, but obviously, that reserved list needs to be known in advance. So it's not after the (fact certainly) or you can't have that one we've just added that to the reserved list.

(Tony Harris): Yes. Well, it says the applicant...

(Bruce): Exactly, right.

So - and I think that's work that needs to be done and I think what Marilyn is trying to do is get a group together that just look at what the reserved rules are at the second level currently and seeing how many of those should be occurring at the first level and that reserve list

whatever it is probably needs to go through a public comment process, just like any ICANN contract would.

In other words, I'd expect the ICANN staff will put together a reserved list based on what they know, and then get comments on that and if they would think another name should be on that list then, you know, they can make that suggestion.

Philip: Hi (Bruce), it is Philip, just joined the call, apologies for being late.

You are talking about a list that you would be a - an indicative list but maybe or it's a possibility to change it or attempting to make a definitive list.

(Bruce): I think in terms of reserved words, I think it should be a definitive list in advancement to think of the process. Now, given that we're probably looking at application round and, you know, that's an issue we're creating that list for future rounds, so I think...

Philip: Right for rounds.

((Crosstalk))

Philip: Yeah, I think that sounds a good objective to me. Yes.

(Chuck): Yes. I'm sure we'll learn things as we go. So...

Ray: (Bruce), can I get in the queue?

Ken Please go on the queue.

Ray: Who is the first person you spoke to?

Ray fassett Ray fassett

Bruce: (Ray) and (Ken), anyone else?

((Crosstalk))

Ray Fassett: This concept of preparing a fixed list of reserved words, I don't remember that Amsterdam, just to be honest, a subgroup being formed to do that.

But regardless, I thought that the purpose of the panel of experts was to determine the string checks and check for any controversies rather than coming up with a list of front.

(Bruce): The concept is a set of checks that have done, so the string criteria, and I'll just set a round through those. There's - we've got kind of about five criteria.

And - so the first one is that the strings should not be confusingly similar and a number of people had suggested changing that to say typographically similar.

Second criteria -- it must not infringe the legal rights of any third party.

The third one is the string should not cause technical issues and e.g. not local hires .xe

And the fourth one is the strings should not, you know, breach, I guess, national law that takes what we need from the GAC

And then the fifth one is the strings should not be a reserved word.

We're not saying the panel coming in, (Ray), is basically, let's say, someone says the string is confusingly similar or something like that, then that's a sort of thing that would be evaluated by an expert panel.

And the last criteria, the string should not be a reserved word, our (hype) is more definitive. In other words, it's a reserved word list - (they're on that list); so it's not and that they get some certainty in the application process.

Marilyn: Okay. I think maybe (Ray) misunderstood what the little group that I was - that (Chuck) and I were doing - what is this we're doing. We should probably - I just want to clarify that.

We're not putting together a list of reserved names. We're trying to identify what are the reserved - what our reserved today at the second level. What are the questions that needs to be asked to see what or those names should be also reserved; whether there's a rationale for - unreserving certain names such as the single letters and how whether certain kinds of reserved names can be addressed more quickly than others such as dealing with the country names or place names, maybe extremely challenging and longer because it's political while a decision about ICANN.org.tld.localhost as example, all should be very simple decisions.

Ray I have a follow-up question.

(Bruce): Yeah, go ahead.

(Ken): Yes, this is (Ken). Just keep me in the queue still.

(Bruce): Yeah, you're still on the queue (Ken).

Ray Just real quick -- is this work going to be part of the final report and then my question is -- is there enough time to have a public comment period on...

(Bruce): Yeah - well no, I don't see this part of the final report.

Ray Okay.

(Bruce): I'd say, the final report is basically saying the string must not be a reserved word and the ICANN staff basically need to do some work on what other current reserved words or what should be and that's probably versus the public comment.

Ray): Okay. Thank you.

Liz Williams: Right, just the...

Philip: I'd like to join the queue as well, please, (Bruce) is it?

(Bruce): Sure.

Liz Williams: Just for any one who's on line, the - if you're looking for this particular element; it's in Appendix 6 of the (30 May) registry agreement for TLDs and

it's - the older one is in Attachment 11 for the earlier TLD -- sponsored TLD

<http://www.icann.org/tlds/agreements/sponsored/sponsorship-agmt-att11-20aug01.htm>

agreement looking for it while you're on line.

(Bruce): What was the appendix again, please?

Liz Williams: Appendix 6 for the (30 May) agreement

<http://www.icann.org/tlds/agreements/tel/appendix-6-07apr06.h>

and it's

Appendix 11 for the previous TLD sponsorship agreement,

[http://www.icann.org/tlds/agreements/sponsored/sponsorship-agmt-att11-](http://www.icann.org/tlds/agreements/sponsored/sponsorship-agmt-att11-20aug01.htm)

[20aug01.htm](http://www.icann.org/tlds/agreements/sponsored/sponsorship-agmt-att11-20aug01.htm)

but there are differences between the two.

Marilyn: Yes, and just a follow up on that, Liz, that's one of the first things that the little group has determined as - that they're actually maybe even one more version of because dot name for instance has a unique reserved list.

But we will

Liz Williams: Thank you.

Marilyn ...so we will be publishing the notes to the full list and people can take a look at it and contribute to it.

(Bruce): (Ken), (establish you next) in the queue?

(Ken): Yes. This is more a process question, first of all, and expressing some concern.

I'm very concerned about making absolutely certain that before we get to the point when we started issuing RFPs, we have a clearly defined process for dealing with the areas that you're specifically talking about.

One of the things I am very concerned about is the concept of infringing on legal right.

First of all, you've got - we've got a lot of lawyers here on this call, I'm sure. You've got the issue of domicile what maybe not an issue in one domicile could be another - an issue in another domicile. And I think we have to have a clearly defined process for that.

Now, I'll try to use as a simple example; I notice today that (Hormel) was not able to prevail on their infringement suit on the word SPAM. I'd hate to have a situation down the road where we get into a process and halfway through the beginning of a (land rush) or whatever you want to call it and all of a sudden, somebody could step in and stop the entire process.

I understand the law, I understand that anybody has the right to go to court with question (injunction) but you protect the integrity of the process as well as insulate the party from liability by having a clearly defined methodology for dealing with this at the very beginning.

And I'm also very concerned about making absolutely certain that the governments are given a specific methodology for dealing with this and so I really get tired of hearing people say, "We weren't aware of this." Or, "We take a long time to make a decision."

And I was very pleased to hear your example of letting the governments know three months in advance (specially) because I don't think we're at a point in time where it's really fair to the communities to hold this process up for an enormously long period of time because various governments need 18 months or 2 years in order to arrive at names they want to put on the list there or something like that.

(Bruce): Yeah.

So, I think in terms of intellectual property issue or the prior rights issue what we've gotten in there is a dispute resolution process. So, a dispute resolution process using independent arbiters where an existing trade mark holder could challenge the string and that's kind of the process for that.

Other than that, at any stage, you know, we don't override the law. So I guess it's just saying, (Ken), is it someone – who is putting together a proposal to be given notice of something but it's not ICANN's position to stop them doing that. It's just that I know that there might be legal issue and try to resolve it with that labor party, you know, ultimately if - that, you know, we've got a court if it's not resolved.

Ute: (Bruce), can I get in the queue?

(Bruce): Yeah.

I think I've got - is it (Philip Sheppard next and then Ute

Philip: (Bruce), thank you.

Apologies, we were having discussion before I joined the call. I just noticed you saying earlier on 2.5.2.1, there was discussion about changing confusingly similar to typographically similar.

I'm just a little concerned about that, the reason being twofold -- one of which confusingly similar is actually stating the objective to avoid confusion, whereas typographical to my mind - that would be similar is one possible manifestation of confusion. So it may be over the limiting.

And secondly, the term confusing similar already has an extensive track record in terms of what that means, I don't think that's something that we could access because that's the term well-known in many different legal systems.

If we're concerned at our account, three lines on 2.5.2.1 are insufficient, and I'll be happy to try to dig out some examples of existing wording which may help to clarify that.

((Crosstalk))

(Bruce): ...be on the mailing list. And we haven't really discussed that in data, yet; but that was something that was on the mailing list more than anything (Ken)...

(Ken): Yes.

(Bruce): That seemed to come from the registrars. There's been a bit of discussion amongst registrars. I think they prefer the term topographically similar because I understand the use of that term more clearly.

Philip: Uh-huh.

(Bruce): And then obviously people that come more from the trademark community and more familiar with the other term.

So, it's really comes down to culture. So, the technical community probably deserve something more specific and then they, you know, others prefer that more general term.

This reminds me a little bit of the WHOIS purpose because to me, they're both the same, the Purpose 1 and Purpose 2 but depending on your culture. And one is saying to be, you know, highly restrictive and...

Philip: Yeah. Exactly, to me, the difference is one of objective .

The word that we currently have is saying we want to avoid confusion which strikes me as the objective worth pursuing and then simply need to get the wording right.

But as I said, I'll be happy to provide on this some additional wording which might help clarify that in a way that is useful for everybody. But, I said, I think, I fully support, I think, the basis of the concern there which is the people are looking for certainty.

Bruce: Yeah, just on the confusion stuff, so that some of the comment, I think, Mawaki made this comment as well is what's the measure of that?

And again, it's a matter of what you use to in terms of the system. But does mean that one person makes a public comment and says, you know, I Bruce Tonkin am confused about that, is that enough to stop it.

Or are we - or is there much more general measure that - which is where you sort of trying to look at kind of a panel approach and saying, "Okay well, if people are saying it's confusing, let's get a panel and see if it's a reasonable person to think that."

: (Bruce), yeah...

Philip: Exactly. I think you're closer to - I think, yes, I'm right and I share Mawaki's concern there too - one voice could be insufficient. But the way - there was lots of help that exist, I think, to clarify that. So I'd be happy to provide wording on that.

The second point to have was on 2.5.2.4, there's conflict with national and international law, et cetera.

One change in wording that I would suggest, it may be helpful for us would be 'country' to 'public policy' on 'morality'.

And the reason for that specific wording is again, that wording exists in much national and international law at the moment. And therefore, there's already guidance as to what that means, rather than using similar terms, it's going the same direction. I'm simply saying that we don't within ourselves, trying to reinvent the wheel pursuing the same objective.

Bruce: Sure.

But I think if you've got - I sort of saw that takes us being kind of price holder because I think we really need to get - see if we can get some GAC consensus around what...

Philip: Yeah.

Bruce: ...that should be.

Philip: Uh-huh.

Bruce: But if you want to sort of use some existing place holder text , all it takes, as you said, that was just words...

Philip: Uh-huh.

Bruce: ...I think when I came up with those words, I just set a list of them on a power point slide just to sort of get the sense of the - that I wasn't basing that on any common terminology.

Philip: Okay. I'll try to do both those actions

Ute: Yeah.

Not surprisingly, I'm supporting (Philip's) point on confusingly similar because they want to avoid confusion at the human level and other than machine level, but I'm just really picking the assurance because I'm confused about one point that you made earlier that during that period of preliminary determination and to public comments, we're taking into account the legal rights of third parties including trademark interest and that the concerns that there was earlier we're on 2.5.2.4

which is national and international law which is, of course, we had more complex

But, you know, just because you said that trademark interest would be taken into account during dispute resolution process, I think it's essential that trademark interest and taking into account as early as possible also to avoid disappointment on the side of the project seeking a new TLD.

And if I may, I would also like to make use of this opportunity to suggest change to 2.5.3.2 which is the trademark dispute resolution process but at least in my version of the document, it said "ICANN may establish a new dispute resolution process."

And I think...

Bruce: Okay. So, it should be...

Ute: ...ICANN must...

((Crosstalk))

Ute: ...all the other things as well.

Bruce: Yeah, yeah, that's...

Philip: It should also be policy rather than process.

Bruce : It could be. What is UDRP called currently, is it - yeah, it is called policy, I think you're right.

Philip: All right.

Bruce: I see someone else has corrected that.

Dan): This is Dan; If it's a policy, that's a question of who should be developing exactly.

Marilyn: Are we talking about the UDRP there?

Bruce : No. What we're saying - and so, I think we need to modify the UDRP to meet this process and the question, I think, Dan is rising - he said that happened, yeah.

Marilyn: Yeah.

So, I think generally people are aware of how it was developed initially that we would be, I think, proposing and maybe that's worth our discussing at some point, versus how we do propose to do that modification?

Bruce: Yeah.

I think for the reason that Dan just mentioned, that's - process for the - on that part of it...

Marilyn: Right, right.

Bruce : We might start to create policy on it; but I think, in terms of speed, I think, I'll be sort of saying well, let's have the ICANN stuff come up with

the prices based on the UDRP and all the things that they've done just to side it with the registry service process, there was a dispute...

Marilyn: Right, but that's pretty much how it was done initially. That was why I commented on that.

We - there was an extensive WIPO six-month study that was done. There was then a set of sort of input provided but the (UDRP) process was really developed by the staff.

It was very much, I think, like you are - like we handled the national laws and other situations where we - where the policy was there should be a policy or there should be a set of procedures and they should be then right.

Bruce: Yeah, that's why the kind of wording is that there should be a process.

Marilyn: Yeah, right.

Bruce: And I think what others are suggesting is I think we had the word "may" and I think we're just saying, well, it's - there must be a process.

Marilyn: Yeah. I wanted to just make a one more comment about that, is our wording presently - and I'm sorry I'm not able to look at it - is it presently flexible enough to know that that process may have to be - may have variations between (ASCII) and (IDN) - they have appropriate variations between (ASCII) and non - a (Latin) character detailed here.

Bruce: It could but probably it would be different.

Marilyn: I'm not sure it would. I just was asking if it would.

Chuck: It certainly at the second level right now seems to be working for both...

Marilyn: Uh-huh. So, that's helpful insight.

Chuck: Another thought in that regard, if, for some chance there does need to be any policy work on this to put it all in place. It would be very good to start that, you know, as soon as possible so that that's not another multi-month extension and in terms of the start of this thing. So...

(Bruce): And I think...

Chuck ...we should keep that in back of our minds.

(Bruce): I think that's why I'm weary about calling it a policy process. Because I think that there are lots of details in this, I don't think you can use a PDP on each of them, otherwise, that never gets done.

I think we've got to entrust the staff to come up with some processes where they're required and the mechanism for dealing with those is public comment at least - as we sort of get the first thing off the ground and then we learn from it and then maybe we want to, you know, be a bit more formal about, you know, creating a policy that the (PDPs) too unwieldy to kind of use every little step in this process.

Philip: (Bruce), I think you're right. It is a fair game.

And I don't actually think these are the job of coming out with a dispute process based on the existing (UDRP) in this context, it's a difficult

talk. So, I think that's something we could very happily, I'll start to look at just right away.

(Ken): (Bruce), this is (Ken). I have a question for you.

(Bruce): Yeah, go ahead, (Ken).

(Ken): Yeah, I'm somewhat confused, at this point in time, are we comfortable with the word confusingly similar or are we moving...

(Bruce): I think what (Philip) had suggested, (Ken), is that we first specify the objective, so the objective is - so that the string is not - don't cause confusion.

And then what (Philip) was offering to do is provide a bit more context around the current wording that they will know confusingly similar means because I think people have different levels of understanding that.

(Philip): Yeah, on my objective, (Ken) - my objective in doing that would be to increase the certainty level as to what is and what isn't.

Ken: And I would have to agree with you, (Philip), and not only that I like to support the idea using terminology that's being used and that have - I hate to use the term case law but at least precedent there...

Bruce: Yeah.

Ken: ...and that's been dealt within the past because it makes so much easier resolved issues if we're using terminology that's been in use

globally for a long period of time. We don't have to - reinvent a meaning...

Bruce: Yeah, and there's kind of pros and cons for that, so some of the mailing list discussions saying they all must be afraid of doing that because they think it will let that brings with it a whole lot of baggage and tries to give property ownership rights, to a string and people feel against that.

But I'm just speaking personally, I think we've got to start with something and I think some of these terms have got pretty well understood meaning in different regions of the world at least within certain communities and I think we can explain that and provide some background behind that. It's better than just us creating words from scratch.

Ken: Yeah, I agree.

And I think Ute's comment about, you know, where something is located on the keyboard, you know, I think that's something entirely different from mechanical issue as opposed to...

Dan Halloran: This is Dan - question on 2521 - (the same) confusingly similar.

(Bruce): Yeah, go ahead Dan.

Dan Halloran: I thought just in Amsterdam, there was discussion about sort of - I knew this could be done through (Philip) - narrowing that to strings that look alike or sound alike.

And I think - that people have to and you mentioned was - that they read that to possibly improve strings that mean - have a similar meaning. And I thought in Amsterdam, it was kind of decided that that wasn't the intent of this language. And if you could capture that which I thought was sort of...

Bruce: I don't think that's kind the way (unintelligible) we try to come out with topographically because I'll try to narrow it more...

Dan: Yeah.

Bruce: ...but I think that's a sense of it Dan, yes.

Olof: Okay.

I'm not really sure I'm on the same page when it comes to sound alike because - then you would have to take into account all the different variations and pronunciation of what is basically a set of letters which how they could be pronounced in the various set of languages and that is an enormous task.

Bruce: Yeah.

So, I think that - yeah, I agree - I think the sense that I had at least from what the non-commercial group and the registrars had put forward in some of the mailing list discussions was very much focusing on the visually confusingly similar.

Ken: Yeah, and I think that's a much better approach because it's going to be a matter of sound alike to who...

Bruce: Yeah.

Ken: ...when - where they're spoken by someone in one culture to someone of another culture, they may sound exactly alike but the way that the tonation and the way they accent and the emphasis put on the word may imply entirely different meaning especially in some of the Asian languages...

Bruce: So, one of the ways of doing it, maybe we should add the word visually in front of confusingly, so it's visually confusingly similar, just sort of that way of clarifying that.

Philip: Let's see what wording I can capture - on existing (unintelligible) that captures that idea.

Bruce: Yeah, that was good, (Philip).

Dan: I think the example we talked about in Amsterdam was Arrow and Aero, A-R-R-O-W and A-E-R-O.

Bruce: Yeah, and I think the view was that that wasn't confusingly similar and they look like too quite separate words even though they sound the same.

Dan: Okay.

(Ray): This is (Ray), I'm sorry. Can you repeat that, (Bruce)? We decided that they were not...

(Bruce): My understanding was that Aero, A-E-R-O as in airplane and Arrow as in A-R-R-O-W the thing you shoot to someone; that they did not look the same.

(Ray): All right.

I - just to be perfectly honest, I thought, that they were confusingly similar. I thought that's what we included.

((Crosstalk))

Ken: That's the reason I like the idea of having visually placed in there because again, it boils down to who are you talking to. You know, we know that there's two separate meanings. But when we speak - and we - and in the context of which we use it.

But someone was talking to in another culture may get total confusion. So, I think visually is more important than spoken. That kind of goes back to the - it doesn't roll up the tongue right, you know, and that scares me.

(Bruce): All right.

Bruce Okay. I think we've kind of done that particular one.

What other - I'll just try to come back to - where we got to...

Chuck: The panel of experts - back to my account, my input, (Bruce).

Chuck Yeah.

Chuck: Yeah.

The next comment was does the panel of expert should be formed in place - formed and in place prior to the end of the application period. All right, that's just so that there's not an additional delay in there and it seems to me there would be no reason why that couldn't be in place at the end of the application period. So then as it's needed, it can just function. There's no delay.

Bruce: Yeah.

Bruce: So, we'd mentioned - and I'm assuming that we're talking about something like the standing panel on security in the sense that this is a public thing, it's not some bunch of people that you don't (know) about...

Chuck: Yeah. So, I think...

((Crosstalk))

Bruce: Yeah, yeah, I believe so.

Tony: (Bruce)?

(Bruce): Yes, go ahead, Tony

Tony The panel of experts would be the people who would review the application, right?

(Bruce): Yeah, reviewing the strings, we're talking about specifically at the moment; but...

Tony Oh, strings thanks, okay.

(Bruce): Yeah, and the concept is what (Chuck) is suggesting is that he's just concerned that we don't have a whole lot of delays of the applications and so he's saying that the panel of experts should be formed, you know, before the - into the application process so that they're ready to go straight away.

And I was just saying whether there's a perception that this is some kind of a secret panel and not my point of view is I think the panel should be similar to the panel for registry services which is a now enlisted people in advance and it's a public list of people, they're on the panel.

Tony: So, they would give the blessing to the strings before the applications.

(Bruce): No, they would - the use to evaluate any issues with...

Tony: Oh.

(Bruce): ...confusingly similar or something like that comes up.

Tony: With any objections.

(Bruce): Yes.

Avri Doria: I have a question...

(Tom): (Bruce), going to that...

(Bruce): So, who was that?

(Tom): This is (Tom).

(Bruce): (Tom). Okay, anyone else?

Go ahead, Avri and then (Tom).

Avri Doria: Okay. Yeah.

I think the idea of having a standard committee similar to the services committee is a good idea. One of the things that has to be curious so is does it take more than one person, no matter how we make the wording to raise the flag that is confusing for that group to have to review it.

I don't know how we differentiate between how many people it has to confuse in what way even though, I mean, I do look forward to seeing that the language that gets offered, I really have trouble understanding how - how we can avoid reviewing it with just one flag.

(Bruce): Do you have any comments on that, Dan Halloran, just from a process point of view with - that's been dealt within the first?

Dan Halloran: No, I have the same question. How are we going to do all these?

(Bruce): Yeah, how does the registry approval services process work where I think it's a concept of a panel there but don't think that panel is initiated based on one comment. I think that panel...

Chuck: I can actually – ICANN makes a decision whether they think that there's a security or stability issue...

Bruce: Or currently...

Chuck: ...which needs to be checked further and they can use experts to make that decision and in any input that they have from public and then if they just refer it to the panel.

Chuck: Is that right?

Bruce: Yeah.

Bruce: I think the process - yeah, that the ICANN make a decision on that Avri, I guess, so it's something just like spurious complaint, it doesn't say you have any basis so that the - that that's sufficient but if someone's writing in and they provide sufficient evidence, you know, let's - so these two strings are confusingly similar and this is why I don't think I've got some text behind it.

I think the staff have to make the determination on – it is the only way I can see it working because if you say - if you said the threshold is 1 or 10 or 20, I mean, you can easily write an automatic program to make look like 10 different and the public comments from (Fred), (Tom), Dick and (Harry)...

Avri Doria: That's true.

Philip: Yeah, and (Bruce) – I have experience from the trademark world. I mean, typically the - an initial assessment like that would actually - would be done by the staff of the trademark office.

And then there would be - normally, in the trademark world, the opportunity, perhaps, if for subsequent complaint by a party who had standing which to begin somebody with the interesting trademark.

And I think some similar concepts could probably be worked for we want to achieve here.

Dan : I think we're talking about a limited class of possible complainants. If it's only...

Philip: Exactly.

Dan: ...similar to existing TLD there's only 260 existing TLDs and so get - if any one of them...

Philip: Yeah.

Bruce: Yeah, but it's also a - so, yeah, if I say that's - I don't know, just because I can't or, I have just dyslexia or something like that and travel looks the same as info to me or something that may be sufficient because my problem most people don't think they look the same, you know...

Olof: Sounds serious.

Isn't it also confusingly similar among the strings received in the same application batch, not only in relation to preexisting top level domains I think that's vital.

Bruce: Yeah...

Bruce: ...yeah, that's the concept and that's, say, done enough with two new TLDs being created, that's both confusingly similar, yeah.

Chuck: But does that mean then...

Bruce: ...process is coming to play.

Chuck: That were the first come, first serve comes in the play as necessary, in other words, an application that came into the process an hour before another one if the two are confusingly similar then the first one is okay.

Man: No, no, what...

((Crosstalk))

olof: ...string contention.

Bruce: Yeah, that's string contention so we can...

Chuck: Okay.

Bruce : ...and all that.

Chuck: So, does the string contention requirement then cover this issue for the current round of application rather than confusingly similar based in this requirement.

(Bruce): The string contention is relating to whether that you have a new set of strings that are proposed, are they confusingly similar to existing TLDS - or are they the same or confusingly similar to each other.

This is where we're dealing with the fact that you might have two people putting up dot example, for example. And so, as the contention issue between the two people who put up dot example but if you also had one person putting up dot example where you had an 'l' in it that someone else put up that example which had a numeral one and, you know, that would still be considered to require the contention.

Chuck : And what I'm getting at (Bruce) is - are both of them eliminated because they're similarly - confusingly similar or is the one that was submitted a few minutes before or a few days before allowed and the second will not.

(Bruce): No, because that's - my expectations that will be dealt with by the contention process.

Philip : Exactly. That is 3.2 and how different layers of - either these guys agree or it goes down to the level of support, doesn't it...?

(Bruce): Yes, that's right.

Philip: ...and then goes to the board...

Chuck: So, and that's fine. I'm okay with that and then I guess I'm back to pull off statement and then the confusingly similar issue probably doesn't apply at this stage. It really is going to be taken care of by content - by the contention requirement.

((Crosstalk))

Bruce: Yeah, between 2 TLDs. So yeah, that's right, I now understand what you're saying, yeah.

((Crosstalk))

Bruce : ...the same.

Bruce: Yeah, yeah. If it's - well, that's right. What (Chuck) is saying is if it's confusingly similar to an existing TLD, you can't have it.

But if there is two new strings that are being suggested and those two strings are confusingly similar, then they are dealt with by the contention process.

.

Olof: Yeah, also that calls for the confusingly similar it's meant to be made prior to the string contention process and there are two outcomes from the confusingly similar determination.

Bruce: Yeah, confusingly similar to an existing TLD - this is - there are strings that have been suggested, that are confusingly similar amongst each other and that's where the contention process comes into play.

(Tom): Yeah, but my question would be who's making judgment on the contention issue. I mean, is it staff as well? I mean, are you figuring that out, where the two strings that are newly placed for having a contention?

Bruce: I think that's where the panel of experts were coming, (Tom), at that stage.

(Tom): Yeah, that will mean that the panel would have to be setup before the application period because where we start is that every contention should be resolved, if possible, peacefully by the applicant as soon as possible, right?

Bruce: Yes.

(Tom): Okay.

Philip: So (Bruce), I'm going to have to leave the call now. I'll Endeavour to do the two of items I mentioned beginning next week.

(Bruce): Okay. Thank you, too.

Philip Okay. Bye.

(Bruce): Tom you're also on queue, did you have anything else you want to say?

Tom: No, I just raised my point. So, that's okay.

(Ray): This is (Ray). Can I ask a clarification question?

(Bruce): Yeah, go ahead, (Ray).

(Ray): For the panel of experts, this could serve two purposes. First, to determine if an application is confusingly similar to an existing TLD; and two, to determine if two applicants that are not confusingly similar to existing TLD; but confusingly similar to each other, what to do from there?

(Bruce): Yes. Well, they're determining whether they're confusingly similar then what to do from there has been dealt with by the contention process.

Tom: Oh, I have one more question.

(Bruce): Yeah, go ahead...

Tom: Yeah, I'm not clear what process is following the other. So, are we dealing with contention first between two newly applied strings? Are we, given with the contention first, which goes around in - comes down to an existing TLD.

Bruce: Okay. So, what we would do is a contention of an existing string first because that knocks it out of the process right away.

Tom : Okay. So - and that was what the panel is deciding , right?

(Bruce): Yes, that's right.

((Crosstalk))

(Bruce): And then the panel would say, "Okay, out of this 10 - you know, the staff have identified five out of the 100 strings that required for these parts were pretty similar and then the panel then decides, "Yes, they are in fact similar and then that kicks off the contention process."

Chuck: Now, and the panel wouldn't necessarily have to be used in every case, would they?

Bruce: No.

Chuck: No. Okay.

Tom: Will that be open in some way that, I mean, that the public will know about the decision of the panel and why they made it?

Bruce: Yeah, I think absolutely that should be in.

(Kurt): This is (Kurt), I have a question for clarification. The panel and experts are expert and I think it's just - the panel and experts are expert in what. So, for example there's a...

((Crosstalk))

...registry services, you know, we have technical expert...

Bruce: Yeah.

(Kurt): ...but I don't know if experts that are, you know, that look for typographical errors or confusingly similar terms.

So I think what we're discussing is whether ICANN staff should make that decision or whether it should be independently made. I think it should be independently made. It should be an independent panel.

(Bruce): I think the sense of it, you know, there're two things. I think one is some level of independence there Kurt . But I think secondly, I think the concept, especially when we're starting to get into areas of IDNs and other things, and this is where I guess you probably need - you might have a standing panel which is kind of only 80/20 rule, you know, I guess they're familiar with Latin character strings and may have some experience dealing with trade marks and things like that.

But then you might find there's a string application in a particular script that that panel of experts doesn't have expertise in. In which case, you probably have to get an expert in that particular script.

(Chuck): So is that true that we might need some linguistic experts?

(Bruce): Yeah, I think that's right, (Chuck). Yeah.

Olof: And again, this is Olof. I think there's a again, like in the registry services process. There is first determination because all right, if somebody is stupid enough to apply for the info, I mean we don't need a panel of experts to determine that that's identical to an existing string, so I mean that can be disposed of by the staff.

(Bruce): Yes. That's correct. Yes.

(Ray): Right. This is (Ray). I think for clarification, I think the first threshold is - it says if staff thinks there may be an issue, if staff doesn't think they're an issue, then it's a moot point as far as the panel, right? Okay.

(Bruce): Yeah. It's not an automatic process but it's automatically going to a panel.

(Tom): Yeah. Talking about all this - this is (Tom). Talking about all these panels and processes that might follow each other, I think it might be really good improvement to our final report if we could include some kind of a flowchart.

Bruce: Flowchart, yeah.

Tom: That people can actually look at what will follow what and what's their consensus because even we get confused...

((Crosstalk))

Bruce : I think Olof is at the point of doing it,

Olof: Yes, indeed, indeed. And it would call for - I've drafted one, just my own sort of - kind of realization of what we try to do. But I think that needs updating for today.

Tom : Okay. That would be great.

(Bruce): So again...

Olof: Okay.

(Bruce): Yeah. Olof will post a version after consideration today just to make sure we've captured it. You're like me, (Tom), you look at it from a process diagram.

((Crosstalk))

Tom : Yeah, we do it in code and so do I. Yeah.

Liz Williams: (Bruce), can I just add a point of clarification on this part of the discussion, if you're ready?

(Bruce): Yeah. Go ahead.

Liz Williams: Just for the information of the group, several people have come back to me asking questions about this particular use of expert panels and the alternative would be the use of an auction or a coin flip to use, Ray's thing

(Bruce): Yes.

Liz Williams: Saying we can expect from the NCUCs, I think, and from some members of the Registrar Constituency, more information that they would want to have included in the final report about the utility of those ways of resolving string contention.

So just to flag to the group, I haven't received anything formally from anyone but that has come to me in informal conversations about the complications of using evaluation panels and the utility of...

(Bruce): Yeah.

Liz Williams: Using methods like auctions and...

(Bruce): Yeah.

Liz Williams: Coin flips and other ways.

(Bruce): Well we - but Liz, that's not new information. That's...

Liz Williams: That's not new information at all, I'm just warning to the group that there would...

(Bruce): Yes.

Liz Williams: Probably the other public comments that would come in that vein.

(Bruce): Yes. Yeah, that's really kind of part of public comments.

But I mean I - what we're trying to do here is avoid - it's really - if we're looking at the ICANN objective, we're talking about security and stability and issues from that perspective around confusingly similar.

This is not something you're auctioning; it's dealing with it whether it's confusingly similar or not and of course a security problem.

Then the second issue is how you deal with contention. And that's something that we've talked extensive public input on as we identified coverage to the whole spectrum. So it goes from auctions all the way to, you know, very thorough comparative evaluations.

And what we ended up with in Amsterdam was something in the middle of two things so that's pretty much the final report would basically that a compromise has been reached.

Liz Williams: Yeah, that's right. Just to let everyone know.

(Chuck): You're ready to go on to the next one, (Bruce)?

(Bruce): Yes, go ahead.

(Chuck): Okay. I think we also have an ambiguity issue with regard to technical issues. How will they be evaluated? And the same issues we're talking about...

(Bruce): Yeah. And that might be that we just use security panel that ICANN already has, that might be the easiest way of dealing with that, Chuck.

(Chuck): And I'm okay with that. It's just like I said before...

(Bruce): Yes.

(Chuck): That needs to be all laid out before, you know, the end of the application process so that it's ready to go.

(Bruce): Yes. So what I'd suggest we do there is to use the same panel that's been set-up for registry services because it's pretty much got the same...

((Crosstalk))

(Chuck): Now, do we need to define some criteria as to what that means for that panel to use?

(Bruce): Technical issues?

(Chuck): In the case of the panel that exists now for registry services, there are very clear definitions of security and stability and...

(Bruce): Yeah. I think we could just use the same definitions. I think that unless you think that needs to be different, again as much as possible...

(Chuck): Right, okay.

(Bruce): Let's use the existing material.

(Chuck): I'm okay with that. I just - this is an area - it's very important that that be understood and communicated.

(Bruce): Yeah. So I think if you could update that text, Liz...

Liz Williams: Yeah.

(Bruce): Along that line so we're pretty much pointing to that security and stability process that we have.

Liz Williams: Yeah.

(Kurt): So what you're talking - this is (Kurt). So what you're talking about, (Bruce), is a panel with the same expertise or role, not necessarily the identical panel but the same definition?

Chuck: Why couldn't the same panel be used?

(Bruce): Well I think it could just be the same panel, (Kurt), because you don't want to double up on having those, you know, do all the work to assign to a group of people.

I think Lyman has enough trouble putting the panel together and sort of assigning people that were obviously conflicted and had the expertise.

(Kurt): Yeah. There's a big wealthy cost. There's a whole set of contracts associated with that panel and there might be operational reasons for, you know, rewriting contracts or, you know, reforming the panel or utilizing a different subset of that panel, so...

(Bruce): Right.

(Kurt): It just might be different operational reasons for doing it more effectively.

(Bruce): Right. I mean I think that's a matter of maybe just getting enough flexibility in the wording. So ICANN would form a technical panel which could be the blah-blah-blah panel just so that they would have a sense and as (Chuck) said, we'll just use the same criteria as the starting point.

(Chuck): The next point, (Bruce), had to do with the controversial, political, cultural, religious terms, and so forth. As we all know, the timing is really important on that and we really need to have those guidelines developed by the GAC prior to the issue of the RFP itself.

(Bruce): Absolutely, yes. And on that front, I think I had an action or we had an action to draft something for the GAC. I haven't personally had time to do that.

Liz, I think you sent me a draft.

Liz Williams: Yeah, I sent you a draft which sets out a time - which sets out specific areas that we need advice on in a specific timeframe.

(Bruce): Perhaps if we could send that draft to the list, I haven't had time to look at it myself but I'm happy to send it to the list and getting your feedback and then we'll just end it on - if there's no major...

(Chuck): And another thing I suggested there, and I know we can't tell the GAC what to do, but we might suggest that it could be useful for them to establish a standing committee that is in place - whenever a review of a string on - for this particular set of criteria is needed.

And again, I'm not trying to tell them what to do but rather help them - make sure they have something in place otherwise, we all know what'll happen.

(Bruce): Yes. Well, we can make that suggestion in that letter.

(Chuck): Yeah, that's what I'm getting at.

(Bruce): Yeah.

Avri: I actually don't think we know what would happen. I think the problem is that we have no idea what will happen.

(Chuck): Yeah. And unfortunately, it would take a long time whatever would happen so...

Avri: Right.

(Chuck): And the next one on the reserved words, I think we've kind of covered that. Marilyn indicated some things that are going on that might help in that. But we are going to have to, obviously, make sure that we do know what the reserved words mean.

Then going on the dispute resolution, I added some wording to the paragraph there at the very end where it says, "If a string is successfully challenged as being misleadingly similar, then no operator may subsequently register it except in cases where affected parties mutually agree to terms allowing such registration."

Wouldn't it be good to have that capability if the affected parties have a mutual agreement? Isn't that okay? I thought that might be okay.

Bruce: Yeah, I think that's...

Marilyn Cade: I have a question about that, (Bruce), if I may?

(Bruce): You can.

Marilyn Cade: I'm not sure that I feel comfortable with that because it could be a deal that's worked out between two interested businesses but still not be, you know, so it might appear to be in the interest of those two

businesses but it may not be in the interest of the users. So I wasn't sure if I understood...

(Chuck): Yeah, yeah.

Marilyn : If I fully understood what the implications were.

(Chuck): Yeah. I hear what you're saying. I'm not sure - that's something that does raise another issue. But we're not talking about confusingly similar here...

(Bruce): This is a dispute resolution between an existing operator, who has standing and someone that's just proposed a string.

(Chuck): Yeah. And that's the way I was focusing on this.

(Bruce): Yeah, this is a separate step too. If a panel or whatever decided the strings were confusingly similar, if a panel decided this.

So yes, I understand the context, Marilyn, which...

Marilyn Cade: Yes.

((Crosstalk))

(Bruce): We are talking about dispute. Yeah.

Marilyn Cade: Yes, I do. I do.

But, you know, if I have dot Marilyn and just because someone else wants to offer dot maryland, M-A-R-Y-L-A-N-D, and the two of us think it's a good deal, that may - it still may not be a good deal for the users.

(Bruce): That's right. So that's still...

(Chuck): But wouldn't they be able to deal with that...

((Crosstalk))

(Bruce): Confusingly similar.

(Chuck): In the comment period?

(Bruce): Yes.

Marilyn Cade: That's why I didn't understand, (Chuck). I didn't quite understand this.

(Bruce): Yeah. So that's why I'm trying to get the context. This is assuming that this is a dispute process. So ICANN's already said it's okay. I guess. I can't say yeah, we don't think there's a problem with this string. But an existing registry operator thinks there is and so that existing registry operator has the option to use a dispute process to deal with that.

Tom: Yeah. But in some regard, if they claim that is confusingly similar I mean, you know, if they would with make the operation of the TLD so it would be confusingly similar, right?

(Bruce): So let's sort of put this slightly differently. I sort of - I'm getting the context the way this came into play. ICANN is this - I don't think there's been an expert panel in this scenario.

So I think what's happened here is that ICANN has looked at the two strings and think they're fine. They haven't - saw the need to go out to an independent panel. But the existing operator disputes that decision and then this process comes into play then.

Tom: Right.

(Oloff): This is (Olof). If I understand it right, I mean, well this would - well, this string that would then be put to one (site) would at least be a candidate for some kind of procedure for updating the reserved list. But I think there's probably a procedure needed for that updating as well.

(Chuck): You see what I'm getting at here. Notice the wording of that sentence. It says, "If a string is successfully challenged as being misleadingly similar." So that's...

Olof: Yes.

(Chuck): That's a done fact. Now but it does say...

((Crosstalk))

(Chuck): That now is that no operator may subsequently register it. I mean it's a closed door forever, this round or subsequent round. And I'm just saying that, you know, it seems to me that it would be okay if the

affected parties agree to that rather than closing the door shut. We can't predict everything that's going to happen there.

((Crosstalk))

(Chuck): The way it's...

((Crosstalk))

(Bruce): Yeah. So now I think I can understand where Marilyn's.

So Marilyn's saying that if it is then a known fact that they are misleadingly similar, how can you then say that the two parties, you know, agree to pay each other some money and so they - the string goes, you know, it's kind of - that would conflict against the security provision of what we're trying to achieve.

(Chuck): But wouldn't that be able to be dealt with through the comment process? I don't know. I understand (Marilyn's) point too. It's a good point. I'm just - and I - we don't need to, you know, spend a lot of time on this but...

Marilyn: So (Chuck), maybe in the comment process, one of the questions could be that your parties believe that the issues that are confusingly similar are not harmful and take public comment on that?

(Chuck): Yeah, exactly. I think that would be, in fact, that's the place where direct question would be very helpful to get comment on.

(Bruce): Look, I think for the moment, let's not add that additional text because I think it does - there's too many lines of stuff in there because I'm sure -

because what concerns me is you have successfully challenged that it's been misleadingly similar so you're saying it is misleadingly similar.

And I think the reason why I said no operator may subsequently register this so you're not getting gaming around that, you challenge someone so they can't have it then you go in and register it yourself sort of thing.

(Chuck): Okay. On the next one where it says the dispute resolution process using independent arbitrators where existing trademark holders should challenge this - could challenge a string based on UDRP.

And that would happen before the full evaluation happens, is that correct? I think that would be a good idea.

(Bruce): Yeah, I think that's the intent. And this is where I think we thought that that dispute process made needed some fine tuning because I think you...

(Chuck): Yeah.

(Bruce): How long does UDRP take to maybe even get - what's an average time for an UDRP dispute to resolve?

Ute: I cannot say off the top of my head. And I just looked at the Web server and I didn't see that there either. But I'm happy to do more research on that and maybe I can get back to you.

((Crosstalk))

(Bruce): If it's weeks that's fine, but if it's months it's not and that's where I think ICANN would need to, you know, adjust that process or have something making it happen faster.

(Chuck): Yeah, and that...

Ute Well, it's sort of my gut instinct is it's rather more months than weeks, that's quite clear.

Ken: It think Ute's right a lot of decisions and the timing period normally seems to take at least 60 days.

(Chuck): So anyway, that's my point, Bruce that's another place where there could be longer delays and if we can avoid those, that would be helpful.

(Bruce): Yeah. And I guess it'd be interesting to perhaps, you know, again, I don't want to try and do this at a policy level, but I think your staff looked at that. But if I expect the UDRP process has got a lot of notice periods and contacting the affected party and having the...

(Chuck): Yeah.

(Bruce): Choosing the arbitrator and, you know, I think there's probably a lot of those steps in there that you'd lose a week or two at each time whereas if the process is designed from the beginning, you have all the contact details of the applicants.

So, you know, you can just ring them up and say, "Hi, you know, there's a dispute being filed and, you know, everyone's kind of ready to

go.” And hopefully, you’ve already got the arbitrators organized, et cetera.

(Chuck): And that’s all I had on the string check process.

(Ray): This is (Ray), can I add a comment to this part?

(Bruce): Yeah, go ahead, (Ray).

(Ray): I think this part’s a landmine -- very dangerous to put into the entire process -- because basically every word has a trademark on it in the English dictionary. And I’m curious where the costs are borne. Is it on the person that wants to bring forth the dispute? Did we clarify that?

(Bruce): Yeah, I think that’s - I mean that’s how the UDRP works.

Tom Actually, it’s not. Both have to pay for it and if the defendant is not paying then it loses the case.

(Ray): We’ve seen a lot of UDRP cases come and go that are really contradictory to each other. Is that likely going to happen in this process? Or is there a consistency?

Dan: The UDRP the complainant pays an initial filing fee, and if the respondent wants a three-member panel instead of a one-member panel, the respondent can contribute.

But otherwise, the respondent doesn’t have to pay anything and they definitely don’t lose the case if they don’t pay. If they’re happy with the one-member panel, they can do it for free.

Ray: Yeah. And I think, you know, there is a difference between second level and top level and, you know, in my view, I think there should be a very high cost that's associated with wanting to make a dispute. I think frivolous disputes should be safeguarded against.

(Bruce): Right. So there's a cost barrier in there to prevent frivolous disputes...

((Crosstalk))

Ray: People would pay it upfront...

(Bruce): And that sort of thing.

Ray : Yeah, if it's a genuine case.

(Bruce): Yeah

Ray: that's one thing.

Dan Halloran: Now this is Dan. I think I have a related question just about 2522 and the criteria which is how are we supposed to figure out which strings infringe the legal rights of a third party and who's supposed to figure that out.

That didn't come up in this dispute process too because as (Ray) just pointed out, every - almost every conceivable thing is going to be trademarked by somebody somewhere for something and we have to figure out, you know, which trademarks apply, which don't, and it just sounds like a...

(Bruce): Yeah. Well, that text came out of the registrar agreement basically and that registrar agreement that's compulsory text for a registrant. I think that text in the agreement.

It's interesting it doesn't require the registrar to verify that. It's more isn't that the registrant...

((Crosstalk))

(Bruce): Not to infringe?

((Crosstalk))

Dan: Right. The representation made by the registrant at the time of registration that neither the use - the registration won't infringe the rights of the third party.

But you're right, neither the registry nor registrar has to go and check that against the list of trademarks.

(Bruce): Check that against something, yeah.

((Crosstalk))

Ute : Well yeah. And that purpose here would be to run a public comment process for example so that this could be drawn out before people incur too much costs so that you don't actually have to run a search, the search is done by bringing it out into the public and the public can step up and say, "Hang on, I think I've got a trademark."

I also should say that I'm actually not that concerned that everything in the world is trademarked. I think a lot of the new TLDs would be generic words that could not be trademarked in any way so not every word actually can be trademarked. For example, music is something that cannot be trademarked.

Ray: I think there is a trademark on music, I haven't checked that. But I think you'll find that whether it's an image trademark or, you know, if that's a word trademark, whatever you call it, I think you'll find that a lot of generic words are in fact trademarked.

Ute: Yes. Well if they're combined with something else that is true. But generally, Trademark Law provides against particularly to ensure against a situation that we're looking at the moment.

So I think that concern that you had voiced is already taking into account an International Trademark Agreement and International Trademark Law so that people are not precluded from using any words.

Ray: Yeah, I'm not a trademark person. Those that stay with dot music for a minute and someone has a trademark in dot music in the food industry, and the operator of dot music allowed people in the food industry to obtain registration from dot music.

You know, could a panel, you know, come to the conclusion that that is going to be infringing on the dot music's trademark for the food industry? And I think that can get very inconsistent, just like it is really in second level cases.

Ute: Well, and I think all these intricacies would be taken into account, I think, during the process. But, you know, obviously if somebody wanted to have dot Coca-Cola that is something that would have to be taken into account as early as possible in order to avoid that court decisions have to be issued and in order to avoid the cost.

Ray: Right. And I think the point I was trying to make is frivolous cost barriers be put in place here against...

(Bruce): Yeah. I think that makes sense.

So just to get some clarity from Dan perhaps or even Ute on UDRP at the second level, are there issues with generic words, where people have won it on a trademark basis?

Because I understand there're obviously images, for example, orange is a generic word and there's a trademark on an image or the way it's, you know, written. But I'm assuming that that's not sufficient to win a UDRP case.

Ute: Well, I'll let Dan go first.

Dan : I think I'm not enough of an expert on it. I think we can get someone to come in and talk to us about issues, generic words and, you know, to explain to us about using music as trademark. Let's say I have music brand jeans, or this shoes, can I trademark music shoes or...

(Bruce): Yeah. That's a bit different though. We're talking about the equivalent of saying can you win the domain name music.com because music being a very generic word.

((Crosstalk))

Ute: Well yes. I guess we're talking about can we have the new TLD dot music or could there possibly be ever a word trademark that would be in conflict and, you know...

Bruce: Yes.

Ute : I think that I'm just trying to reassure everybody that Trademark Law is taking this sort of problem into account.

But I fully agree. We should probably get a trademark lawyer to talk to us about this.

Cary I'm (Cary) joining the call late. And since I'm a musicologist in fact - can't comment on the trademark thing, but one of the concerns that we had when we were looking for dot museum, which is also a generic term, was if we were to reduce it to dot mus, we would need to grapple with the music industry, which we didn't really feel like doing.

Why is music anymore or less dictionary-neutral than museum or travel or jobs or any of what's going to be a plethora of dictionary words sooner or later?

((Crosstalk))

Bruce: Yeah.

(Bruce): I mean I do see how the big challenge on dot museum and - or towards jobs or travel.

Cary Well we side away from mus because we didn't feel like having the media industry ruin our chances.

(Ray): Let me just interject, this is (Ray). The difference is that in - with jobs and travel, et cetera, there wasn't this particular clause at hand. We're looking at putting this clause in. That's the difference in the process.

(Bruce): Right. I still think that you could be challenged if let's say, just to get this clause for a second, let's say in the previous rounds you'd put up dot Coca-Cola, I'm pretty sure that Coca-Cola would challenge you for misuse of the word.

Ray: Right. And they can do so in any future round. Why are we getting in an arbitrary clause, and why are we putting in this, you know, in other words, there are already jurisdictions and ways for Coca-Cola to challenge that. Why are we putting this in?

(Bruce): Yeah. So, because what we're trying to do is that that would normally go through a court of law and that would be a long drawn-out process. So the reason why UDRP was created was to streamline a way to resolve those disputes and in the concept here is taking the same concept.

So when someone's applying for the string, before they incur the expense of doing an entire registry and then getting sued in court on the trademark that there's a way of dealing with dispute early on.

Ray: And I guess the point I'm trying to make is that I understand that the second level and I think top level is a little different. I think the barrier should be something like existing processes. I'm not sure that UDRP works at the top level.

(Bruce): Yeah. So that's what I'm saying, using that as an example. But that process needs to be refined for the top level.

Ray: Okay. Thanks.

(Bruce): And all you're suggesting, which seems reasonable, that there's a reasonable threshold. It's not \$20 to raise a dispute.

Ute : I wondered - of course I'm very much interested in the particular issue. I wonder how we are going to be - probably going to go about refining this process.

(Bruce): Okay. So what we're talking about earlier there also was that the staff would take the UDRP and consult with people like WIPO - to adjust that process for - to this case and then put that process out for public comment, you know, prior to release of the RFP.

In other words, I'm not suggesting that we use a PDP to do it which would probably take six months and perhaps, you know, it'd be difficult to find what (unintelligible) they're talking about.

I think it's better off, you know, having - we've got a process UDRP that by and large, working with you sort of starting point and then at least be adjusted to suit this process.

Ute: Right. Thanks.

(Bruce): Okay. Are there other comments on the recommendations today?

Tom: (Bruce), I would like to comment on the prior issue about that dispute process.

(Bruce): Yeah, go ahead.

Tom: Just one thing we should do if we leave it up to staff and some experts like you said that we should frame it carefully in terms of time so that we can make for - well, if that process is tried for the first time but we can evaluate it and still make changes to it afterwards instead of installing some things that will be there for the rest of time before we...

((Crosstalk))

(Bruce): I think in any of this thing, one of the things that I was thinking about sort of doubling the recommendations currently, that after the first round, there's a fairly focused evaluation of - about round wins.

And I think (Kurt), you might have comments on this. But I know one of the problems we had with the 2004 round was that it wasn't really a streamlined evaluation process -- that in itself needs to take six months to a year just trying to collect the information together. I think that needs to be done in some streamlined way.

Do you have any suggestions as to how you think that might work?

(Kurt): Are you talking about this new UDRP process in particular or...

(Bruce): No. I'm talking about the whole process actually.

So in previous rounds, there's been a requirement to do an evaluation of the effectiveness of the round. But that seems to have been a long drawn-out process -- certainly for the round of 2000, I think it took about five years to do that.

Avri: After he answers , could you put me on?

Man: Well I think that - I'm not sure I understand, but I certainly understand the need for further evaluation of the round and to do that in the very near term.

(Bruce): Yeah. I guess what I'm thinking of it would be useful for the staff and, you know, maybe yourself particularly to think about how you would do a fairly fast evaluation.

So once the round is over and done, it'll be good to say right, we're going to have a focused event, people, you know, maybe make it an in-person event, you know, any concerned parties attend this event, you know, present your views and then we collect all that together and round up an report and that's used to improve for the next round.

But that whole thing takes a month, not a long period of time.

Kurt: Yeah, that's what I...

Avri: Can I comment on that?

Kurt: Not that there's near enough time in Sao Paulo and with what is scheduled but that might be a good place to do that.

(Bruce): Do they what?

Kurt: This sort of meeting you're talking about where we collect...

(Bruce): Right, yeah at an ICANN meeting you suggested.

Avri: Right.

(Bruce): Yeah. And there's a focused session. Yeah.

(Chuck)? Avri

Avri: Yeah. I actually think that what you're suggesting is a really good idea but is perhaps not even just for the first round because each round in some sense will be different and things would have moved on and it may be worth putting in to this whole process that every round has that kind of feedback session.

In other words and actually make a recommendation that that is part of the process is that at the end of the process there is an evaluation of how the round went.

(Bruce): Yeah, and all I'm saying, (Avri), just to be a little bit more specific is what that evaluation is. So, you know, this isn't a process where you get a consultant to spend six months on a...

Avri Yes, yeah.

(Bruce): Not like the London School of Economics doing a thorough review, you know, think big sort of high overhead, interviewing lots of people type thing. I'm thinking more much lighter weight which is, you know, we have a one-day workshop at an ICANN meeting to evaluate it or something along those lines.

Avri Right. And so that seems like it's something that's actually worth putting in the content and actually making it part of the process for every round.

(Bruce): Yes. Good. Okay.

So Liz, can you just sort of add that to the sort of bottom of the series of recommendations that this is an evaluation process just, you know, maybe get (Kurt) to draft some basic text around what that might look like?

Liz Williams: Yeah. Sure. I've just got a note here for (Craig) and (Kurt) and I to have a chat about how to do it.

(Ray): This is (Ray). I have one last comment.

(Bruce): Yeah. Go ahead, (Ray).

(Ray): It goes back to that UDRP thing. Just for clarification, a UDRP filing can be made on an existing second level domain five years later, you know, after the domain isn't operating.

I'm curious what the thought process is that if a TLD is in the market, it's operating and then five years down the road, someone wants to file a UDRP again.

(Bruce): Yeah, I would say that this would be a process that only applies during this application process...

(Ray): Okay.

(Bruce): And then after that, it would be dealt with, you know, through normal legal processes.

(Ray): Okay. There'll be a timeline when a UDRP could be filed at...

(Bruce): Yeah. This is not a UDRP. This is basically a review process for doing the application process.

The strings are announced. If somebody has a problem with it from, you know, a trademark perspective, they announce, you know, they've got 15 days to do that, you know, to lodge their complaint and then that complaint has been dealt with.

I mean dotEU is probably a good example of they've done it, (Ray), that there was, you know, a challenge process. You can challenge the process and, you know, this whole series of timelines about when you challenge and how long it takes, so...

(Ray): Okay. I think I understand this better. Thanks.

(Bruce): Okay, any other comments?

Man: I have one kind of general observation, (Bruce). I think the LSE is wrong on one issue that teleconferences cannot work. I think this has been productive.

(Bruce): Thank you. All right, good.

Liz Williams: (Bruce), when everyone's finished with their discussion on the recommendations I just want to talk about a bit of a timeframe for the remainder of the work for the group.

(Bruce): Yes. Go ahead. Yeah.

Liz Williams: When you're ready. Are you ready now or...?

(Bruce): Yes.

Liz Williams: Yeah. Okay.

Everybody, I've just been working backwards from the Sao Paulo meeting and if you have your calendars in front of you, I just wanted to step through what I thought was probably practical and reasonable.

I hope by now you've got the draft correspondence which needs to go to the GAC, it should be in your inboxes. Note that it's only a draft and it needs to be sent formally with (Bruce's) signature on it.

My intention -- and I just want to check whether this is okay with everybody

-- my intention was to complete a final report in time for the 19th of October for distribution to my colleagues inside the organization so that we can make sure that we've captured all of the points that everybody has made.

I was hoping that within a week of that which is the 26th of October, I would have a draft of that report, the final report ready to distribute to the committee, just this group.

Then I would hope by email that we could do any further amendments over the next week after that, and by the 9th of November, have a completed final report ready to distribute to the committee for any last little tweaks and bits and pieces so that I could get a report to the council in time for the council 16th of November meeting.

If we use the 16th of November as the date upon which GNSO council as a whole might sign off on that report, it then gives me two full clear weeks to make minor adjustments to ensure that the report can be properly posted and to go through the Webmaster process that it needs to go through for the internal posting of the document with a view that the final report be completed in time for the start of the meeting on the 2nd of December.

And that was my rough road map for the next month or so, two months or so. And if anyone had any improvement - additions about that, then I'd be grateful to receive them.

(Chuck): The only concern I have, and this may be totally unavoidable and I understand that because of resource, time, et cetera, is that means that it's posted just at the beginning or just before the public meetings in Sao Paulo and as we know, that is so often criticized because people then...

Liz Williams: Yeah.

(Chuck): Don't really have time to go through a fairly comprehensive document in detail before those meetings and they're so busy in those meetings that they often don't have time to review them. But it may be unavoidable as just unfortunate as it is.

Liz Williams: (Chuck), my intention was that if the council signed off on the full report on the 16th of November, that it ought to be pretty much ready to go and be posted as quickly as possible which would give two full clear weeks before the meeting.

(Chuck): I misunderstood you. I thought it wasn't going to be. That's good. That helps a lot in the concerns that I had.

Liz Williams: Yeah, so two full weeks. That would be, if at all possible, posted by the 25th of November. But I'm not going to claim to know what Kent is going to do. But it would be available then for two full weeks prior to the meeting.

(Chuck): Okay, that's excellent. I didn't understand that.

Liz Williams: Yeah.

Tony: I have a question for Liz.

Ken: As I do. (Ken).

(Bruce): Go ahead (unintelligible) and then (Ken).

(Tony Harris): Yes. Listening to this my question is when would be the approved document reach the board for their decision on this would it be during Sao Paolo or afterwards?

Liz Williams: At this point we're actually in the process of and you will read (Bruce's) notes that have gone out today. We're looking to produce the final report which is contained in the PDP process.

There's one more little bit which is the Board report that needs to be produced and I suspect that what might be a good use of timing to use the public forum and the forum that's been specifically allocated on new TLDs to take any further comment, to spend time talking to the Board about the final report.

And then, after the San Paolo meeting, I would produce the Board report on the basis of any further input that we have had.

In addition, we need to take into account GAC input and you'll see in draft

Bruce Yeah. Actually what I would suggest actually, Liz, is that if the council signs off on the 16th...

Liz Williams: Yeah.

Bruce I think we should produce a Board report that we can place before the board. But I don't expect the Board to be making decision on San Paolo because they aren't sure they will want to take GAC input and other inputs before they do that. All right?

Mine, I would anticipate the board would probably not do anything until January being my expectation that we should at least give them a complete document that they're considering.

Liz Williams: In addition (Tony), we need to have a public comment period on the Board report as well. So there's at least a three-week delay by just having a commitment to a public commentary.

(Tony Harris): Okay. So it would be fair to say that we probably wouldn't have a Board decision until the Lisbon meeting in March?

Man: Yeah.

Marilyn Cade: (Bruce), it's Marilyn. Can I make - can I ask a question before you answer that because I think it's a relevant point that I didn't hear mentioned.

(Ken): And keep me in the queue please, (Bruce).

(Bruce): Okay. We could go Tony and (Ken) and Marilyn then we'll come back to what those questions were.

So go ahead, (Ken).

(Ken): No, I'll give up my place to Marilyn because it sounds to me like she's in a kind of a rush situation.

Go ahead, Marilyn, and I'll come back.

Marilyn Cade: I just wanted to - and I'm sorry, I was off the phone for this so you may have addressed this.

The consultation we need to have with the GAC. I'm sorry if it was already - but we need to have the GAC on their principles which is physically - tentatively scheduled for Wednesday afternoon.

That doesn't necessarily mean that consultation is the end of consultation with the GAC. So how are we factoring that into the timeline?

(Bruce): Well, my perception, I think what Liz had suggested, Marilyn, is that we try and reach a vote at the council level on a final report, we effectively create a Board report.

So by that stage, we've got a solid report which hopefully has content to support. Then basically, we're moving into a phase where we're more or less selling the report to the Board, to the GAC, to everyone else.

So at that phase the Board will be willing to take input from the GAC. The GAC will presumably have some principles we need to look at those, see if the work we've got is consistent with those principles and deal with any issues as they arise.

But I want to have a completed signed-off document from the council before we're sort of entering into those discussions.

Marilyn Cade: I have a follow-up concern about them that I'd like to express at some point.

((Crosstalk))

(Ken): This is (Ken).

(Bruce): Okay. (Ken), go ahead.

((Crosstalk))

(Ken): Yeah. Actually to some extent, maybe Marilyn and I are going to end up expressing the same concern and that was for the last year we've tried to make it a point to have a closer interaction between the GNSO and the GAC when it came to board policy developments and issues like this.

If we, in effect, take this report through to a full council signoff and then turn it over to the GAC, what we, in effect, are saying is that we don't think that your input is that necessary in arriving at a consensus - a policy that comes out through the GNSO. To me, it almost - it insulates us even more from the GAC.

What we're - and I just don't want to send a signal out that seems to, in some ways, conflict with what we've been trying to do in the last year. Maybe I'm wrong, so please correct me.

(Bruce): So I guess one approach to that, (Ken), and this one of things I'll be concerned about because about because I've got beaten badly on that bit on WHOIS But I think we, as a group, have to have reached a decision point or a consensus point so that then someone like me as chair can say this is what the council thinks about this.

I think where we get into trouble is when each of us are going in and basically trying to sell their own views to the GAC and then, you know, and it's total chaos basically.

So I would rather - whether we call it - maybe we don't call it a Board report or whatever, but I want some sort of council vote that gives me a strong basis to say this is where we are so far, this is, you know, we voted on it, this is where we think. That's not to say that we're not then looking for further input from the GAC.

(Ken): Okay. I guess my biggest concern is - actually, my biggest concern is not as much with standard ASCII but rather with the IDN stuff. And I don't want to create a situation where we're trying to "shove something down somebody's throat" without really finding out what the impact would be if the process is being managed in a different way. So, and that's the only reason I was looking for some sort of input, yeah.

(Bruce): Yeah.

(Ken): Sometimes, we get...

((Crosstalk))

(Bruce): I suspect, to pick another particular example, we probably will have to structure this in a way with hooks but it may be that the timeframe we're talking about, say by the 16th of November and I think this is probably going to almost certainly be the case, that we're not going to get a response back from the GAC to our letter by then.

And then maybe the placeholder we're putting in is to say this is the process we've come up with and agreed for new GTLDs.

We have a section here where we're wanting to take GAC input on and that's a bit that we're waiting on sort of thing that was signed off on a process apart from that.

So in other words, we're creating a hook or a slot for the GAC input to go into.

Chuck And (Bruce), would the plan be to give that version of the document with that placeholder in it to the GAC as soon as it's available?

(Bruce): Yes.

Chuck Good.

(Bruce): All I'm saying is that before we get it to the GAC, (Chuck) and I would have voted off at the council.

Chuck Yeah, I got you. I understand.

Marilyn Cade: However, (Bruce), it's Marilyn, I just want to - I feel more comfortable, but I think that means that we may get advice which is very important to include and then the council would need to discuss that and consider any revision otherwise we basically put the Board in a very difficult situation.

(Bruce): Yeah, I agree. Yeah. We need to telegraph that the process where we need to do it.

(Ken): And that was the point I was trying to stress to the...

(Bruce): Yeah.

Does that - you have to kind of encapsulate that, Liz, just the sense we're talking about from...

Liz Williams: Yes, I hear very much the concerns of the group and I understand exactly (Bruce's) position. I think...

(Bruce): It's essentially a synchronization problem.

Liz Williams: It is a synchronization problem.

((Crosstalk))

(Bruce): But GAC isn't tied into our timelines.

Liz Williams: Not part ...

(Bruce): So we need to kind of incorporate that factor.

Liz Williams: That then has a bearing on when we would produce a board report. And I still haven't answered (Tony's) question about when we would expect the board report to be signed off and I think if we took...

((Crosstalk))

(Bruce): Right from what the discussion just happened then...

Liz Williams: Yeah.

(Bruce): We're kind of signing that board report off after we've received GAC input and...

((Crosstalk))

Liz Williams: That's right.

And just so that the group knows, I did have a conversation with Suzanne Sene two weeks ago now and she said to me then that GNSO GAC working group would have focused pretty much all of it to WHOIS and the principles there that they had not made much progress towards developing the public policy principles and wouldn't have anything very much for us by Sao Paolo.

(Denise): This is (Denise). The letter though that GNSO is about to send to the GAC restating its formal request for input and volunteering briefings and laying out some suggestions of how to improve the general GAC

knowledge of this PDP and to assist in any way we can in facilitating helping the GAC develop their principles and provide input to this PDP could help move that along.

(Chuck): There's a joint session in Sao Paolo with the GAC similar to what happened in the last meeting, a good idea where they could ask questions and (Bruce) can maybe do a quick overview.

(Denise): Yeah, that's a part of the Sao Paolo schedule.

(Chuck): Thanks.

(Ray): This is (Ray). If I understand you correctly when - I think it was in Marrakech, it was - there was an expectation level that the GAC would have a comment on this new GTLD process, right? I mean that was their communication by Sao Paolo and that's now probably not likely.

Liz Williams: I remain optimistic that they will respond quickly to the correspondence.

(Ray): Okay.

(Bruce): Yeah. I think what's been expressed, (Ray), is that they have focused on WHOIS is the simple answer, isn't it? And I believe there's been a draft circulated of the WHOIS principles and the plan is to vote on those WHOIS principles in Sao Paolo.

I'm not aware that they have a document, a similar document ready for voting on the GTLD issue.

Marilyn : But they do have a set of principles. The question we haven't resolved yet, I think, is what the status is that this will only be discussed and be voted. Isn't that right?

((Crosstalk))

(Bruce): That's correct. Yeah.

I think my sense of it from talking to (Suzanne) because we did call (Suzanne) while I was in Amsterdam with (Denise) just to get a sense of where they're up to. But I think (Suzanne) was indicating that there's not as much resource has gone into as perhaps would be desirable and hence, the reason for trying to send a letter, a formal letter from us to them to try to spur that on a bit.

Liz (Bruce)...

((Crosstalk))

(Bruce): After your question, just going back to (Tony) had actually asked the original question and is that kind of giving you the answer you're after?

Are you still there, (Tony)?

Okay. Well, I think actually we've responded to that. I think we've essentially - we weren't - whatever document it is that we're putting before people in Sao Paulo, we wouldn't call the Board report.

Liz Williams: Yes, exactly. I will, of course, begin drafting it so that it's ready. But it will be a final report.

Just to clarify my own mind, is everybody happy what I've proposed in terms of the timing? Have I captured what everyone wanted to do?

(Bruce): I think let's proceed on that basis for the moment...

((Crosstalk))

Liz Williams: I'll do the same.

(Bruce): Yeah.

Liz Williams: Yeah. Okay. Thank you.

(Bruce): Okay. If there are no further comments then, I think we've reached two hours so let's - I propose to close the call.

Does anyone have any final comment?

Okay. At that point then I'll close the call and thank everybody for attending.

END