# Introduction of New gTLDs: GNSO/Staff Discussion
## Los Angeles
## 11 April 2008

**Note:** The following is the output of transcribing from an audio recording of the Introduction of New gTLDs: GNSO/Staff Discussion in Los Angeles on 11 April 2008. 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.icann.org/calendar/#april

http://audio.icann.org/gnso/gtld-1.mp3

## Legend

Name:         First name of member of group

Name?:        If we think we might know who's speaking but aren't 100% sure.

Male:         Unsure of who's speaking, but know it's a male.

Female:       Unsure of who's speaking, but know it's a female.

 [-ation]      If we believe that all we missed was the beginning of a word because the audio cuts out, we will just put the end of the word that we can hear.  If we are very sure from context what the whole word is, we'll just put the whole word, to make it easier for the reader.  However, if the word could be a variety of different things, then we will show only the part of the word we could hear or thought we heard.

[very faint - barely audible]  We will put this at the beginning of paragraphs where we are having a very difficult time hearing.

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## ATTENDEES:

Robin Gross
Norbert Klein - NCUC
Dirk Krischenowski - dot Berlin
Roger Castillo -.lat
Eric Brunner-Williams
Werner Staub -CORE
Dan Schindler - CentralNic
Kristina Rosette
Steve Metalitz - IPC
J. Scott Evans - IPC

Mike Rodenbaugh
Marilyn Cade - CBUC
Adrian Kinderis
Paul Stahura
James Bladel
Jon Nevett - RR
Avri Doria - NomCom GNSO Chair
Chuck Gomes - Ry GNSO Vice-Chair
Greg Ruth - ISP
Ken Stubbs
Ray Fassett - Ry
Olga Cavalli - NomCom
Richard Tindall - Demandmedia
Jon Bing - NomCom

Afternoon: Karl Manheim, Professor of Law at Loyola Law School


**STAFF:**

John Jeffrey, Dan Halloran, Craig Schwartz, Olof Nordling, Karla
Valente, Denise Michel, Karen Lentz, Glen de Saint Gery, Irving Sanchez.


**REMOTE PARTICIPATION:**

Keith Drazek - Neustar
Edward Viltz
Jeff Neumen Ry constituency
Danny Younger
Michael Palage Ry +IP +CBU constituencies
Hal Lubsen - Afilias
Thomas Lowenhaupt – Communisphere
Cheryl Langdon-Orr - ALAC Chair
David Maher - Ry constituency chair
Lyman Chapin - Interisle Consulting Group
Colin Strutt - Interisle Consulting Group
Amadeu Abril l Abril - .cat
Beau Brendler - Consumer Reports Webwatch


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Male:        ...for dot lat initiative.

Eric:        Eric Brunner-Williams, an observer from CORE, and also from the NAI initiative.

Werner:      Werner Staub from CORE, also observer.

Kristina:    Kristina Rosette, Council IPC.

J. Scott:    J. Scott Evans, Yahoo observer.

Mike:        Mike Rodenbaugh, GNSO Council, Business Constituency.

Adrian:      Adrian Kinderis, GNSO Council, Registrar Consituency.

Olof:        Olof Nordling, ICANN staff.

Karla:       Karla Valente, ICANN staff.

Avri:        Avri Doria, NomCom appointee.

Chuck:       Chuck Gomes, registries.

Greg:        Greg Ruth, Council ISPCP.

Karen:       Karen Lentz, ICANN staff.

Ken:         Ken Stubbs, representing affiliates, also former council member and member of the original gTLD committee.

Ray:         Ray Fassett, registry constituency.

Paul:        Paul Stahura, [Inam 00:01:03], and I'm an observer here.

James:       James Bladel, Go Daddy, registrar constituency.

John:        John Nevitt, Network Solutions, registrar constituency.

Olga:        Olga Cavalli, I'm a GNSO council member, and NomCom appointee.

Liz:         Liz [Gasster], ICANN staff.

[voice in background – inaudible]

Marilyn:  Marilyn Cade. I'm a member of the BC, a former Councillor, and was on the gTLD committee of the whole at the time we started the policy process.

Steve:  Steve Metalitz, President of the Intellectual Property constituency, [inaudible due to a sneeze 00:01:40]

Avri:  Okay, thank you, and going around the edges. Do we have a microphone, or just come up to a microphone?

Richard:  We could shout.

Avri:  It won't get on the recording, no matter how hard you shout.

Richard:  Richard Tindall, from Demandmedia - sounds strange to say that. Observer.

Craig:  Craig Schwartz, ICANN staff.

Dan:  Dan Schindler, Centronic.

Kurt:  And Kurt Pritz, ICANN staff.

Avri:  Okay, and we have also a fair number of people, I believe, on the phone. I was going to ask...

Glen:  Yes. We have on the phone: Keith Drazek, Edward Viltz, Jeff Neumann, who has got other participants with him. Danny Younger was on the line, perhaps he'll call back. Mike Palage, Hal Lubsen, Thomas Lowenhaupt, and Cheryl Langdon-Orr.

Avri:  Okay, thank you. I guess at that point, the next thing I'm going to do is go through the agenda quickly, so that we know what the course of the day is. Mostly I'm just going to be sort of a traffic cop during this meeting, in terms of keeping lists of who wants to speak next, etcetera, because most of the content here is being presented by the staff, and it's a staff-produced agenda. So I'm really just assisting them in running the meeting, but the content will be from Kurt, from Carla, from Karen. I think those are the primary three presenters, or staff people who have been doing this work.

So we had listed originally starting out as 9:00 a.m., and I actually think that by the time we finish with all the pleasantries, it'll actually be, you know, 9:00

a.m., and we can actually get into the content and substance. Scheduled ending at 5:30.

So the first thing that was listed was in relation to term of reference 1. Whether to introduce the new gTLD and the topics that fell under that, was scheduled from 9:00 until 10:00. By the way, this was sent out about a week ago to the GNSO list, so anybody that doesn't have it can go to the archive there and find it there. So under this was basically being discussed recommendations 1 and 9, and so I won't go into the full detail of that, but that's in it.

Then term of reference 3 was the next one, the allocation method, scheduled from 10:15 to 11:15, with 7, 8 and 13, the recommendations being discussed.

Term of reference 4, contractual conditions, from 11:15 to 12:15. And under that one was 10, 14, 15, 16, 17, 18, 19 being discussed. And by the way, during the discussions, I believe that for the most part they include both a presentation and I'll give people a pointer to where the presentations are in a second, and a certain amount of discussion and question and answering, so we will have to be very good to meet these timelines.

A lunch is scheduled for 12:15 to 1:30, as I understand for the people here, there will be a buffet outside the room, so there's a 45 minute lunch break.

Term of reference 2, selection criteria, there's a two hour period from 1:30 to 3:30, under which some of the most popular recommendations, 2, 3, 4, 5, 6, 12, and 20 will be discussed.

And then a conclusion and follow-up from 4:00 to 5:30. This conclusion includes an overview of the anticipated way forward, noting dependencies and parallel activities. I don't know whether there'll be a discussion of further discussions that we need to have. I have a feeling that if anything like that comes out, it will come out of the discussions we've had. We may find that we go through all this and everyone is in perfect agreement, and the staff goes away with a perfectly clear view of every question that needed to be answered, in which case we would never have to talk about this again. On the other hand, we may have outstanding questions that need further discussion. Any questions on the agenda? Any corrections from staff or anyone on the agenda?

Kurt:        This is Kurt, Avri.  Only to point out that that was our very best shot at timing.  We have 60-some odd slides, and a couple of charts, and time for discussion.  So we divided up the time slots and have no idea whether we'll hit those marks or not.  But we have quite a bit of material, and quite a bit of time, so we'll do the best we can.

Avri:        That's very good.  I actually see you have a microphone pinned on, so you can actually walk around and speak, too.  Fantastic.

Keith:       Avri?

Avri:        Yes.

Keith:       I'm sorry, this is Keith on the conference bridge.  It is a little bit difficult to hear the people in the back.  We can hear you fine, but those who are around the edges, it's a little bit difficult.

Avri:        Okay, thank you.  So everybody... so...  Were you able to hear Kurt well?

Kurt:        This is Kurt.

Keith:       It's still [faint 00:07:25].

Avri:        Okay, so you'll have to move your mic.

[inaudible background voices]

Avri:        Okay, fantastic.  Okay, now.

Mike:        Avri?

Avri:        Yes?

Mike:        Mike Palage.  The 60-slide presentation, will Kurt be providing that?

Avri:        That is... that's what I was going to say next.  If you go to the GNSO ICANN.org webpage, under the What's New, you will see a GNSO council on Staff Discussion, New gTLD Policy Recommendations.  There's a slide presentation there.  As I understand, it's being... or, it's updated... I don't know, is that the updated version or not?  Oh, that's the updated version, way cool.  So there's no problem.  So if you go down to... you'll see Introduction of

New gTLD Staff/GNSO Discussions.  That, for reference's sake, are the slides that Kurt showed last night.  And that was really just giving us an overview of what was going to happen today, and there were a few questions, but there was no substantive discussion on any of the issues at last night's meeting.  There is no recording of it, though, so it's...  But it's really... those slides were what was discussed.  And it was an introduction to today.

So I don't have anything else.  Does anyone else have any introductory questions or points to make before I turn the projection over to... Is it Karla?  Are you going with the slides first?

Kurt:       Karen.

Avri:       You are.  Okay.  Any questions?  [pause 10 sec]  It'd probably be a good idea, since there are so many people following remotely, that when a slide is changed, the person talking say what page slide we're on, or just "Change," or something, so that people can keep track.  It sometimes is confusing when you're remote.

So who goes first?  First slide is up, Kurt, it is yours.

Kurt:       Hi, thank you very much, everybody, for attending.  I know many of you came from a far distance and left your day jobs to be here, so we're very appreciative of that.  I'll stand and move around and try not to block, but if anybody has any better ideas about positioning or about logistics, just shout them out, and... so far, I'm fine... and I will try to accommodate you.  From those of you listening on your radio dial, if I can... if you can't hear me or if we need to improve the communication in any way, we'll stop and try to do that.

Last night, as Avri said, we had a brief meeting.  It was basically to outline the agenda for today's meeting, and touch on some of the points we'll be discussing today.  So if you didn't attend last night, you're going to be completely caught up by the time you listen today.  The idea was just to sort of have a little pre-session, so that we could hit the ground running today.  So Karen and I will probably get into a good rhythm here as we get to the end of the slides, but if we could start.

The purpose of this meeting is first and foremost to review staff implementation work regarding new gTLDs.  So, a lot of work has been done,

as you know. Implementation work really started coincidentally with the finishing stages of the policy development process, and has been on-going ever since. Staff provided a fairly detailed update at the Delhi meeting, and then a very terse update in a conference call. And so we want to inform the Council, Council members past, present and future about issues concerning that implementation. We want to demonstrate that this implementation essentially maps to the recommendations. So we've taken each recommendation and determined how to implement that, and so we want to demonstrate that to you, and then highlight or discuss any cases where we think there might be differences between the recommendation and implementation. I mean, we're not feeling cocky about how close we are, but we're mildly confident.

There... as you might guess, when you get into the details of an implementation, that's where all the dirty work is. And there's choices to be made in an implementation. Either choice could be in compliance with the spirit and the literal meaning of the policy recommendation, and because we have some of the best experts sitting in this room here, we're going to mention some of those choices we're trying to make, and solicit your input into some of those. That would be really helpful. And then talk about where, you know, the next steps for the implementation.

So the way we've laid it out... there's a ton of material, right, you know, 19 recommendations, implementation steps associated with each... Implementation that... you know... all the implementation steps. So the way we've laid it out is by the term of reference, because the terms of reference really group the recommendations well. So there's the, you know, the terms of reference, or the big motherhood question... remember, we settled that in Washington, D.C., it seems like a really long time ago, whether or not there should be new TLDs. And then there was discussion about how they should be allocated, what the string criteria should be, and what terms should be included in a base agreement. So those were the four terms of reference, and we found it useful to group the recommendations themselves, the 19 recommendations, under those headings, and then discuss the implementation of each one of those.

So the material we're presenting goes back to the entire body of staff work, so we take one recommendation, and we form this staff vision for how we would

implement it, so this is our vision. And then once you have this big idea and you make a plan for executing that, you work the plan, and then at the end you have some work products. So the slides follow that format. And we're not doing that 19 times, but we've kind of grouped the recommendations logically, to get through that.

We have a number of questions, as I mentioned before, that we want to solicit input on. So those discussion topics are sort of interwoven in with the discussion of the different recommendations, so we can discuss those at the various times. So that's essentially how we've organized the presentation. So is that clear? Just, it's more a check of my communication skills rather than whether it's meaningful or not.

So, should we introduce the TLDs? This is a really scary slide, because we got past this two or three years ago. And so these are the recommendations that have to do with that. You know, the recommendations really don't to "You shall implement new gTLDs," but you should do it in this way, in a clear, pre-published way, where the applicants know all the rules of the road before they get into it. That there's measurable and objective criteria for measuring applications, so an applicant can more or less guess pretty well whether they meet the criteria or not before they actually submit the application.

So, I'm just going to... for those of you listening, and those here, these first few slides are very basic and don't get to the meat, so there's not a lot of controversial material here, or things we haven't said before. But certainly, ICANN took those policy recommendations to heart, and each step of the way, as we work with our RFP writers, or criteria writers, people that are helping us with various recommendations, we consistently refer to ICANN core values. Our consultants literally refer to the core values and the mission statement when they're writing the criteria. And always in our contemplation is this idea of how we're going to publish the criteria, how we're going to make sure that everybody knows what the rules are for applying, how we can not only communicate well, in detail, and with depth, but also broadly communicating across all regions of the world, to all organizations that may have an interest in this.

And we've worked on... "we" meaning we through others, have developed scoring methodologies that are objective and clear. So there's not a lot there.

So the RFP, when the RFP is published, it will include all the steps that applicants will be asked to follow, and the RFP will be published several months before the final RFP is published.  So the publication of this initial RFP is the thrust of this main communications expert.  I think I'll talk a little bit later how we've created a matrix with those parties with whom we want to communicate the actual institution of the new gTLD round.  That communication matrix includes – I'm going to repeat myself, I'm sure – about 600 parties, including every ccTLD, every government, you know, organizations in all territories, all treaty organizations, all meaningful organizations.  As part of that communication, we'll have FAQs, we'll solicit questions and responses while... well, we'll talk a little bit later... the main language of the application is going to be English.  We will communicate about the availability of new gTLDs in many languages.  And there's the objective and measurable thing, then.  That it should be clear, no matter which parties are using the... which parties are applying, they should arrive at the same conclusions.

Adrian:     [inaudible 00:18:30]

Avri:       Adrian, yeah.  Make sure you give your name, since this is recorded, when you speak, please.

Adrian:     Adrian Kinderis.  Um, Kurt, that communication out – do you see that it's to entice applicants to participate by way of applying, or do you see that it is for people to be aware of the process so that they can object, or is it a mixture of both?

Kurt:       Well, I think it's both.  The big idea is that there's no surprises, so that we have a TLD round and there's TLDs in the route, and then all of a sudden, they're surprised that this has occurred.  So that's what we want to avoid.

Adrian:     So... but it's not necessarily an advertisement to apply?

Kurt:       Right.  It won't be in the form of, you know, "Come one, come all TLDs," fairly reasonably.

Male:       Yeah, I know, you came in later, Adrian, in the process, the whole new gTLD process, but we really wanted... we pushed hard for making sure that everything's   up-front, so that people can carefully evaluate all of the

parameters with regard to whether they want to apply or not. And judge the risks, etc. So, in past rounds, that hasn't been the case in some parts of it, and that has created complications down the road. So we really wanted everything to be on the table, so that it allows possible applicants to do a full evaluation.

Adrian:     Yeah, I understand the predictability side of it, that you need to know what you're getting into. I was more talking about the mechanism by which you're going to promote the new TLD process, and whether it's a... and Kurt's already answered this... whether it's an advertising scheme to get people to apply, or it's, "Hey, listen, this is what's going on, and you need to be able to object in this way, if you're affected or impacted."

Male:       Yes Marilyn. Marilyn Cade.

Marilyn:    Marilyn Cade. I just want to follow up on that, because I want to support, I think, what you were saying, Adrian. It is far... the impact of introducing new gTLDs is far more extensive than just the parties who want to apply. And that's what I thought I understood you saying, that this is an awareness-raising approach, that will be... and in the awareness-raising approach, then sending people off to more detailed pieces of information, that are suitable to their particular interests. Which might be, they want to apply, or it might be, they want to object. And that will all be covered in the campaign. That was your question, right?

Adrian:     Yeah.

Marilyn:    Which I would second and support the answer from you, I think, being yes.

Kurt:       Yes.

Steve:      Kurt?

Kurt:       Yes, Steve?

Female:     [inaudible over phone line 00:21:29]

Steve:      [inaudible – mic not on]

Avri:       Microphone's not on.

Steve:      Steve Metalitz.  At some point in your presentation, you're going to talk about timelines, such as when you expect a draft RFP vote to be released, and the time period?

Kurt:       Mm-hmm.  Yeah.

Steve:      Thank you.

Kurt:       And the uncertainties associated around that.

Ken:        Kurt?

Kurt:       Yes.

Ken:        Yeah, it's Ken Stubbs.  I have a question for you. With respect to the application and the fact that you're going to be disclosing everything when you submit the RFPs to the public for them to complete, I would hope that ICANN is going to make it very clear in terms of exactly what the requirements will be for execution.  By that I mean, in the past, applications have been submitted where there have been many promises that were made in the application that were never kept or implemented.  So I'm assuming that ICANN this time will have specific requirements for resources, deposits, and so forth.  I'm concerned about technical stability, the ability to deal with the technical issues, and am very concerned about the financial issues, and I would be very upset if applications got through the process, and we wasted a lot of time, only to find that the applicant was really doing this on the come, and just hoping to get the application, then they were going to get the money, then they were going to get the back-end providers, or whatever.  So I'm hoping that in an outline or preamble to this whole thing, ICANN makes it clear exactly how they're going to deal with that aspect of the process.

Kurt:       Yeah, thank you Ken.  So, leaping ahead several slides, regarding technical criteria, I think you're exactly right.  An application can say, as Dan would say, "We'll have so many gold-plated servers, and so much... our pipes will be so big."  So the implementation calls for that sort of requirement to be in the application, that you demonstrate technical capability to operate a registry. But then, at the end of the process, just prior to delegation, IANA does what's called a Tech Check, usually before a TLD is re-delegated or delegated.  So what we're going to do is expand on that Tech Check process to verify, right

at the end, just before the TLD is put in the root, that in fact they meet the technical criteria they said they would.

Ken: I'm also concerned about the financial aspect, as well.

Kurt: Yes, so part B is, I think an issue with the process last time was that the business criteria was somewhat vague, in that it asked for business plans and financials, but then didn't set forward clear criteria. So necessarily, I think, the operating and financial criteria are going to have to be simpler and more straightforward, and just demonstrate the financial resources capable for starting up a registry as envisioned in the application.

Ken: The reason I bring this up is that I would not be at all surprised to see situations where people will be using the shotgun approach, and you will see numerous applications, 10, 20, 30 applications. Each application can promise resources, but I don't want to get down to a situation where ICANN has to go back to the applicant and say, "Okay, fine, we think you might qualify for 15 of them, now you've got to pick which ones you want." In other words, I think that it has to be done in such a way that there is a firm commitment up front for the resources, and that commitment can't be contingent on whether or not another application is withdrawn, or so forth, because you know as well as I do, there's going to be a significant amount of jockeying, there's going to be a lot of issues that will be coming up in both the ASCII and the IDN space that need to have clear parameters established, even before the process starts. We can't do it on the fly.

Kurt: I understand.

Avri: Eric, you had a question.

Eric: Thank you, Avri. Eric Brunner-Williams, from CORE. Kent, the IANA Tech Check, the existing one, I'm not familiar with... well, I'm familiar with the Tech Check that was done for the involuntary dot IQ re-delegation. What is the present IANA Tech Check, and... because that is that base, apparently, upon which the proposed tech check will be developed from.

Kurt: So I'm going to answer the question you didn't ask first, and that is, we're capturing the idea of a Tech Check, i.e., a verification of technical capability just before delegation. The present IANA Tech Check is just to check that the

servers are operating, that they're returning pings. So it's not an exhaustive or thorough check. In the case of this new TLD process, it would be a more thorough technical check to determine that the applicant meets in fact the technical criteria that he or she promised to meet during the application, where it's really just words on paper.

Jeff: Hi. This is Jeff Neuman. Can I get in here?

Avri: Okay, I've got Paul and then I'll put you in, Jeff. Eric, did you have a follow up question, or did I see...

Eric: No, thank you.

Avri: So, Paul and then Jeff.

Paul: So on the technical, I have two parts to it. It's Paul Stahura, by the way. On the technical, will there be a certification or something beforehand, so that we could just... whoever does an application could fill in a box that says, "Oh, I'm using certified registry number three?"

Kurt: That's one of the issues for this... uh, thank you Paul. That's one of the issues for discussing later on. We've explored that. There's some issues with, say, privity of contract. So, with whom does ICANN contract? Does it have contracts with certified providers, and therefore, where's the duty for operation? Is the duty between the certified operator and ICANN, or is it with the registry operator? So one, whatever the technical criteria are for operating a new registry in the TLD program, that would be essentially identical to being qualified, say, as a back-end services provider, if you want to use that term. And so, two, whether or not there's a certification with whomever the TLD contracts to do back-end services, they could... they can... you know, once that contract is in place, then that back-end services provider could respond to that technical check instead of the, you know, instead of the applicant.

Avri: Um... a couple of things.

Paul: Two parts.

Avri: Okay, two parts, but also, I wanted to make sure that you knew an acceptable answer was, we're gonna cover that in part three later today. Because

otherwise I'm afraid that, as we hit every one of the topics as we go through the day, we'll never...

Paul:     I got you. Okay. Just want to make sure this one's hit later then, or I don't know the whole plan here for today.

But the other one is on the other side, which is the financial side, would there be... and it kind of goes to Ken's comment... would there be a financial standard or a bar per company, or is it per TLD application? So, you know, if one company puts in 10 TLDs, does that one company pass, and then they could put in 10 TLD applications? Or is it, you know, per TLD?

Kurt:     Well, each application stands on its own, right? Each application will be evaluated on its own.

Paul:     So, but can... I got that, okay. So, can the one company use its financial wherewithal for this application and this application and this application at the same time?

Avri:     [Inaudible 00:30:14]

Kurt:     Yeah, so I'm just going to let that go for now, and I'll try and get back to you.

Avri:     Okay, I have Jeff and then I have Ken, and so Jeff.

Jeff:     Yes, can you just [current] explain the rationale behind doing this Tech Check prior to... I'm sorry, prior to the root, as opposed to prior to award?

Kurt:     Yeah, the award or the acceptance of an application, say in the initial evaluation phase, is based upon the words in the application. So the application is going to say, "We will allocate so many gold-plated servers, and have this sized pipes, and have these response rates." And it could be a very excellent plan, but it could cost more than the applicant realizes, and then later on in execution, the applicant might change their implementation.

Another example of that is if an applicant, in its application, says, "I'm going to have registry A be my back-end services provider," and that is a great plan. And then when implementation time comes, the candidate or applicant finds that that registry wants to charge a lot of money to be the back-end services provider, and then goes to registry D minus. So in order to verify that the

applicant is in fact meeting the spirit and the fact of the technical criteria, the best time to do that is just before delegation, after a contract is agreed to, and all the approvals are met, so the applicant feels empowered to make the investment they need to in order to start up the registry. Then the final Tech Check will be made before the name is delegated into the root zone. We'll use the same criteria that the applicant wrote on before, and should be, you know, will be very objective and clear.

Avri:      Okay, I have Ken, and then I have Adrian.

Ken:       Yeah, please understand, Kurt and John and Dan and so forth that I wasn't trying to drill down to specifics. What I'm concerned about is setting the tone for the process. That needs to be set at the point that the RFP is sent to the community. People need to understand clearly, one, that this is a process that you can gain, number two, that we have expectations from you – we're going to require that you meet those expectations. We're not going to play around with the process, so that at some point in time, down the road, you have to decide as a technical back-end provider that you all of a sudden had 15 applications that have been approved, but you can't really do them all, because you really hadn't planned on all of them being approved. Or the other side, as a proposer, that all of a sudden you have this. We have seen over the last five to seven years, gaming in every process in the ICANN community. We just need to prevent that from happening this time. That's all I'm saying.

Kurt:      Thank you.

Avri:      And Adrian.

Adrian:    Adrian Kinderis. Um, Kurt, if I'm reading you correctly, I don't think I agree. With respect to the back-end service provider of the application... so you're saying that you could put an application and say that you're going to use VeriSign, for example, to run your back–end. And then once you went to implementation, so you're awarded the contract for the TLD, then you go to implementation and say, "Nah, I don't want to use VeriSign anymore, I'm going to go and find somebody cheaper. I'm going to go around and sell it." You're permitting that? So long as they meet the technical requirements...

Kurt:       Right, right.   The technical requirements are a set of objective criteria, so there's no technical requirement that says you need to use a certain registry.

Adrian:     No, I understand that.   But I would have thought that my application was viewed in its entirety, so that if I'm successful because of who I'm choosing within my, say I'm using...out-sourcing my registry back-end.  If I'm successful because I've named them in my application, surely my... that is, my application is a whole, not just a technical person I can swap in and out whenever I see fit.

Kurt:       Well, what if that registry goes out of business, in the end?

Adrian:     Then you don't get your application.   Then you don't get your TLD.   That's your business decision, to go in there and choose somebody that's going to provide that.

Kurt:       Well, okay... [voices in background]   Too many people have their microphones on.

Avri:       I have Marilyn, then I have [inaudible 00:35:07] there.

Kurt:       No, I'm alright.

Avri:       Okay, yeah, so I have Marilyn and Paul.  By the way, Kurt, Kurt, is all of this... because I'm really worrying about... Is all of this what was expected in this particular part of the talk.

Kurt:       Well, no.  But we'll get... we'll skip other...

Avri:       You're fine with this now.  Okay, so Marilyn and then Paul.

Marilyn:    Kurt, as someone who has responded to bids in the health care industry, I'd just make a comment, and participated in responding when I worked for AT & T.  There are times when a change is a material change, and I think Adrian is hitting a point that I personally would agree with.  You... if you make a proposal, the evaluators are evaluating the whole.  And if you have to make a change for some reason, let's say the guy you partnered with goes out of business, or gets bought, or whatever, then perhaps the process needs to allow for a modification to deal with a significant change, and then allow the submission to be resubmitted and reassessed.  But I don't think the process

ought to allow what will be viewed by many in the community as bait and switch. So I partner with a gold-plated team to put my proposal in, and after I am awarded, I go, "Never mind. I'm going to do it this way." We had this conversation about if I put in my application – and let me disclose I am a) not applying to be a registry operator, nor am I advising that anyone I know is. So let me just use, since this is being recorded, hypothetically, let's say. If I'm applying, and I say I am going to serve this community, or I am going to do this, that's my offer. If there are material changes, and maybe we need to figure out what the community can accept as a material change, then the process has to accommodate an adaptation, it would seem to me. And maybe that's a way to approach the concern that you may have about someone going out of business or being bought. But I think we've got a community expectation that you bid, and you stick with it. If you need to modify it, then let's make sure the process allows that.

Avri:      Okay, I've got Paul and Ray.

Paul:      I see both sides to it, but the... if you go by what Marilyn just said, and I think what Ken and Adrian are advocating, that would lock the registree, you know, the guy who got the TLD, who won the application, into some incumbent registry operator forever. I mean, what happens if, you know, six months after you win the bid because you picked VeriSign, you know, you change contractor, and you switch to Afflilius. Would now, are you saying they would be locked into VeriSign forever? [voices in background 00:38:11]

And the second thing is, I agree that what you say in the application, you have to do. But if you say, if you say, "Oh, my registry is going to have these technical requirements, it doesn't matter if you pick VeriSign, Affilius, or whoever, as long as they pass those technical requirements... or do it yourself. As long as you pass the technical requirement before you're in the zone, I don't see any problem with that. So if you say, "Yeah, my registry's going to have, you know... it's going to pass the bar. And I'm going to have three servers, and pipes that are so big, and so on," who cares who provides that?

Avri:      Okay, I've now got Ray, Ken, John and then Adrian.

Ray:      Hi. Ray Fassett. I think the concept here, from the ICANN perspective, is that the technical qualifications, as proposed by the recommendations, are to meet minimum specifications. So assuming that you meet the minimum specifications, I think Kurt is saying is an IANA check prior to going into the root. Then it becomes more or less an interchangeable part, rather than a material change, as long as you can meet the specifications. So I don't think it is a material change.

Avri:     Okay, I have... I've got Ken, and then John Bing, and then Adrian, and then Chuck.

Ken:      Thanks. I'm not going to go back to exactly what we were talking about, because I know we have a commitment from you to take this specific area and talk about it. This hour is supposed to be the process, the concept of non-discrimination and transparency and so forth. But embedded in that process is fairness, and I think that's why I think it's extremely important. To me, the most important part of this thing won't be the application, it'll be the tome that's established at the time the applications are tendered to the prospective applicants. And that's why I think it's extremely important.

And you know, I've been a product of this process from day one. All the way through, and I've seen the good, the bad, and the ugly. And I don't think that we have time in the next 18-24 months to deal with the ugly. So that's why I think it's extremely important. And I'm not lecturing you. I hope you understand the point I'm trying to make with this, Kurt. It's easier to deal with the community if you are able to set up a process that you can look in the eye and say, "Listen, from the very beginning, this is what we said we were going to do." And it may end up being... the preamble might end up being 5 or 10 pages long to deal with those issues, but I think I'd rather deal with them out front than half way through the process. Thanks.

Avri:     Okay. I have John Bing, Adrian, Chuck.

John:     Thank you. I'm not going to discuss the sophistication of this, but only mention that obviously there are other areas where you have this situation, where a bid is made, and when there are amendments made during the process in which the bid is evaluated, a contract is entered, and change is happening after the contract. And as there is a rather huge body of

experience and detailed rules and case law and so on, it seems to me appropriate to draw on that, rather than try to reinvent too much of this oneself, and concentrate some things on what is a significant change within our area, and the things into which ICANN has a specific competence.  Thank you.

Kurt:       Thank you, John.

Avri:       Okay, thank you John.  Adrian.

Adrian:     Yes, Adrian Kinderis.  I think that after listening to Ray, I may be swayed.  If you're saying that there is a base level of requirements, and it doesn't matter whether you go silver-plated or gold-plated, but if you meet bronze-plated, anything above that is fine.  So long as you're not awarding in a challenge process, you're going to turn to your technical providers, and say, "Well, hang on, these guys are using gold," right?  So long as that's not a criteria, so long as you're just saying, "You meet the minimum requirements, and therefore you go forward."  Okay?  My fear was that if you then... like, if you said, "We're going to choose Adrian's because he's using gold-plated," okay, and then the minute we go forward we get bartered out for someone who's using, now, bronze.  Okay.  Then you're saying, "Well hang on, we evaluated you because you had gold."  All right?  So if you're not doing that, and from understanding Ray's point... and I agree that if you go forward that way, that there is a minimum set... And you could therefore accredit people with that minimum set... and you could therefore accredit people with that minimum set.  You do this, therefore, you can go forward as one of these guys, swap in and out, it doesn't matter – to Paul's point.  Then I think you're on the right track, and I retract what I was saying earlier.

Avri:       [not into microphone] Okay, at the moment I've got Chuck, J. Scott, Paul, and then I saw another hand go up, and then Marilyn, and... okay.

Chuck:      I think we need to make a decision about this meeting today.  All of this is good, and applicable to implementation, and if we decide to continue at this rate, that's a decision we can make, but I guarantee you we won't get through half of the agenda for today, and probably not even that far.  And if that's what you decide, I think that's okay.  There are... we should keep in mind that there are going to be comment periods on the RFP and the base contract, when

those are communicated, there'll be public comments on the whole process and so forth. So there's lots of opportunities to get into the details of every little aspect of this plan. My understanding was, is that a key part... a key objective of this meeting today was to get a good overview of the overall process, but particularly focus on some areas that are fairly controversial, and where implementation may be difficult, so that we can give staff some feedback in that regard, and they can pass that on to the Board in their upcoming retreat and so forth.

Again, nothing anybody's saying is not not important. It is. But we've got one day today, so I think we'd better make a decision in terms of how we're going to proceed. One option would be to let Kurt proceed, not without questions, but to try to stay very much on track with what he's talking about. Note other questions, and deal with them if we have time at the end of the day or in the future.

Avri:       Thank you. J. Scott.

J. Scott:   Just real quick, because where Chuck is, we need to step back. Adrian has raised a point with a specific, but Marilyn's raised a point on a high level, and that's the one that needs to be noted. What happens if there is a material change after the bid has been accepted? Is there a process? Period. That's what needs to be bulleted and noted, and move on.

[voice over microphone – inaudible]

Marilyn:    And I withdraw my need to speak, because that is what I was going to say.

Avri:       Okay, I have Paul.

Paul:       I think it needs to be clarified really well, these two criteria – the financial and the technical. I'm looking at the flow chart that was given out at the front door, and I assume that it's in the initial evaluation is where those two check boxes will be checked or not, and if they're checked, the bidder... you know, the applicant moves on to the rest of the process. And it's not... and that is not into any consideration after they pass that bar. So is that true, or is there some time later when two strings are exactly the same, that some evaluator is going to go, "Well these guys have gold-plated servers, and these guys have bronze-plated, so the gold-plated guy wins." Can you clarify that?

Avri:      Okay, I have no one else on the list at the moment.  So please talk quickly.

Kurt:      So if two strings are in contention, they've both met the criteria, so then criteria has been developed to resolve that contention.  And one of the topics we want to discuss later on today is what should that evaluation criteria be.  We've written some criteria about, you know, adding value to the DNS, trying to capture the spirit of some of the Council notes in their deliberations, but we want to discuss what we think the criteria should be.  Are they both... they both passed, so do they both start out equal, and then... or is there points given because somebody had superior technical criteria?  I think it's one of the things we want to discuss later.

           Yes Paul?

Paul:      Just a quick follow up.  If they both pass, then they really didn't... it's out of order then.  We... because if they pass, and you take any consideration, they really didn't.  Then, you know, it's... people will pick the gold-plated server, in hopes of beating the other guy.

Kurt:      Well, no, the question is, do you get one pebble for having a better, more solid technical implementation.

Paul:      Once you pass the bar... my opinion, we'll talk about it later.. but once you've passed the bar, you've passed.

Kurt:      Well, that's... yeah, so that's my viewpoint too, but that's what I want to try to discuss later.

           Okay, let's skip this slide.  Yeah, let's go to this slide.

Male:      What slide is that, Kurt, for us following remotely?

Kurt:      Nine.

Male:      Thank you.

Kurt:      So, several, as you might guess, several elements of the RFP have been drafted.  There's been considerable discussion about business, operational and technical criteria.  And the whole basis of that... of those evaluations have been drafted.  There's an interesting point to be discussed later, whether

ICANN should use the information garnered during the operational application stage for other things. Um, I've already spoken about the global communications plan developed, and we discussed it here. And dispute resolution procedures are in development. In the Delhi meeting, I shared pro-forma dispute resolution standards for the three types of objection, as far as we've gotten – the infringement of rights, morality and public order, and community-based objection. We've done considerably more work with the community-based objection, we've developed some standards for confusingly similar... but we're not going to call it "Confusingly Similar" any more, we're going to call it "String Confusion." And I'll share that information with all of you later, when we get to that phase of the game.

We've developed a cost accounting model for accumulating the costs associated with processing an application, and I'll share that... how we're putting those costs together and the methodology for how to put those costs together later, and what the key components of those costs are. We have... we've contracted with a developer to build the interface between the applicant and ICANN that works in such a way that the applicant will upload information into an interface, into a database, automatically, fill out the application there, and then ICANN, using that interface and that tool, will be able to disseminate the information to evaluators... you know, the pertinent evaluators who need that information. Or, you know, dispute-resolution providers. And then those evaluators would send back the information back into the same interface, so the interface is being constructed to create a complete record of the whole application, including the evaluation, the comments made, objections made, and all the findings, so that it's finished together.

Um... I'm going to have another bullet about global communications, but I'm not going to say anything about it. We've gone through some iterations of a base agreement. We'll talk about the base agreement later, and whether there should be one agreement for all TLDs, or perhaps there should be more than one base agreement.

We've also gone through an operational readiness, so some areas of ICANN staff will be severely... 'severely' is the wrong word, but significantly impacted by the introduction of new TLDs. Think... you can expand your operation so much to accommodate a increase in volume before you need a real paradigm shift. So IANA delegates or re-delegates one TLD a month, about. You

know, think about dozens of TLDs a month, how are they going to do that? There's a process with the U.S. government, there's a process with VeriSign, there's our internal processes, how we inform the Board, the amount of documentation that's done. How do we scale that up? How do we scale up routine administrative procedures such as billing or contract administration, or discussion about contracts with the registry liaison team?

So we've done this operational readiness and risk assessment to identify those operations in ICANN – not the departments, but each task in the department, and which ones are Red, meaning particular management attention has to be paid and is being paid to those departments, through... not just the budget, but how you can perform those operations economically and effectively.

So this is the table of contents, essentially, for the RFP.

Male:      Kurt, if you could... each time you switch a slide, if you could let the people online know that you've switched to another slide? That would be helpful. We're on slide 11.

Kurt:      So, for those of you listening at home, the New York Giants are moving from left to right on the radio dial.

So I'll let you read through these items in the RFP, but the RFP will essentially map to the... after providing preliminary information, such as definitions and also the preamble, the likes of which Ken was talking about, the RFP will provide full detail of the application process – the flow, the scoring, how the information is going to be used, timing, the objection process, objective standards, timing for that. To set expectations of the applicant, including at what stages fees will be charged. Werner? Oh, I'm sorry.

Avri:      I have a question from Marilyn, and then one from Werner.

Marilyn:      Kurt, maybe this afternoon we're going to talk about this in more detail, but I just want to flag something for us to come back to. Web-based applications are not going to work for many people from developing countries, so maybe we can come back to what kinds of assistance or changes... because there will be people who will need to have the application translated. So maybe we

can just come back, when we talk about what kinds of additional materials or support can be provided. The other problem may be, and we've encountered this in the past, that very often, the web-based application is limited to so many lines, and it's difficult for the applicant to fit the required information within that. I don't want to go into details...

Karla: Marilyn, Marilyn. It is a web-based application. There is going to be a limitation. All of the limitations will be spelled out in the RFP, but the applicants will also have the ability to attach documents to the interface, which probably could address the issue that you raised. We will also have specifications on the formatting of the documents, volume, and all of those things. But I think we're creating enough space on the website, enough infrastructure so they can upload documents and give us the information we're asking for.

Avri: Okay, Werner.

Werner: This is Werner, from CORE. I just say that you say there's going to be scoring details, but an RFP is about quest-..., whether or not you have to write... fulfill the requirements. And that's not a question of scores, you know. Either you fulfill them or not. It's not a question of making so many points.

Kurt: That's correct. I think, you know, with... you know, I don't know if I can answer this really well, but there's certain ways to meet requirements, so maybe 'scoring' is too hard of a word. But there's certain ways to meet requirements, and so that way might be two of these actions, or one of these actions.

Werner: Could 'measurements' be a better word than 'scoring'?

Kurt: Yeah.

Avri: Okay, I had Adrian. You had a comment, or are you fine now?

Male: That's a good word.

Avri: Okay. Thank you.

Adrian: If they're having trouble with web-based applications, why do they need a new TLD?

Avri: Okay, can I actually give a comment on that one? I think that web-based communications means that one has to be able to communicate evenly, consistently with L.A., or with wherever it's being processed. Whereas you may want a TLD simply because within your part of the world, even though it's not richly connected to the rest of the world, you still want to be able to, within your part of the world, work evenly. So that would be why I would say, even if you don't have reliable, continuous communications to the centre of the world, you can still have good reason for a TLD in a regional sense.

Karla: I would like to make two points about this. So this is one of the issues that we have identified, and there are two things that we are doing to address this issue. One is we are looking into having some kind of customer support or CIM system that would allow applicants, during the application process, to have their issues resolved – technical issues, clarification issues, things like that. The second thing that we are trying to do is, when the application period closes, we are trying to have a period of time that follows that in which we are allowing applicants to correct administrative errors. Did they upload anything that they were not supposed to? You know, did they upload a file we are not able to open, and so forth. So we are trying to build into our process and system enough to address administrative issues.

Kurt: Uh... Karen, can you... The next slide is really a PDF of the process map, and I don't know if it's going to work in this room, except you can probably... there's a handout of this, right?

Avri: Question – that handout... I did not find a copy of that, and I am sure that there are several online that I can point people to...

Karla: I'm sorry, our apologies. This is being posted right now, because...

Avri: All right. So it should be there shortly?

Karla: Yes.

Avri: Okay, thanks.

Kurt: So I don't think we need to... I don't know how long we want to spend on this, because we could spend a long time. But this is a pretty succinct map of the evaluation process. For our internal use, we have an evaluation process map

that's about 155 steps, that captures every administrative task that needs to be done in order to evaluate an application.  This boils that process down into one that we think is clear and succinct.

So it shows the... for those of you watching at home, I'm pointing to the initial evaluation box.

Male:       [inaudible – not on mic 00:59:23]

Kurt:       What?

Male:       They don't have the chart.

Kurt:       They don't have it yet?  They're having it soon.

Karla:      Kurt?

Kurt:       Yes.

Karla:      Can I just make a little disclaimer before we start.  Between the yellow boxes, and my apologies for the people that are remote, but between the yellow boxes, right on the top, there are some variables that we are considering in terms of timeline.  Those variables are not the numbers that we have indeed come up with.  We're still analyzing that.  This is just a place-holder for us to understand that this has to be taken into account at this stage.  So please don't hang on the numbers there.

Kurt:       So, before we go on, Glen?  Can you let me know when that's posted?  Maybe we'll skip this and come back to it.

Male:       And Karla, just a clarification, make sure I'm understanding correctly.  The... so, for example, from the close of the application period to the completion of the... application completeness verification, you're estimating, and it's only an estimate right now, somewhere between 15 or 30 days, if it's 300 to 600 applications.  Am I reading that correctly?

Karla:      Yes.  So what we considered here, the assumptions that we made here, is first of all, we don't know how many applications we're going to get.  Second, we need to understand what we are going to do.  When we say we are going to an administrative check, how... what exactly takes place with that

administrative check, and how long does it take for one individual to do an administrative check?  One person, and it's... how much time do we need to address that issues.  So this is just some kind of estimation so we know how to scale, okay?

Avri:        [Inaudible – not on mic 01:01:16]

Mike:        So... um, it's Mike Rodenbaugh.  I see over on the left-hand side, sort of a new path, I think, which I haven't seen before, which is an extended evaluation.  I'm wondering if you could just kind of talk about what that would mean.  Are you envisioning an additional fee for that?  What sort of things that the applicant might be able to remedy through that process.

Kurt:        I was going to skip the chart, but I think I'll just answer question and...

Avri:        Okay, yeah, because I've already got a list of Mike, Werner, Dirk, Kristina, Steve, so far, and Paul.

Kurt:        Right, so this is where we went to school on the sTLD round.  So, sometimes we will receive an application.  It'll be close, or there'll be some missing information, or there'll be some question as to whether the criteria are met.  It seemed that given the possible price of the application fee that applicants be afforded to provide supplemental information, if their application demonstrated that they hadn't fully met the technical or business criteria.  So we would afford an opportunity for an applicant to flesh that out, and to have just a dead-end there seemed, you know, in that balancing, seemed the wrong answer.

Mike:        I just guess the concern would be, if there's competing applications for the same string, which of course there will be...

Kurt:        Mm-hmm.

Mike:        ... and one person has done their application fully and completely, and then they're essentially delayed because the other person did not, the other party did not.

Kurt:        Yeah, that's a very valid concern, and that's part of the balancing that goes on in creating a process – whether you'll evaluate an application differently if

there are or are not competing applications.  So, in the end, the process as displayed here allows for a limited extended evaluation.

Karla:  I also want to make a note, if I may, that we are looking at the different paths that each application can take, and how long it's going to take.  You know, it's still preliminary work, because we need to advance on the criteria and everything else, and the different paths.  And one of the topics for discussion today is really about the rounds, and when we do the next round, because, as you mentioned, applications can be at different stages, and how do we deal with the fact that one might be holding another one, and...

Mike:  I guess I think it's just maybe critical to focus on limited extended evaluation, be very clear as to exactly how someone can get into that step.

Avri:  Okay, I've got Werner, Dirk, Kristina, Steve, Paul, and then Adrian.  So, Werner.

Werner:  Um... there is an objection-filing phase, but of course on this flow chart, we cannot see the timelines, nor do we see if timelines overlap.  Now, respective to objections, it may of course be a problem if everybody has to wait before anything happens, before... until the objection-filing phase is complete.  And even then, this objection-filing phase may be too short for some communities, for instance, that would have to get their acts together.

Moreover, the objection-filing would possibly need some of the information that may come out of the evaluation.  So logically, wouldn't it be good if the objection-filing phase would actually start immediately upon publication, but actually extend past the initial evaluation.

Kurt:  So... yeah, well, if you could scroll up, Karen.  You're exactly right, the objection-filing phase starts with publication.  And must take into account the ability for notice of the application to be fully communicated everywhere, and also take into account the processing time for those entities to process... to make an objection.

The other side of that is, we want to run that in parallel with the initial evaluation, in order to accelerate the time.  So we're trying to make the... not make the chart too complicated...  But the objection phase, exactly as you frame it up there, Werner.

Werner:     So it is in parallel?

Kurt:       Yeah.

Avri:       Dirk.

Male:       Excuse me, Dan has a comment.

Avri:       Dan has a comment.  Sorry.

Dan:        I think what Werner is asking is if you could still file objections after the end of the initial evaluation period, which I don't think we want to allow.  In other words, the... we'll let the objection-filing phase be as long as it has to be, but then it ends.  And when it ends, then the initial evaluation period also ends.  And then we decide anybody who's qualified, and doesn't have an objection, they win... and there's no contention, they win, they get their TLD.  I just want to...

Kurt:       So, by definition, the initial evaluation is done when that initial evaluation work is done, and the objection period is closed.  That's the end of the initial evaluation.  And then the path applications take is determined by the results of those two things – whether you pass the initial evaluation, or whether there was an objection.

Karla:      May I just add one thing?  And I'm sorry, I know I'm not in the queue.  We will have a period for objection filing, a beginning and an end of period for the objection filing.  Then there's the actual objection period, where, you know, the DRP takes place.  When we retain, or when we finalize our partnership with whoever is going to be the DRP provider, we are going to refine the timing that you see on that slide.  So this is, please, a preliminary work.  We know there's going to be some periods of time, but how long those periods will take will be refined only when we have the dispute resolution provider on board.

Avri:       Okay.

Werner:     Excuse me, just one... maybe the comment I made was a terminology problem.  The initial evaluation, I interpreted that as being something that causes a report to be published.

Kurt:        Right.  Yes.

Werner:      However, an objector may actually want to see a report, which may be called differently, of course, before deciding whether or not to file an objection.  So they would see this, and kind of think... But then they would possibly make their determination once they see possibly what could be called a preliminary evaluation report, which may not be the final one.

Kurt:        They might not want to pay for an objection if the application fails.

Werner:      Yeah, for instance.

Kurt:        Okay.

Werner:      Or, other reasons, they want to have a good understanding of the subject, and the evaluation report, they might find that helpful.  So there may be good reason to have a report that comes out somewhere in between.

Kurt:        Mm-hmm.  Okay.

Avri:        Dan.  And I just wanted to mention, on... you had mentioned not being... I think whenever one of the staff people has a response to one of the things we're saying, of course they jump the queue.  Okay, so I still have a queue that is Dirk, Kristina, Steve, Paul, Adrian, Ken, and so you're all still in it.  But Dan, you wanted to say something.

Dan:         I just wanted to thank Werner.  We totally understand how that... I think, we understand your points, and I just wanted to clarify that we got that, and I don't want any misconceptions about it will work.  I think the idea is, we'll have... First of all, what you're doing in the initial evaluation is totally separate from the grounds for objection.  We're looking at, do you know how to run a TLD, do you have enough money to run a TLD?  The grounds for objection are all about, you know, whatever we end up... the rules will be.  Infringement of rights, and morality/public order... whatever those objections are, aren't related to what's being evaluated in the initial evaluation.

             Also, I think the idea is the fee for the objection filing... what you have to actually pay and file is small, it's like just putting down a place-holder.  You know, we don't know exactly, a thousand, a few thousand, to mark that I want to object to this.  You don't have to put in your whole big objection, because

the thing might lose an initial evaluation, so you don't need to pay some humungous fee or something to file an objection, and then have it be rejected in initial evaluation anyway. So, we understand your points, and we're working on that.

Avri: Dirk.

Dick: Dick Krischenowski. Kurt, just a question about the application period - how long is it intended to be, this application period?

Karla: I can take that. We don't have a set date, so we're looking at how complex it is going to be to apply for, and take into consideration also payment, money transfers from all over the world. So we are estimating that it is not going to take less than a month, but I cannot tell you right now what is the period of time. But we are taking into account all… we are taking into account the fact that applicants come from all over the world, and, you know, wire transfers and any kind of foreign payment takes time, and assembling things take time.

Dick: Yeah, okay, some 30 to 60 days are aware… expected. But when I see the next point, "applications reviewed for completeness," only after the application period is closed, I think it would make much more sense for ICANN to already review applications when they are filed, so it would reduce the workload a lot, not starting at day zero after the application period.

Karla: Yeah, I see your point. We are trying to balance out how many resources we are going to have during the application period that we would address… like a customer support kind of role, that we would address issues with the applicants, give technical assistance in case there are issues, etc., and try to estimate what does it take, and whether or not we can do some kind of check up front. We are also trying to consider whether or not is this fair, to start with some before and some afterwards, and how many issues… We really know what the issues are, the applicant knows what the issues are, after they click on "Submitted." Right? So we are trying to balance out the resources that we have, how much we can do, in each period.

Avri: Dan, you had something to add?

Male: Yeah…

Dan: Let me just respond on that. Because one other important consideration is, let's say we have the applications opened for four months, and somebody finishes their application after two weeks. We could theoretically open it up and start working on it. We want to keep, though… I mean, contention is going to be a big issue, and we want to keep it under lock and key exactly what applications have been filed, and not start spreading out the information mid-way through the application period, "Well, we have 10 applications for this, and 2 applications for that." So that's going to be very tightly limited knowledge, and even just giving it out to evaluators or to staff might be an issue.

Dick: But I think we will have a launch party when we file the application, or something like this, so it's anyway public, in our case.

Avri: But not necessarily everyone will…

Dick: No, no, no, definitely. And a last question, for understanding. Objection-filing, or objections, are different than string contention, so that in string contention no one can file anything except for ICANN. So if one wants to object, only in objection-filing phase?

Dan: That's true.

Dick: Okay.

Avri: Okay, I've got Kristina, Steve, Paul, Adrian, Ken, Chuck. So, Kristina.

Kristina: Werner and Dan addressed, I think to a great extent, my initial question/concern, namely whether or not it would be necessary for potential objectors to really put forth the entire filing fee, their entire case, etc., before knowing whether or not the application of interest had passed the evaluation period. Having said that, depending upon what the level of fee will be… and another question that I know is on the slate for later is whether or not an objector has to object to every… say there's six applications for dot whatever-you-want-to-call-it, and they do… whether or not they would have to object to all six, or whether a successful objection against the first one would eliminate that. Because I think, you know, regardless of how nominal you make that fee, at a certain point, it's really going to add up.

Kurt:     Yes, I think that it depends upon the type of objection.   There's certain objections that are just based on the string itself, so in that case, probably all the… the dispute about all those strings would be heard about the same time. Some objections are specific about a string.   You could have a string that might infringe IP rights.   One application would, and one application would not, even though they're for the same string.   So I think the ability to consolidate depends upon the type of objection.

Kristina:   Okay.   The other question I had is with regard to the appeal procedure.   Do you know now, or do you anticipate whether or not that would be, for example, an appeal within the same… for example, to a broader panel within the same provider?   Do you anticipate that'll be judicial review?   Do you… have you made a decision?

Kurt:     Um… we haven't made a decision.   We anticipate it would be to a broader panel by the same provider.

Kristina:   Within the same provider… all right, thank you.

Avri:     Okay, Steve.

Steve:    Yes, Steve Metalitz.   I wanted to get back to this extended evaluation, which I think is a new wrinkle here.   And as it was just described by the staff, it isn't really… it sounds more like an amended application, not an extended evaluation.   It's an opportunity for the applicant to put more information forward, rather than for ICANN to think about it longer, as to whether this meets the criteria.   Is this essentially correct?

Kurt:     I think that's essentially correct, yeah.

Steve:    Well, if that's so, there's no provision for reposting that information, and if this is all happening after the objection period has ended, then someone might not have objected to the original application, but the expanded application makes it objectionable, or makes it clear that it's objectionable.   I'm just saying, I hope that if this is included at all, it's under very tight time frame and limitations, because I think it really has the possibility of complicating this process considerably.   And, in fact, pass EE would have to go back up to posting of all applications and start through the whole process again.   So, I'm not…

Avri:       I think Karla…

Steve:      I'd like to hear more about why people think this is necessary, but if it is necessary, I hope it'll be tight…

Avri:       I think Karla has a response.

Karla:      There are two things here, whether or not it is necessary.  But I would like to address your comment about this being new.  I joined ICANN in September.  That was already there.  And it was in the phases.  My understanding is that was discussed in San Juan, and maybe even previously with the council, so that has been already there.  So I am not quite sure why we are looking at this as being new.  What new element do you see on this extended evaluation?

Steve:      Well, you have been immersed in this more than I have, although I've been involved in this process since the beginning, and my understanding of extended evaluation was that that was a description of what's in blue here.  That there's an objection, then of course an application that's passed initial evaluation is going to take longer to process it.  So if it's not new, I apologize for characterizing it that way, but I'm still not clear on why…

Karla:      So let me… maybe I understand why the confusion happens.  There was a work breakdown structure that was presented to the Council before.  In this work breakdown structure, you had the phases on the left side, and then you have the flow.  Every time I have flow and phases in one slide, there is always a challenge.  That is why we did this purely as a flow, because of that kind of an issue.  And indeed, when you looked at the phases, extended evaluation and objection were together, and if one were not being clearly described in details what that meant, one could come to the conclusion that we meant extended evaluation as being objection.  But that was never the intent.

            There is also our twenty-something steps process that was worked out in San Juan, and extended evaluation is reflected in that process as well.  But I recall that work breakdown structure.

Steve:      So, what I… we realize your issues, and the effect that somebody going down the extended evaluation path could have on identical… or identical

applications that have already passed, that I think somebody else brought up. So it's well-captured. Thanks.

Avri: Okay, I've got Paul, Adrian, Ken, Chuck, Olga and Werner. So Paul.

Paul: So, the initial evaluation is a technical and business evaluation. Is that correct?

Kurt: That's correct, and some other things.

Paul: What are the other things?

Kurt: Whether the string itself will negatively affect the DNS stability…

Karla: No.

Kurt: What's the…

Karla: So technical, there are two…

Kurt: Whether it's a reserved name…

Karla: So, there are two things to technical. One is the technical evaluation on the string itself, and that goes back to the DNS stability paper. The second technical evaluation is on the applicant ability to run a registry. So, when we say 'technical', let's be careful that we understand. There's the string component of the technical, and there's the applicant component of the technical.

Paul: So… one last question on this. Will one applicant… if, let's say, an applicant puts in five applications, and he chooses Affilius to do the back-end. Will that… or let's say it's five different applicants, they all choose Affilius. Will Affilius' ability to service all those at the same time, simultaneously affect those applicants' scoring, or however the initial evaluation is performed, or are they all just separate? Since they...

Kurt: I don't think so. I think the application is going to say, "We intend to meet the technical criteria by this," and it's going to be a technical answer, not a Affilius answer, you know. We anticipate this many servers, and then at the end, when we're ready to delegate, we'll verify that those servers are in place and dedicated.

Paul:        I would assume that, you know, since one group of servers could service five… or a large number of domains, like many registries do, that it wouldn't affect it.

Kurt:        Right, so it all goes down to the ability to actually do it at the end, prior to delegation, that you meet the criteria.

Paul:        Dig it, thanks.

Karla:       Can I make a comment?  Every time that there is an evaluation, the evaluation is going to be on that specific application.  The idea about having back-end provider qualification, or whatever you want to call it, is not something that is set in stone in this process.  This is an idea that is being explored, whether or not it's feasible.  So I want to just remind the Council that this is not something that we're saying "We're going to do."  This is something we're saying, "We're exploring this alternative."  Although I'd like you to think about potential new applicants from other parts of the world that have not been necessarily in this industry, and the fact that maybe something like that, not necessarily very strict, but something like that could possibly facilitate for them to partner, for them to know with whom to partner, and be able to meet the technical criteria this way.

             We do realize the different ways that this can be gained, and we do realize that this has to have some kind of thought in terms of continuity, right?  What the applicant says in the application is a promise, but what is going to happen moving forward?  So please don't think about that as being a set-in-stone process we're going to do.  It's an idea being explored.

Avri:        Okay, Adrian, you're next.  Oh…

Adrian:      Um, you know what?  I think for expediency I'll…

Avri:        Thank you.  Ken?

Ken:         Yeah, with request to the filing of… well, I'll use the term protest, but I need to make sure that we have a clear process outlined to the GAC.  I'd hate to have that we have a situation where you have two separate timelines, where somebody… the general public can file a process, we move on down the road, and all of a sudden, a GAC member decides they want to file a protest,

and we open up a whole new set of guidelines and rules to allow these "delayed protests." So I'm hoping that the ICANN staff as well as the Board is working with the GAC to ensure the process is clearly defined for that, because I'm absolutely certain that countries will be filing protests on applications, so…

Kurt:       It will be clearly defined, but I've never been able to tell a government what to do.

Karla:      Can I…

Ken:        No, but the other side of the coin is, if the governments understand that their timeline is for them, I think you can look them in the eye and say, "I'm sorry. You have had plenty of advance notice, you can institute a process in your own organization to prepare something and have it done in a timely basis."

Kurt:       Right, that's the intent of the communications.

Avri:       I have Chuck, Olga, Werner, Dan, and then Bjork.

Kurt:       Oh, you missed Marilyn, somehow.

Avri:       Oh, I missed Marilyn.

Kurt:       She's had her hand up for a long time. I think she's third.

Avri:       Okay, then we'll try Chuck, Olga, Werner, Dan, Bjork and Marilyn.

Chuck:      Okay, thank you, Avri. It's Chuck. The… Karla, based on how well you've thought this out, I'm sure you've already thought of this too. But for the objection period, there's a set time when objections can be filed. The change in that is those who don't pass IE and go through extended evaluation, and then pass it. How is… how do you envision that working? I don't know if you can even answer this now. It obviously is a timing issue that needs to be dealt with. Will they all go into an objection period together? That may not work, but… you want to comment on that?

Karla:      Yes. [laughter] So, the timing and the difference [inaudible 01:24:21] in the paths is something that we are just, you know, looking into. I don't have a

definite answer for that.  But it is quite complex, what are the different stages that the applications can be, and how are we going to group them?

I want to make just one quick comment, is that, one, the Board role or not in the approval process.  And also, public comment periods are not reflected in this process, because we are still looking, exactly because of what you just mentioned.  You know, what are the different tests, what information should be posted for public comment, how much information… we are still looking at where the public comments will fit, for how long, and what information is going to be available on the applicant status and so forth.

Chuck:      But… just one follow-up question.  I'm assuming… let's make sure this is correct, that those applications that pass the initial evaluation, that the objection period for them won't be delayed because of any going through extended.  Is that correct? Do you want me to rephrase that?

Karla:      Yes.

Chuck:      All right.

Karla:      You want to take that one?

Chuck:      You have a group of applications that have passed the initial evaluation.

Karla:      And they have no objection pending?

Chuck:      No, no.

Kurt:       Yeah.

Chuck:      At that point, then, they should… the objection period could start for them. Will that happen without delay, or are you anticipating delaying the objection period for those going through extended evaluation?   I'm assuming the former, but..

Karla:      I don't believe we…

Avri:       Dan… Dan, go ahead.

Dan:        So, I think what's maybe a little confusing here is that this is meant to show… this new chart is meant to show sort of the logical process, but not the actual

phases of the procedure. So you can't see what's going to happen at the same time, which includes, I think, extended evaluation and objection resolution. You, as an applicant, might at the same time be fielding extended evaluation questions about your financial wherewithal and handling a trademark claim under the objection resolution process. They can go hand in hand.

So this chart, again, is just the logical process, and it doesn't show what can happen at the same time.

Male:      [inaudible – not on mic 01:26:50]

Dan:       So, so… well…

Avri:      Excuse me. If you're going to speak, you need to use the microphone, although I would prefer to keep things in order.

Dan:       So I guess that this doesn't represent the order it would happen in. So you might… you could easily just as well flip the yellow and the blue in space here. You have to go through… you have to pass evaluation, and you have to pass through the objection process. So I think if you have questions about the timing and the order, it might be better to go back to last year's… I think it was in San Juan, the big five-page thing with phases, which I believe… there's nothing new in this chart that wasn't in that chart, and they're just different views at it, and they're confusing in different ways. But they both depict the same process, substantially.

Chuck:     Dan, I'm still not sure that I'm getting my question across. You've got some applications, probably a lot, that pass the initial evaluation. I would assume that they would… that the objection period, which I understand to be a defined period, would start right away for them, no delay because some applications are going into extended evaluation.

Dan:       So you're talking about the objection-resolution phase, when you're taking… looking at the objections, and deciding…

Chuck:     No, I'm not talking about the resolution…

Dan:       The objection filing window?

Chuck:      Exactly.

Dan:        That closes the same day for all applications, without regard to the results of any evaluation.

Chuck:      Including the extended evaluations, then?

Dan:        Yes.

Chuck:      So, in other words, those who pass the initial evaluation process are going to be delayed because of people who didn't do a good job on filling out their application?

Dan:        No.

Female:     No.

Avri:       Go ahead.

Female:     If I could jump in?  What I think that you're saying is…

Avri:       You'd have to turn on your microphone.

Female:     Sorry.  That basically you're going to have a 30 day window to file an objection.  And, as I understand it now, you're basically going to be putting down a marker.  You're not going to have to pay the whole fee, you're not going to have to put in all your paperwork.  You'll just have to say, "Here's the list of the applications that I am planning now to oppose."

            It may be that one of those needs to go through extended evaluation, and never surfaces again.

Avri:       For those who aren't here, I see Dan nodding his head.

Dan:        Except for the 30 day part.

Avri:       Except for the 30 day part.

            Okay, at the moment I've got Olga, Werner, Dan, Dirk, Marilyn.  And then Ray.  Olga, please.

Olga:       Thank you Avri, this is Olga Cavalli. I have a concern about the objection. As I understand from what has been said, there will be a fee for filing objections. Is that correct? And there will be around one month for filing an objection?

Dan:        That's not correct.

Olga:       No? Maybe more?

Dan:        Longer.

Olga:       My concern is about governments. For governments, it is very difficult to get money. It's not… sometimes… they have the money, but it takes time for going through the bureaucracy to have this money for filing the objections. And we may find some problems with some governments saying that they don't have the time to get this money. And I also agree with our colleague about the clear procedure to be sent to the GAC, because, if not, we will have many, many governments complaining about the rules. Many governments have concern about a big list of names which are relevant for the cultures, and they may want to file objections, but if this takes a lot of money and timing for them, they will not be able to do that. Thank you.

Avri:       Thanks. I wanted to mention before I went on the list that the new gTLD evaluation process chart is now available through the website, so for any of the remote participants, you can grab that chart now. And, I don't know, were you going to respond to the Olga issue, or…

Kurt:       Oh, I agree with the… you know, what Olga was saying, and especially the need to inform the GAC and governments of the process.

Avri:       Right, so at least you have some rules for them to ask for a variance from.

Olga:       One clarification. Are there going to be exceptions for that fee payment?

Kurt:       So there might be a mechanism where ICANN could lodge an objection, but… we're discussing that, but it's not very far down the path.

Avri:       Okay, I've got Werner, Dan, Dick, Marilyn and Ray. So, Werner.

Werner:     Okay, this is Werner. It's just about the extended evaluation. I've participated in a number of ICANN processes, and there's always been one. In the

previous ones, they were not kind of announced, except maybe in the case of the 2000 round, because some happened after selection, but there still was an extensive resolution process. There was always a need to resolve questions that have not been known before. And it's not just that. There's also the question that we want good quality TLDs, so we have to do the homework, so we have to have this ability. Moreover, there are many cases when there are cultural misunderstandings, can they be resolved easily on that process. But if it's just one office, submit it all, and then there's no ability to cure, that would be really discriminatory to many people.

Kurt:        Thank you.

Avri:        Dan, did you… it went past it. Okay, Dirk.

Dirk:        I think, on the table yesterday evening, Marilyn and Karla and the others were discussing about this point of objections, and the idea was, as I understood, that ICANN itself could file contentions… not contentions, objections… if, in case everyone agrees there's something problematic with the string, but no one officially in the world files it. And that would be also a way for governments, to write a letter to ICANN that they have concerns, but it takes so long in the country, and ICANN could instead file that objection. That was an idea on the table. I don't know who brought it up, but I point it out now.

Kurt:        Thank you, Dirk.

Avri:        Okay, Marilyn.

Marilyn:     Thanks. I think most of my questions have been addressed. I do think Olga in particular has identified a couple of concerns that I have. It does take a very long time not only for governments to get cross-agency agreement. In some cases, a government may not actually have a fund that they can use to pay from. We've run into that with the issue of some governments, for instance, not being able to contribute to funding the ICANN secretariat or the GAC, because it's not an official entity. So we probably need to take more consultation about addressing that. The same problem, I'm afraid – and I'd like to hear more when we talk about communication – may happen within multi-national corporations, who… and small companies. So the time period of how long the objection period happens, I think we need to pay close attention to. But one thing I'd like to point out is, if you go down the left-hand

side of the chart, there's a pink box that says Application Denied. That there is nothing there that says "Appeals Process." Like Werner, I too have been a student of events and activities at ICANN since before it existed, and something tells me that there is going to have to be, whether we like it or not, there's going to have to be some track to send the potential appealer off to.

Kurt:   Just to briefly answer that, I think the extended evaluation is a form of appeal, and as far as the objection process goes, there is an appeal process, so maybe… you know, do we need to create a third step here? That's a question. Or whether we label the extended evaluation as a sort of appeal. But it was meant to capture your thought, but we'll certainly rethink the labeling and the boxes, given your comment.

Karla:  And I just want to make a comment that it is quite a challenge to capture in an overall flow all of the stages where the application can be denied, all of the stages that the applicant can withdraw, and so forth. So we try to simplify that as much as possible for people to begin to understand what is the thought process behind this application. But by no means is this everything that… all of the stages and all of the different scenarios that can happen. We cannot possibly capture that in this flow.

Avri:   But from looking at that flow… This is a question, and apology for jumping the queue here… there is no line coming out of there, saying something happens after Application Denied.

Dan:    So, I think maybe to answer Marilyn's question, it may be just overall… Maybe we should have had printouts of the five-page thing from San Juan, too, but the reason that thing was five pages, and the thing that's missing here, and again, it's not a criticism, but this is intended to be an overview of the logical, likely outcome of what happens. But what's missing is all the draft reports, opportunities for comments, public comment phases, final reports, opportunities maybe for Board action at certain steps, which has its own set of procedures around that, so there's a lot more to that than just these little lines between boxes, I guess is the answer.

Avri:   Ray.

Ray:    Ray Fassett. The question I have has to do with the objections, and I'm not looking for an answer on the implementation or process right now, drilling it

down.  But I want to note that the recommendations really noted four buckets of potential objections.  And I really think the intention was for them to be mutually exclusive.  In other words, someone could file for morality or public order, or perhaps infringement of rights, but it's really not realistic to say that you can file an objection on both.  The combination of both, as it's…  So I just want to make that comment, not looking for an answer.  But the real question I have… are we actually going to discuss today who actually has standing to file an objection under one of those four buckets?

Kurt:       I think there's a slide about that.  We've discussed standing also in Delhi.  But there can be separate objections filed against one string.  One for morality and public order, and one for infringement of rights, right?

Ray:        But not likely from the same objector.

Karla:      But if…

Kurt:       Oh, I see what you're saying.

Karla:      I think it could be.

Kurt:       Yeah, it could be, but I understand that the objectors' interests are different, so someone seeking to protect their rights might not be seeking to say their… you know, they think the string also violates some community…

Ray:        Part of my comment here is that there were four buckets to find, because this wasn't necessarily intended to be where anybody can file an objection, "I'll just pick this box."

Kurt:       Right.

Ray:        So I'm just curious what the standing is to say, "Yeah, I believe this is morality and public order," and what is the standing to say that you qualify to make that objection?

Kurt:       Can we talk about standing later, Karen?  We [overtalking 01:39:06]

Ray:        Yeah.  That was my question, if we were going to talk about it later.  Thank you.

Male:       Okay, Adrian.

Adrian:     Can we move on, please?

Kurt:       What was that?  I'm sorry?

Adrian:     Can we move on?  We're behind time, and I reckon we've beat this thing.  We're going to pick up a lot of this in the slides, right?

Male:       I haven't… there's nobody else in queue, so I think that's a good idea.

Male:       Thank you, Adrian.

Male:       [off mic]  Actually, I have a question.  [laughter]

Kurt:       The next slide is more challenging.  So there's… so this is meant for full transparency and clarity.  It actually looks much better from here than I thought it would.  We're on slide13, which doesn't have a label on it, because the chart takes up the whole slide.  But we're trying to build this cost accounting model for capturing the costs associated with the TLD process.

            There's essentially four families of costs involved.  Not all of them would be laid off on the application.  There was considerable work done in support of the policy development process.  After September 6$^{th}$ GNSO vote on the policy recommendations, there's been considerable work and investment in the implementation, both in staff time and being here and phone calls and consultants and that sort of work.  So that's another bucket of costs.  The third bucket of costs is how much does the application process, the evaluation process, cost to administrate?  That's what this chart is – I'll talk about that in a second.

            The fourth bucket of costs is, once you get through the evaluations, there are administrative costs associated with getting the TLDs in the root zone, those things that have to happen once an application passes the evaluation.  And then, finally, there's the on-going business costs - the registry liaison, finance, IANA costs of, you know, the ICANN associated costs, associated with providing services to TLDs.

Karla:      Kurt?

Kurt:       Yes?

Karla:      May I interject with one disclaimer here?  So, by no means we are saying those are all of the paths and scenarios that can happen.  Because if you think about objection, and all of the four buckets, and appeals, and etc., we can come up with dozens and dozens and dozens, and this is a work still in process.

Kurt:       Right.

Karla:      This is very high level.

Kurt:       So I haven't… even though it doesn't look high level, I… [laughter]

Karla:      So you see?

Kurt:       I was about to describe what this is.  So this is sort of a decision tree for the paths an evaluation could take.  And if you could actually see this, you would see that an evaluation could pass or not pass the initial evaluation, and an application could be objected to or not objected to.  An application could pass or not pass an extended evaluation.  Making it through the process, strings could be in contention with other strings, or not.  So this is, as Karla appropriately caveated, you could take more permutations and combinations of this set, but essentially this leaves 64 sets of outcomes, and the idea here is to… each one of these boxes is a cost bucket.  You put the cost associated with providing that service in that bucket.  Then, you assign probabilities to each decision.  So, 70 percent of them pass, 30 percent of them not pass.  60 percent of them are not objected to.  And then, you know, you get to 100 percent at the end, and then you can calculate what the total costs of the applications are, you also have to take a stab at how many applications there's going to be.  That's an important part of the equation, isn't it?

So are we going to be right when we guess those percentages?  No.  But what we can do is vary those percentages.  So then we can say, "Well, we guessed 70/30.  Let's guess 30/70 and find out.  You know what?  The cost didn't really change that much when we varied that variable.  So we can do a sensitivity analysis to determine what forks in the road are really… really drive cost.  And where do we have to concentrate on trying to get a number correct in order to approximate the cost.  So this is a tool we're going to use… an approximation of what final evaluation costs will be, before fact.  And so, you know, we've done some game-playing with this, and it's kind of fun.

So, thus far, we've done a good job of identifying the costs that supported the policy development. We took a pretty good stab at that. We have to determine if those costs should be laid off on the applications, or they should be just accommodated by ICANN as part of the policy development costs.

We've done a pretty good job at approximating implementation costs – those costs before the evaluations. The same question exists, but we feel pretty sure that those costs should be laid off on the application costs. There's these costs, which certainly should be, there's the post-evaluation costs getting the TLDs and the root, which certainly should be, and there's supporting TLDs in an on-going basis, which is supported by registry fees and other fees that ICANN receives.

So that's our methodology for estimating the cost associated with TLD evaluation. You know, we're a few weeks away, we think, from really getting a good handle on those costs. The key, as is with many other aspects of this process, the timeline and finalizing it, lies in finalizing the dispute resolution processes. It's there… you know, those dispute resolution providers are going to be charging applicants… you know, those fees will probably be paid by applicants and objectors directly to the dispute resolution provider, so having them understand fully the ICANN process and then being able to approximate costs for dispute resolutions is an important part of this, as is, you know, the panels that will be evaluating the applications. That's a more straightforward estimation. So that's the path we're going down as far as costing out what the applications are. So there could have been more slides for this, but I thought I'd put up this really arcane kind of not understandable one.

So that's kind of the close of the first section, and we're going to move on to allocation methods, unless there's questions.

Avri:     It doesn't look like it. So, yeah, we're running only about 20 minutes later than the original schedule. We were going to take a coffee break in here. We are not. But it's there, grab it.

Male:     Let's move on.

Avri:     Yeah, did I give you too much time to think of another question?

Adrian:     No, I just wanted to… so, that's how you're going to work out how much the whole thing costs. How do you then… what's the process for determining what the application fee is going to be?

Kurt:       So, we're going to marry that with… we're also creating a demand curve, and somewhat serendipitously, we're supposed to get a first cut at that from our outside consultants, Charles River, today. And we've asked them to explore two questions, two big questions having to do with TLDs and initial reports due today. And so that demand curve kind of will inform the Ps and Qs, you know. At what application prices will the… what quantities will be. I think the costs and that need to inform a management decision about what the application fee should be.

Male:       Are you familiar with [inaudible – not on mic 01:47:37]

Avri:       So I guess we are now…

Adrian:     Can I…

Avri:       You're not ready to move on?

Adrian:     I'm not ready, no. I just want to… so, just on that, so is there a point where ICANN will decide also, irrespective of how that may work out, that may turn out that the number is 100 bucks per application. Is ICANN going to put some logic there itself and say, "Well, that's clearly not acceptable. We'll take these numbers, and…" You know, it's not just a matter of the algorithm telling you how much it's going to be, it's got to be some sensibility going on as well.

Kurt:       That's right. That's exactly right. That's the purpose of the other study and the demand curve.

Adrian:     Can we move on? Thank you.

Avri:       Please. Next topic.

Kurt:       What time was our break supposed to end, Avri?

Avri:       10:15. Did you need a break?

Kurt:       And is it… no, no.

Avri:       I mean, it's up to you.

Kurt:       It was supposed to end at 10:15?

Avri:       The last one was supposed to end at 10:00, and this one was supposed to start at 10:15, according to the schedule you all gave.  This one ends at 11:15.  Allegedly.

Kurt:       So we're going to talk about allocation methods next.  And some of this, we've covered.  Remember, the allocation methods are embodied by these three policy recommendations.  And we're looking at slide 15.

So it's Technical Criteria, Financial Criteria, and Assessing in Rounds.  We're going to get to move a little bit fast, now, because the next slide is… repeats some of the information that we've already discussed before, about what the vision for the request for proposals is.  So I think there's a… so I don't really have any comments to make about that, unless there's any questions.

So, what work is being done?  Can we have the next slide?  Yeah.  So what work is being done – we're on slide 17 – is that we, as everybody knows, we posted a statement of work to solicit applications to do this RFP, to partner with ICANN and selected… Deloitte and Touche and [Interisle 01:50:1], to work on the RFP with us.  We think those were good choices, because it's somewhat multi-cultural – we get a European take on it, a North American take on it, we marry two different sets of skills.  One, you know, administrative, business implementation type, the other, technical.  So we think we covered our technical requirements, technical meaning business technical, all the skill sets needed to do that.  We also have experience with both those firms in the past, so we thought those were good choices.

We've already talked about this second bullet quite a bit, and that is, in evaluating RFPs, we're wrestling with this problem of how to rely on promises made by the applicant, because the application is really a set of promises with regard to the business plan and regard to how you're going to accomplish things technically.  And so we've talked quite a bit about, you know, trust but verify at the end, you know, just prior to the delegation.

Avri:       I've got a question from Adrian.

Adrian: Sorry, Kurt. So, when you said "promises by applicant," do you mean… would you go forward as to say that the RFP could form part of the contract, whereby you would be in breach of your contract should you change any component of your RFP?

Kurt: Well, I think…

Adrian: Rather than just make it promises, as in [inaudible 01:51:48] with promises, try and firm it up?

Kurt: I think so, but to the extent that the promise is to meet the criteria in the RFP, because that's the hurdle – the applicant has to meet technical criteria providing some technical capability. What I don't think is workable is a different contract for every TLD, based on positions stated in the application, because then we'll be administering and trying to do… "compliance" is the wrong way to put it, but do compliance on many different agreements. That becomes administratively very difficult. So there may be… so I don't want to say, never say never, so there may be aspects where there is some differentiation, but for trying to operate the entity afterward, we'd rather not.

Adrian: [inaudible 01:52:42 – off mic] One of the early issues that Marilyn brought up is the promises versus the variation, right? So we're going to discuss that.

Avri: Okay, I've got Paul, and then I've got Mike Palage remotely with a question. So Paul.

Paul: It… to me, it depends on what is going to be asked in the RFP, and what you say in your bid. Let's say, on the business part of the RFP, if ICANN asks, "What are your projections?" And then, based on those suggestions, you might need more money than some other TLD, because they're going to use a different application, you know… [inaudible], when you only expect three names, you might have different financial bar, I guess, than maybe dot web, where you expect a lot of names. So I don't know what's going to be asked in the bid, but if it has projections and so on, like in the 2000 round, you know, is that a promise that you're going to meet those projections? So I just think it needs a little bit more definition. And it's based on what's asked in the RFP, what information is going to be required to pass the bar.

Avri: I've got Mike Palage, John Bing, and then Adrian. So Mike, go ahead.

Mike:          Kurt, when I was reading the advance questions that were circulated at the council, this one of the ones that I flagged. And I guess my question goes, the contracts that were set forth in the 2004 sTLD round, specifically addresses, or, at least in my opinion, specifically addresses this issue. Because section 2.1b talks about statements [inaudible 01:54:34] by the applicant during the application, and states that that is part of their representations and warranties, and thus are incorporated by reference into the base contract. So under the 2004 contract, I see that as already having been addressed. And is ICANN proposing to deviate from that provision?

Avri:          That was a question, so is there someone…

Mike:          So, Dan, the question is, under 2.1b of the 2004 base sTLD contract, there is a provision that says, "Statements made during the application process. Factual statements contained in the registry operator's application for the TLD or made by registry operators in negotiating this agreement…" So it actually goes to the negotiations. "…were true and correct…" Hold on.

Male:          "At the time the application was submitted."

Mike:          "At the time the application was submitted." So, to me, that is addressing this provision that Kurt was talking about. I think this standard provision includes that, that someone cannot say x, y, and z during the application process, and during the negotiations, and then seek to provide a, b, and c. If in fact that is the case, it would be a material breach of the contract, at least as I read it under section 2.1b. So can ICANN staff elaborate upon whether they see a deviation from that standard term in the baseline contract?

Avri:          Dan? Dan?

Dan:           Yeah, I think maybe we should take that up with Michael Houghlin later. I understand your point, and I'm not sure I agree completely with your interpretation of that section, but I don't think we want to… I don't know how many people care about that in the room.

Avri:          I had Ken with a follow-up question that he wished to insert then, and Paul, your question was related to this question? So I had two people with follow-up questions.

Jeff:       This is Jeff Neumann.  I have a follow-up.

Avri:       Oh, great.  Okay, well it seems that everybody's comments are in relation to this, so I will just go with the queue.  But, yes.

Dan:        So I think it was a question in part about interpretation of a previous agreement and how it might relate to this agreement.  I think rather than answering that on the fly, we should probably take it under consideration.  We can try to answer it later today.

Avri:       Okay.  [inaudible – off mic 01:57:14]

Adrian:     My understanding is that he's simply saying that in the past, you made reference to say, whatever you said… and Michael, if I get this wrong, please correct me.  But that whatever you say in your RFP, right, back in the sponsored round, you made reference to that.  So then that formed part of your contract.  That's what I think Michael is saying, that there was a part of that that said that, this forms… your RFP, what you're saying in your RFP, forms part of your contract.  Are you going to do that again next time around, I think is the question.

Dan:        So let me, I guess, jump a little bit into it.  The problem is I don't want to give an opinion about the job to contract or the travel contract or whatever right now, on the fly, without looking at somebody's exact contract.  But there's a difference between a representation that what you said was true when you said it, and a promise that what you said you were going to do you were going to do forever, no matter what.  That's the distinction.  So, it's one thing to say… Let's take a registrar application, just to move it off interpreting registry [hearings 01:58:21].  Registrar applications come in, we've got thousands… you know, a thousand of them, and they'll say, "We're going to focus on the retail channel, we're going to have a website."

            That might have been true when you submitted the application, but then, later, a year from now, you change your business model, and instead you're going after corporate clients, and you have, you know, high-end customers, or something.  So you didn't lie when you submitted the application, and there's nothing in the RA that says you're bound forever to be a retail-only registrar.

Adrian:     Yeah, but that's different because… and thank you, but on a registry level, when you're talking about sponsored, you could say I'm representing dot Berlin, the country. I think I brought this example up before. And you win in a contention, because of… oh, city. "Dot country!" Thank you. Someone kick me for being stupid. But then you go ahead and one year, down the track, change, and say now you're not representing, you're in fact just opening up your name space, and that's what you're doing. And the guy that you beat turns around and says, "Well, hang on a minute. You beat me because you were representing somebody, and now you're not." That seems to be a change. You know, you're not doing what you promised to do.

Dan:        So, there's two kinds of promises we could put in the contract. One is representation that what you said when you applied was true. Another is a promise that what you say you will do in the application, you will do forever. And you won't change what you said you were going to do when you did the application. Two different promises. So, and this is the kind of thing we want feedback on – what kind of things should be in the contracts. So thank you for the point, and we understand the point.

Avri:       Okay, I've got a list now, and it's got John Bing, Ken, Richard, Kristina, Marilyn.

Jeff:       And Jeff Neumen was… earlier, somewhere.

Avri:       Jeff, you're right. And I don't have Paul. Paul and Jeff. Sorry, I'm losing track of the names. Go ahead, John.

John:       Thank you. These are of course both interesting and important considerations, relating to what is a promise and what is a precondition, and whatever. And as I'm sure we know better than most bodies, these conditions change according to national law, contractual law being one of the place where… And, as we know, have not entered a contract yet. [Or chose a inaudible. Those haven't taken effect 02:00:41]. So perhaps we need to insert some element in the invitation that makes sure that every… yeah, offer, is evaluated on the basis of the same [points].

Avri:       Okay, Ken.

Ken: Again, in my opinion, a lot of this goes to whether you call it, a preamble or whatever it is. What you say about how you're going to deal with this down the road up front, I think is extremely important. I see too many opportunities for gaming. It's kind of like the guy that signs the loan agreement that the property is going to be owner-occupied, so that "he can get the best rate." But in fact he can change his mind five seconds after he signs it. So we need to make sure that we don't have a process that allows somebody to game you because your logic was, at the time you made this representation, that was your intent. That's a fleeting moment, you know as well as I do. So I think upfront we have to be able to have a methodology outlined in the process that allows you to hold their feet to the fire. And that methodology has to be something between your concerns about binding somebody forever to someone, and at the same time, having somebody going in with the pre-intention that six months down the road, we're going to slide it over here, and they're going to be stuck with it, because at the time… So that's what I'm talking about.

Avri: Thank you. I've got Richard, Kristina, Marilyn, Paul, Jeff, Robin. So if you could come to a microphone, please.

Richard In the initial evaluation, are you going to make a judgment about whether you agree with the estimate… the business plan of the applicant? And let me give an example. So, I apply for dot web, and I say I'm going to charge a dollar for them, and I think I'm going to… in my application I say I think I'm going to sell a hundred names, and therefore I need a fairly limited set of financial and technical resources. If you disagreed with that, how is that going to play out?

Kurt: [inaudible – not into mic 02:03:08] Did you hear that question, Carlos? So, I don't… that's one reason why we think the business criteria really can't go down that road. That might be interesting information to gather for other purposes, to help inform how ICANN and the registry work together in the future, but that sort of analysis is difficult to evaluate in a really clear and objective way.

Male: Can I do a follow-up to that, because it's almost what I was going to say anyway? I'll wait, okay.

Male: You can do a follow-up.

Avri:       Otherwise we end up having everyone's follow-up…

Male:       No problem.  Sounds good.

Avri:       …and it's only my limitation, is I can't keep track of it.  So I have Kristina.

Kristina:   I have two things.  Regarding the promises, representations, etc, what's in my application at the time I make it is true and correct.  I mean, to me, that, frankly, is a no-brainer.  You've got to have that in there, and if somebody's not willing to state that, then I think you have some real issues.  With regard to some of the kind of promises in terms of future, that was a pretty extensive and heated discussion that came up in the context of recommendation 20, at least initially.  And personally, I didn't like the outcome.  I still don't.  But the council conclusion was, "Tough."  If you go into this saying you're community-sponsored, you get the TLD, and then you change, well, so what?  If we are going to consider taking different interpretations of that for different aspects of the application, then I think we need to be very clear as to what it is we will and will not allow to change.

Avri:       Okay, now I have Marilyn, Paul, Jeff, and Robin.  Marilyn.

Marilyn:    I associate myself with the sane and pragmatic comments made by some of my predecessors.  But we have, in the past, accommodated a material change, but the party has had to come back and present what that material change is, and have it approved.  So I'm confused about this not even being the assumption.  I really am.  I thought we, you know, we wanted to learn from previous lessons.  So, you know, I go back to the comments made earlier about…  You know, when people bid, they are making a promise to the community.  They are putting in writing what they should be evaluated on.  If circumstances change, build in the ability for a material change to be taken note of, and a renegotiation and a republication take place.  But let's not put ICANN in the position of approving expansion of the space, and having a lot of change that happens in what is agreed to and publicly commented on.  And then ICANN suffers, because governments, businesses and civil society does not trust ICANN.

Avri:       Paul.

Paul:   I agree that we need to have, you know, you rep and warrant that what you say in your application is true, when you said it. I mean, circumstances change, but when you said it, it better be true and correct. But what you say in the application depends on what you're asked. So, for example, you know, to follow up a little bit what Richard is saying, there's really four things, as far as I can tell, or four categories of things. You've got the string, you got tech, you got biz, you got the community. So, for example, take tech and biz. Is the bar to pass those going to be based on what you say? In other words, if I say I'm going to do a million registrations, is the tech bar higher, or the biz bar different, than if I said I'm going to do three applications, or I'm just going to use it for my company. So I would hope that the tech and the biz bar are constant no matter who is applying, but I need to have that clarified. Because that's going to affect what everybody says, and what you say, I agree that it should be true.

Avri:   [inaudible, not on mic]

Karla:  Kurt, do you want to take that?

Kurt:   No, go ahead.

Karla:  So, we always mention there is going to be a minimum criteria. Everybody needs to meet the minimum criteria. And we do realize that people have business plans, and they forecast, and maybe in a few years this comes true or not. So, I don't think at this point we are evaluating, "Okay, you are going to say you are going to sell 10 million domain names, therefore you have to have x infrastructure." But you must have the minimum criteria.

Paul:   So therefore you wouldn't even ask me if I'm going to… how many names I'm going to sell? Right? Why would you ask that if it doesn't depend… if nothing depends on it.

Karla:  But I'm not saying that we're asking that. What I'm saying is that every application is going to be evaluated for a minimum criteria.

Paul:   I got that. And the minimum will not depend on how many names I'm going to sell, for example. Is that what you're saying?

Karla:  That's right, the minimum is…

Paul:       So therefore you won't ask me how many names I'm going to sell.

Kurt:       Not necessarily.

Paul:       You won't ask me to make a projection on that.

Karla:      No, that's right.

Paul:       Okay, thank you.

Avri:       Okay, I've got Jeff, Robin, Chuck, and Ken.

Jeff:       Yes, so, I'm going to make a statement.  I think ICANN definitely needs to ask in every application what the purpose of the TLD will be for.  Not so that it can necessarily evaluate that as to whether to grant it, but for a couple of reasons.  Number one, is that there needs to be something, when people file objections, that they are able to point to in the application for their fear.  For example, if I can apply for Apple, I really intend it to be for apple growers.  If I don't put that in my application, then what is Apple computer, for example, going to challenge.

The second purpose for stating it is, and I disagree with Kurt's statement about getting into compliance, because my question is, If you don't get into compliance, then who can?  So, you know, if there are things for which… if the basis for which you are granted a TLD is changed, there is a process to deal with that, and that's the Registry Services evaluation process.  All… some of us have gone through it already, with a number of different changes, and that shouldn't be different in the future for future TLDs.

Otherwise, I'm going to tell you right now, I'm going to apply for triple-x, and I'm not going to state what it's for, and if I don't say what it's for, you can't make any assumptions.  There's no basis to challenge it, and you know what?  Tomorrow, after I get it, I'll use it for porn, and that's it.  So I really think you do need to ask the purpose.  You don't evaluate the purpose, but just need it for objection and for compliance.

Kurt:       Luckily, Jeff has told us the purpose of his application, and we can use that in the evaluation.

Avri:       Okay, I've got Robin, Chuck, Ken and Paul.

Robin:      Yeah, I think it's really, really important to recognize the distinction between trying to game the system and trying to misrepresent what you're intending to do, on the one hand, with just the natural evolution of the Internet, and the way businesses change and the Internet evolves.  I think we've got to make sure that we leave room for that kind of innovation, for businesses to grow and expand, without having to go back and ask for permission from ICANN in order to do that.  So I think it's really important that the criteria really be, when you made the application, were you intending to be deceptive or misrepresentative.  Not, down the line, when… ten years later, when the Internet's entirely different and you might want to expand in some way, to not allow that because of your previous application.  I think that would be a big mistake.

Avri:       Thank you.  I've got Chuck, Ken, Paul, and Mike Palage.

Chuck:      We spent a lot of time talking about business and technical criteria, and I fully agree that we did come to a conclusion that there should be minimum technical criteria for everybody.  But I'm not sure it's consistent with what we decided to say that the RFP should not ask for projections to evaluate technical criteria.  Because if in fact we really do want to do minimal… now, again, we agreed that there doesn't have to be a full business plan, in that sense.  But there should be enough information, and this, I believe, is what we put in our report, there should be enough information to have reasonable assurance that the applicant can do what they're saying… what they're planning to do.  That may change, but I don't know how you can evaluate that unless you ask some of the questions, including "What's your projections?" and so forth.

Avri:       Okay, Ken.

Ken:        I'm very concerned about the comment that you made about minimum standards.  It sounds to me like what we're saying is we're going to set the bar, and all applications will be judged against that bar.  If I was in a position like that, and if I was ICANN, I would be inclined possibly to consider the bar being far lower than it should be.  Let me explain to you why.  We are also talking about internationalized domain names.  Suppose we had some obscure cultural community in Mongolia that had 1500 people that spoke its own language.  Are we going to impose the same restrictions on them for

Internet, for using a new TLD, as we would hypothetically an open TLD that has the potential for millions of users? I think you can't just say we're going to have a minimum standard, because I don't think it works quite that way. You are... we are opening the Internet up for broad communities that can be as large as tens of millions of people, and as small as communities of less than 1000 users. I think we have to be able to evaluate it realistically, and that's why you're getting learned, knowledgeable people to look at these applications, to see whether or not the use, the community and so forth is consistent with the standards that you're going to apply. If not, you're kidding yourself.

Look what happened in the last few rounds – we've had how many registrations with [Musdoma 02:14:11], how many registrations with these groups? I wouldn't hold the museum community to the same standards in terms of exposure that VeriSign would have. They have entirely different issues, you know. And I think we have to be realistic with this and I think we have to be very careful when we talk about minimum standards, you know. We can…

Karla:      But I wonder… sorry, but I wonder if there is some mechanism that could be that… so there is the initial evaluation. Then we are going to have a check pre-delegation. Is this something that could or should be done in compliance, or afterwards. Because, again, we don't know exactly what this TLD and how this TLD is going to operate, and whether or not they will be able to implement what they are planning on.

Ken?:      I have to respond to that, only because I'm concerned that somebody is going to get compassionate in this process, and they're going to say, "Oh my God, that's incredibly onerous for some of the new IDNs, and some of these communities, and we're going to have to set up a minimum standard. We're going to have to make that bar low enough to be able to accommodate them, so that we're not being too onerous. At the same point in time, the commercial guys are going to jump over this thing, and it's just not going to be realistic.

Kurt:      Well, the criteria… I'm sorry, this is Kurt. The criteria are about performance, too, right? And what's written into the agreements is not how many servers,

it's response time or up time or performance. And that is scalable for a small registry or a large registry.

Ken?: At the same point in time, you have to look at the capacity. I can promise you 11 nines, it doesn't mean I have that capacity. You had promises made to you and have in the past, on performance levels that were just absolutely unrealistic, because all they had to do was stick a number in there and say, "At the time I made you that promise, I fully intended on putting together an infrastructure that would give us 11 nines."

Avri: Okay, I've got Paul, Mike Palage, Chuck, and then Eric.

Paul: As someone who started in my garage, I got to say, scaling, okay? You can scale. I don't care if you propose dot web, and some people think it's going to do 10 million names, or two names. It's a minimum bar, I think, we need a minimum bar, and does not depend on what your projections are. I mean, come on, you guys are trying to… you build a tree house and you pull up the rope ladder. I mean, dot info, back in 2000, on your application, you didn't need your projections. Should you have dot info taken away because you didn't meet your projections? No.

Ken?: I'm not talking about meeting your projections, I'm talking about resources.

Paul: I'm saying that…

Ken?: To be sure that you have adequate resources.

Paul: I'm saying…

Avri: I'd like to keep it going with the questions.

Paul: Yeah, I'm just saying that we need a minimum standard, and it shouldn't depend on… you should be able to scale. It shouldn't depend on what you have now. Yeah, you're going to be motivated to scale, you should be allowed to scale. You should be allowed to be small and get big. You don't have to be big to start, that's what I'm saying.

Avri: Okay, I have Mike, Chuck and Eric. Go ahead, Mike.

Mike:       Thank you, Avri.  As one of the persons that started this thread of discussion, I just wanted to make the following statement.  While I respect ICANN staff's desire to streamline this process, to minimize their headaches and their potential liability, I really feel it's important to reiterate the statement that Jeff made, about compliance.  Because if it is not going to be ICANN staff or board, enforcing compliance and representations made by the applicant, the answer to the question of who will step forward I think is a very scary one.  And that answer to the question would not be in the best interest of the Internet or the ICANN community.  Particularly those people that have been participating in the ICANN process dating back to the Green and White paper.  Thanks.

Avri:       Okay, I have Chuck, I have Eric, and I wasn't sure… J. Scott, were you putting your hand up, or just…

J. Scott:   No.

Avri:       I wasn't sure.  Okay.

J. Scott:   [inaudible – not on mic 02:18:39]

Avri:       It's a wonderful thing.  Okay, Chuck.

Chuck:      Thanks, Avri.  Ken, there's one… I think you and I are pretty close to the same page, but there's one thing you said that I disagree with.  I do believe that as a committee, and the recommendations that were approved, were that everybody had to meet some minimum level of criteria to ensure stability, security and inter-operability of the Internet.

Paul:       Period.

Chuck:      No, for the minimum.

Paul:       Period.

Chuck:      No, it was not period, Paul.  In our recommendations… and again, we're not here to re-debate the recommendations, but we did say, and it's in the document, that applicants… that there should be reasonable evidence that applicants can do what they're proposing.  That's in our document, in our recommendations.  That goes beyond the minimum if somebody's proposing

something.  If I'm proposing a global TLD, not some local community, I'm going to need a lot more name servers around the globe to really offer good service, if I'm committing to good service, and I don't have to.

Paul:      Maybe not.  Who's making that judgment?

Chuck:     Paul, what I'm telling you, the recommendations are what I'm saying.  They have already been approved, and we… everybody has to meet a minimum.  If I'm proposing more than… something that needs more, I need to demonstrate that.  It's not going to be a perfect demonstration, but there needs to be evidence, and I'm fully in agreement with you that it's okay to show that you can scale.

Male:      [inaudible – not on mic 02:20:28]

Avri:      Yeah, I mean, basically… you have to use your mic to speak, but the recommendation only talks about the minimum, even though there were certainly discussions about other things, the recommendations, when we voted on the 20 recommendations and guidelines, they were fairly specific.

Paul?:     So, hypothetically,  I could propose for 30 or 40 TLDs, meet the minimum requirements, and then do just enough to get them put in the root, throw them on the back burner for a few years while I concentrated on a few, and then deprive the communities that could have been served by these TLDs more effectively.  That's the kind of stuff I'm talking about.  That's where my concerns are.  There has to be some sort of a commitment to action if you're going to do a TLD.  Maybe that's something that needs to be included in the RFP.

Avri:      Thank you.  Eric, you were actually in the queue.

Eric:      Thank you.  This is Eric Brunner-Williams.  At the Rome meeting, I made the point to the Board that bad standards for proposals drive the proposants to constructive if not direct fraud in the preparation of their proposals.  The desire to have some kind of performance minimum requirement may lead us in that direction if we don't… if we're not careful about things.  The example of dot museum was given as an example of something that didn't actually need to be scaled or scoped as if it were a dot com competitor.  So I want to point out that performance is not a universally useful metric.  I ran across a figure

recently about a seven second resolution globally from a particular platform provider who's present here, and that number in itself doesn't answer the basic needs of a community that presently has no name space. So when we look at de minima, and when we look at however we choose to couch what kind of a technical evaluation we're going to be building into this process, I want to remind us all to be careful that we don't encourage a kind of constructive fraud in responding to artificial requirements. Thank you.

Avri: Okay, thanks. That's the end of the queue at this point, so…

Kurt: Oh, so I just had a couple of comments. One is balancing contracts that are the same versus different contracts. And what we've heard the GNSO say through its recommendations and meetings like this, is that the differentiation of representing a community is a special case that should be accommodated for in the application process, and then that identification of association with a community is carried through, and considered during the evaluation, and also considered in the on-going operation of a TLD. We didn't hear a lot of other, you know, issues where we would have different contracts in order to be able to effectively administrate the name space. So we have identified the identification with community as an important distinction that should be taken into account in the on-going relationship of a registry and ICANN.

And second, it's a completely different topic. "Minimal" does not mean de minimus, or it doesn't mean small. It means appropriate and adequate. But the right word isn't "maximum." It's that you have to meet the baseline, you know, the baseline criteria. So that doesn't mean something that's very small. It means something adequate.

Avri: Chuck. Chuck has a…

Chuck: Okay, I want to point out two of our actual recommendations. Number four, strings must not cause any technical instability. That's minimum, for everybody. Number seven, applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

Now, I understand the complications of that, but that was the recommendation.

Avri:          Okay, I've got Steve and Paul.

Steve:         Avri, this is Steve.  My question was really just a point of order.  The staff listed five questions that they wanted us to discuss under this general topic, and I wondered if we are going to move… very few of which have been touched on yet.  I wondered if we were going to move to that?

Kurt:          We could.  The first one is the RFP information.  And so when evaluating, for example, technical and business criteria, that provides a lot of information to ICANN we have just been talking about, about that.  And so there will be baseline criteria that have to be satisfied in order to be approved for a TLD.  But that information can be used in an on-going basis.  If I think about the sTLD rounds, or the previous rounds, you can identify part of the nature of the on-going relationship between the registry and ICANN in some of that information.  So, we intend… there was a recommendation about contractual compliance, too.

               And we also want to be effective in the services we provide to TLD registries, so we see part of the RFP information going to pass or fail, but also use that information to direct on-going relationships with registries.  So what are the risk areas of this registry?  What actions can we take to ensure stability, whether we call it a risk assessment sort of thing on one side, or a more positive take is, you know, some sort of stability assessment.  How can we use that information to point ICANN activities in an economical fashion towards certain registries, how we're going to work with certain registries?

               So we're not… if I'm being clear, we will not only use the information in the RFP to make the pass/fail judgment, but then we will synthesize that information and say, here's how we should start working with our registry to help do whatever ICANN needs to do to ensure stability and maintain its role there.

Avri:          I have two people.  I have Paul and Jeff, so far.

Paul:          To kind of tie in what Chuck finished with, and what you… in the second bullet here – purpose.  So Chuck said, "Okay, well, the technical evaluation depends on what purpose you say in the RFP."  Did I get that right?

Chuck:         [hard to hear – off mic]  That's what the recommendations said.

Paul:       So, is that purpose going to be used for some other purpose later in the application, right?  So here on the second bullet point, let's say we're both applying for dot web.  And I say my purpose is, I'm going to service a thousand customers with it.  And you're going to service 10 million.  And then so I size my technical capability for a thousand, you size yours for 10 million.  We both pass that bar.  Now, later in the process, you know, is that purpose that I said… I'm going to use it for 10 customers, and you're going to use it for a million, is that going to benefit you because you're serving a bigger group of people?  That's my question.  How is the various…

Chuck?:     Our orientation there was really to deal with the concern that Ken was dealing with, that you don't impose a dot com technical requirements on a small registry.

Paul:       No, it's that you do impose the dot com requirements on something that you purpose, that's going to compete with com.  That's how I'm taking it.

Chuck?:     You miss my point.  One of the… in our discussion of this, we talked about the fact that we didn't really want to have huge technical requirements on a small registry.

Paul:       But you do want to have a huge technical requirement on a big registry?

Chuck?:     We didn't say that, Paul…

Paul:       Okay, good.

Chuck?:     …but we did say that there should be reasonable evidence that the applicant can do what they say they're going to do.  Now, you're right.  They can say minimal requirements, and totally game the process, I understand that.

Paul:       I'm not saying "game it."  I'm saying, how would you use it later?  Would that be used later, in some other, you know, one of these decision points?  "Oh, you know, you said you're serving a small community.  I'm serving a big community.  So I win because my number of registrations is bigger.  Or my purpose is more altruistic or better somehow.

Kurt:       Yeah, so I rise to a point of order.  I think we're talking about something other than that.  Which is, ICANN… I don't think this is really controversial.

Paul:       It's exactly number two, right?   Could there be additional purposes to the information?  So, if you seek some information from me, how are you using it, for what purpose are you using it?  That's my question.

Kurt:       And this is about, essentially, post-delegation.  So you've proposed a… your model, or the assessment of your application is that you meet the baseline criteria, but there's also information that indicates there's certain risks associated with the delegation.  So ICANN could use that information to kind of target its efforts at TLDs to provide services or ask questions on an on-going basis.  Rather than treat every registry that's delegated exactly the same, it could use information after the delegation process in order to inform frequency of communication, or types of questions, or something like that.  That's… so it's essentially a post-delegation…

Paul:       Okay, I get it.  I thought it was during the process.

Kurt:       Right.

Avri:       Okay, I've got Ken and then [inaudible – not on mic 02:31:15]

Ken:        Yeah, I'm going to take you back to comments that Karen made with respect to allocation methods and so forth.   Item number 2, community-based applications.  I asked Karen before I started whether or not she thought this was a good time to bring this up, and is this… do you want to talk about this now, Kurt…

Kurt:       I don't care.

Ken:        …or is this something that you think we should talk about later on?  I don't want to…

Kurt:       I don't know where you're going, so go.

Ken:        Well, basically, you talk… there were questions, obviously, that the staff has that you guys want to be able to work with so that you can go to the Board and so forth.  And you asked about… I'm going to repeat it.  "If applicants identify themselves upfront as community based applicants, and they have the option to select and subject other applicants to comparative evaluation, is it the intention that these applicants should have an advantage?"  That's a question that you're asking us to give you opinions on.  "And if so, can this be

harmonized with principles of fairness and non-discrimination?  This area may present challenges of perception, as there's likely to be significant diversities."  Now…

Karla:      This is slide… I'm sorry, this is slide 27, for the remote participants.

Kurt:       Yeah, but let's not… wait… we're not going to go to slide 27.

Karla:      But all of the questions…

Ken:        I didn't want to.  That's the reason I asked if you wanted to talk about it now.  If you want to wait until we get to…

Kurt:       No, I just want to talk about this one.  So this is slide 18.  But I don't think this is… anyway, it's ICANN's intent to, you know, in the spirit of trying to be economical and effective to use information we get from the RFP to direct activities after the delegation.  So I think that was kind of a smart thing for us to do.  So some of these slides work good, and some of them don't.  So I think we should move on, unless you have something to say.

Avri:       Okay, I had Marilyn and Steve on the queue, unless they're saying, "Move on."  Okay fine, I just didn't want to give you a chance to…

Marilyn:    I'm just going to say one thing, because I know that in the RFP you are telling people that you are going to use that information, therefore you've disclosed to the applicants, and you should be using the information.

Kurt:       Slide 19 we've discussed quite a bit.

Avri:       Fine.  So we can go on.

Kurt:       Slide 20 starts a discussion that we could talk about a long time, but… well, let's introduce it and then decide how long we want to spend upon it.  But it's about, you know, whether back-end providers or… I'd rather call them registry operations providers or some better term, whether they can be qualified or certified.  Some of the issues associated with ICANN having relationships with qualified providers, whether that's a separate form of agreement, which is not a great, desired outcome.

Can you go to the next slide, Karen? So, there's a series of complexities… you know, any time you try to do some good, there's a series of complexities that arise that make it somewhat problematic in this case. You know, if registry operators were qualified, would there be a contractual relationship, or could there be an annual qualification that's kind of like renewing your driver's license? Would there be any fees associated with it? You know, and what would be an on-going compliance framework for checking? Would it be the one time a year thing? So it becomes… we're trying to, in this process, have applicants that meet the technical criteria. A qualified registry operator would meet the same technical criteria, so… While we've talked a lot about that, we really haven't moved this down the path too much, and it might not be in place for this round. But I thought we should discuss it, since there's a lot of interest in it.

Avri:    Okay, I've got Paul, Chuck, and Adrian.

Paul:    I kind of see it as ICANN is Boeing, and they're looking for suppliers. So in order to…

Male:    There's a comment from the phone line – if all of you can get closer to the microphones, it would help.

Paul:    I'm practically swallowing it. So, I'm thinking of it as ICANN is Boeing, and you're looking for qualified suppliers, just like you can't supply anything from pencil sharpener to wings to Boeing unless you're a qualified supplier. So that's how I look at this. It doesn't necessarily need a contract. It just needs a yes, you've made a check box, and you meet the minimum bar.

Chuck:   And, in fact, in the past, I mean, the idea of using back-end providers for registry services is not new. And we have not needed any contractual relationships with ICANN for those providers for those particular TLDs today.

Karla:   I want to make one quick comment. When we discussed about the diversity of future applicants that we might have, and some of the challenges those applicants might have, like the Mongolia example that you pointed out. We also talked about whether or not this would be something that would help in the process of adding diversity, making at least the information available to these future registries that they are able to partner. You know, this is one of the options that they could have in the future. Now, I'm not saying how they

should do business as a registry, but one of the thoughts behind that was actually to help these newcomers with some of the technical challenges you describe, to be able to meet this minimum requirement.

Avri:       Okay Adrian.

Adrian:     Yeah, when I first made this request to the Board some time ago, I did it with the intent of two things. One, to allow those that were outside… you know, I kind of considered that the existing gTLD registries were already 'certified', in inverted commas. And therefore wanted to open the door for others to be certified to the same level. So I sort of, when I first thought of this idea, I thought, "Okay, let's take the dot net contract," or whatever. I understand what the whole minimum requirement debate on dot net may be crushing a nut with a sledgehammer, sort of thing, for some of these registries.

The second purpose I brought it up was to try to make the new TLD process more efficient, in that you could take the technical evaluation out of the entire process. And if you use one of these selected, certified guys, that doesn't even get reviewed. That seems to be becoming more problematic with the view that you are now judging the technical criteria with the business model, as Chuck brought up with respect to one of the recommendations, saying that, if you're certified, does that mean you're certified for huge registries, or only for small registries, you know? So the bar that you're… with which you're going to have to be certified would have to be substantially higher, I would assume, if you're going to assume that you are capable of covering all scenarios within a TLD. So you've got to be capable of running dot com, you've also got to be capable of running dot Adrian, which has two names, on a thing.

Is that making sense? I don't know if there's a question there, it's more just a point.

Avri:       Craig? You wanted to speak?

Craig:      Sure, this is Craig Schwartz. So I'm not necessarily sure that I agree with Paul's comment, that it's just like Boeing selecting a new vendor. And this kind of tags on well to what Adrian just said about qualifications, and that is, you know, you could streamline the process, but what happens… You get certification six months from now, what happens next year, and what happens

the year after?  So what's the on-going… what are the on-going requirements for the certification?  Because if you think about  what the technical provider does, it's ensuring the security and the stability of the registry.   It's not necessarily the delegated sponsor, but it's the back end provider that makes things work.  So if you look at, you know, stepping into the future a little bit, how often do they need to be checked, who do they get checked by, what are the on-going compliance…?  You know, there's a whole new compliance function that needs to be created to service it, and while I'm not saying that this is not doable, you know, you need to look at timing, you need to look at resources…

Adrian:    How is that being done now, Craig?  You've got dot net, and VeriSign, with the dot net contract, said they were going to do that.  Who's checking them?  You're already supposed to be, I assume, supposedly verifying that these guys are doing what they said they'd do.  So the short answer could be, once you're blessed, you're blessed.

Chuck:    So you said before that these folks in the G space were already certified, and I wouldn't say that they are.  They're recognized for the time and investment that they've made in building their services and promoting their services.

Adrian:    Well, I think it's not about certified as in a continual certification.  Maybe if you change the word to, you've been given a nod once by ICANN, therefore…

Chuck:    But does us giving the nod once, is the nod forever?

Adrian:    So how often are you checking if VeriSign is doing their… you know, or Affilius, or wherever?

Chuck:    I'm not saying that we need to, but if we're going to put a stamp of approval, and give this qualification or certification designation, doesn't it create some on-going obligation for us, to ensure that that certified…

Adrian:    Well, what if it wasn't on-going?  What if it was across applications?  So, could you be certified… if you are certified once, or given a tick of approval once for an application, and you're the back-end provider for 20 applications, do you have to be reviewed every other time.

Chuck:     In what you just said, I think there's an opportunity to look at a product similar to that, that you passed once, and in on-going rounds, that you've been recognized as a qualified provider. I just… I…

Adrian:    I get the complexities of it, and the issues… complications.

Avri:      I've got a long list. I've got Mike Palage, I got Paul, I got Ken, one I can't read… No, it's not Adrian. Adrian has a recurring position on the list. I think it's John, but I'm not sure. I got Olga, I got Chuck, I actually put myself in for a comment, and I've got Marilyn. And Werner and Eric.

Mike:      So I will go there, Avri, if I may.

Avri:      Yes, please.

Mike:      Thank you. Two comments on this particular discussion point. The first is, I do think, in any type of certification process, there needs to be a tiered approach. And I make this statement having dealt with some registries that are under 10,000 names, some registries that are under 1 million, and some that are under 10 million. I think that one size fits all is not the approach for registry certification, and that any certification process must take a tiered approach, or else I would submit that it's fundamentally flawed.

The second comment on this is with regard to, if you will, a separate accreditation or contractual scheme by ICANN with entering into infrastructure providers. I somehow question the appropriateness of this. I don't see ICANN necessarily going to VeriSign and saying, "We need to accredit your ISP provider, your tier one provider, or this provider, or who your DNS infrastructure provider is." I believe that once someone is accredited, if in fact they are meeting their SLAs that are contained in their registry agreement, if they are meeting their service requirement, that is, in and of itself, the necessary, on-going certification.

If you have a registry that fails to meet those SLAs, I believe in that situation compliance should go and undertake a review of the technical representations and qualifications of that infrastructure provider. If in fact ICANN feels that they need work for their compliance department, to keep them busy, what I suggest is possibly looking at the reseller market that probably gives more rise to security and stability concerns than back-end

registry infrastructure providers.  So that's my comment on that particular point.  Thanks.

Avri:       Okay, Paul.

Paul:       On one hand, I agree with Michael – one size doesn't fit all.  But just like, you know, socks that stretch… it fits different size ankles.  So, what I'm saying is, if you're going to certify somebody…  Crazy, yeah, crazy analogy.  I was going to say "underwear," but…  …you have to demonstrate the ability to scale.  That's my thinking.  I mean, if… that would cover all tiers possible.  So if you're small, covers that.  If you end up being big, covers that.  I think, going in, you don't need to demonstrate you're the size of VeriSign to any degree.  I think it's the minimum one, but yet you need to be able to scale.

A point to Adrian - if we go along with this… you know, if this is actually the result, we have these certified, back-end providers, and when an applicant applies, they can say, "Yes, I'm using back-end provider number three."  But they don't have to use any of them, so it doesn't necessarily take out…

Female:     [Inaudible 02:46:38]

Paul:       Okay.  You were thinking that it would take out that step entirely.

Adrian:     Can I answer so it's on the mic?  My thinking is, absolutely not.  That you can just make the process more efficient by choosing one of those guys, or you can go about it yourself.  That's what I meant.

Paul:       I think another… final thing I'm going to say… another benefit, I think, of this certification thinking is everybody knows what is certified and what isn't, so that we have a bunch of examples.  Right  now, you know, I don't know that… are these ccTLD registries, can I use them, is that going to pass?  Can I use [Centralnick 02:47:12]?  You know, a third-level registry?  You know, what?  Give me some examples of what would pass the bar – that's another benefit of actually having the certification processes.  Everybody would know what good examples we have.

Avri:       Okay, I've got Ken, John, Olga, Chuck, myself, Marilyn, Werner, Eric.

Kurt:       Whew.

Avri:       Hmm?

Kurt:       That's going to be a long time on this topic.

Avri:       Yeah, and then… Did you want to say something now, or did you want to be on a queue?

Male:       [Inaudible 02:47:41]

Avri:       Okay, then.  Go ahead.

Male:       So, two questions.  So Paul said you should have to demonstrate ability to scale, and one of the big things we're struggling with is how do we have measurable, objective criteria for things, and how on earth are we supposed to… somebody submits a piece of paper, how do they demonstrate ability to scale measurably and objectively?  How do we score that or rank that or… If you have any ideas on it…?  I didn't say it was easy.

Avri:       Okay, Ken.

Ken:        Well, I just want you to know we're available in Spandex in five different colors.   But aside from that, I would like to support the comments that Mike Palage made.  I'm very concerned about setting up some sort of contractual relationships between technical, back-end providers.  In my opinion, ICANN's primary responsibility is to deal with the registries.  I would hate to have a situation where, as a registry operator, I suddenly was informed that my technical back-end provider may not meet ICANN's criteria anymore, and that, if they de-certify him, I have to go run around.  I think you need to keep the contractual relationships and the obligations for performance at the registry level.   These guys are businessmen, they're outsourcing their services to various people – whether it's Iron Mountain, whether it's the DNS people, whether it's the registry technical people, it's their responsibility to make sure that the people they are vesting with the responsibility of helping them to meet their commitments are doing their jobs.  Not your job.  And it just… it's more bureaucracy, it's more opportunities for breakdowns in communications.  There should only be one person you should have to pick up the phone with when you have an issue like that, and that is your contact at the registry.

Avri:        Okay, John.

John:        Thank you.  Just to have it mentioned before this considering a certification procedure, one should also consider that it would be appropriate to also say to one of the classification societies, which have a vast experience in doing exactly this sort of thing, and which has an international presence, and are able to guide those who are not close to neither English nor America.  It is a possibility.  I just wanted it to be mentioned to be, you know, in the back of our heads.  Thank you.

Kurt:        Thank you.

Avri:        Got Olga, Chuck, myself, Marilyn, Werner. Eric.

Olga:        Thank you, Avri, this is Olga Cavalli.  I have a question and a comment.  The question is, are all ccTLDs… will be considered qualified technical service providers?  Because as far as I know, not all ccTLDs have the same relationship with ICANN.  And my comment is, I have participated in many international tenders for telecommunication services, and you said, "How to show experience?"  Well, how can you pick up a good, qualified service provider?  By showing experience.  If you are handling this many number of registers of names, if you're operating here, there and there, and you're stable and you're good and you have a good reputation.  It doesn't matter… it's valuable.  That's how [intellicommunications 02:51:28] work, and I think that could be a good example.  Thank you.

Avri:        Chuck.

Chuck:       I'll be brief, because some people have said part of what I was going to say.  But first of all, I think it's important that we recognize that there are two different settings that we're talking about right here.  One of them is this thing we're calling certification of back-end providers for an application round, and the other one is this on-going certification issue that has been raised as well.  I think that one is best… I don't see that ICANN needs to get involved in that part.  The contract is with the registry, registry operator, whatever we want to call them.  They are responsible for fulfilling what they've contracted to, and they would be crazy not to have a good contract with their provider.  I don't think that ICANN needs to get in that relationship as well.  That definitely complicates it.

Now, I do believe there is value, though, in some way, like Adrian communicated, of facilitating the process. It should reduce costs for applicants and ICANN's evaluation, it'll reduce costs for back-end providers too, if there is some way that we can facilitate the qualification of back-end service providers. That shouldn't in any way reduce the possibility of somebody new coming into the game, but it's just a way of reducing costs and streamlining the process.

Avri:       I have myself. While listening to all this… and I don't necessarily have an opinion on whether one "ought to," I had thought that this was… one of the reasons it was being looked at was to make things easier for the process. One of the things that I… that came up while listening was that existing registries that could provide such a back-end service is not necessarily… and the fact that they can do it for themselves and do it well is not necessarily the same set of criteria as being able to provide a service. So if ICANN was going to get into the notion of pre-qualifying or certifying, the set of criteria would be in addition to the ability to run your own registry, and have shown that. And so, that's really all I was commenting on.

Kurt:       Thank you.

Avri:       I have Marilyn, Werner, and Eric.

Male:       Marilyn's left the room.

Avri:       Marilyn has left the room. Okay. Well, I'll keep her at the top of the list until we hit the bottom of the list. Okay, Werner.

Werner:     Okay, I'm a bit concerned about the idea of certification because it has many side-effects that are undesirable. The ones that come to my mind, the first one that comes to my mind, is what I will call nobility for the sake of nobility. You know, ICANN distributing nobility titles, I become Baron of CORE, and Chuck becomes the Count of VeriSign [laughter], and so on. So basically, ICANN is in the business, in our already very feudalistic system, of distributing nobility titles. And these have a natural tendency to become an end in themselves, even if it facultative, even if you don't have to be Count, but, you know, people will stop trusting anybody who is not Count or Baron or something like that. So that's a danger, you know, is something we should not go into.

Secondly, there is, you know, an inflation, a natural inflationary effect of pointless requirements, you know. You may say, look, if you want to be a tier one, or something like that, you must do 100 million requests per day. What is that going to any good for a given TLD that has whatever, 1000 or 2000 domains inside? Whereas this specific TLD may have totally different, very important requirements for that specific purpose, which would not be part of the requirements, which essentially comes with my third concern.

It would lead to neglect for important, appropriate requirements. So we look at some things, which become… so, the focus was the important things for the specific TLDs that may have different requirements would be neglected. So probably the best view would be not to look at this as a component of the current framework. Consider SLA verification as the method, because SLA criteria usually scale with size, automatically, if they're well done.

Avri:       Okay, thank you. I've got Eric, and a question just came up – is, in terms of schedule, we're at 11:30. If anyone had to check out of their rooms before noon, well, it's 11:30. Okay, Eric.

Eric:       Thank you, Avri. This is Eric Brunner-Williams. Streamlining the process doesn't look the same to the proposants as it does to rest of the process, that is to ICANN and people who are not proposants. I want to repeat my reference to my much earlier remarks at the Rome meeting, that we have other ways to affect cost, the total cost of preparing a proposal, than just making a box where we can tick, or a proposant can tick, that they are or are not using a technical service provider who is qualified. Having written the escrow section of the biz proposal, and some that came afterwards, with… Well, if ICANN were looking at this… the idea of having a registry on technically qualified service provider who wasn't operating a current registry. Having that for the purposes of solving the escrow problem would be very sensible, in my view, but otherwise I don't see the great utility for us here.

If ICANN were to have a test bed for which it was doing some technical exercise which was set to the technically… the qualified technical service provider, that too would be sensible. So if we have this kind of thing, I think it should solve the escrow problem for ICANN and registries. And it should also be demonstrable for some kind of test bed activity, where we can actually get the registry operator to do something useful.

I'm broadly critical of this idea in the first place, but if it is adopted, it should be used to solve some actual problems that don't have solutions presently, such as the registry escrow problem, and doing anything useful with any test beds. Thank you.

Avri:       Okay, I have Jeff next.

Jeff:       Thanks Avri.  I just want to respond to the last two speakers.  The first with Werner said that to certify a registry would give them some sort of royalty or title.  You know, ICANN certifies registrars, now.  They accredit registrars. And I don't think that registrars view themselves as having some sort of royalty, or title.  So I kind of don't believe that.  What I do believe a benefit is, and this addresses a comment that Eric raised as to how a proposant, I guess is the word he used, would view it.   I'm sure a proposant would be thrilled if it lowered the cost of their application.  In other words, if somebody's already accredited for the DNS functions and the SRS functions, if that would drop $100,000 off the price of a bid, I'm sure the proposant would be thrilled about that.  And the third thing is, going back to one of the other comments raised, there could be things in a proposal that are above and beyond DNS, SRS and [who is 02:59:56], and if that's the case, they should only be accredited for DNS, SRS and [who is], and anything above and beyond that should be evaluated.  No one… I don't think anyone is suggesting otherwise.

Avri:       Okay, thanks.  Other than Marilyn, still on the list but still out of the room, I don't have any more on the… okay, J. Scott.

J. Scott:   This is J. Scott.  I just want to answer the question that's been asked.  This is separate than the certification.  The contractual framework, as Ken said, is going to be easiest if it goes right to the registry operator.  That's what you need to do, and you need to draft your contract so that you have the right, and they have the right, to make sure their agents and representatives cooperate with ICANN.  You also need to make sure that you're an established third party beneficiary, so if these people blow out of the water and disappear, you can step in and take over and function as the registry representative in the event that they don't appear.  And those are the things you're going to need to do.

As far as this certification issue, with regards to making a streamlined process, if that's the way we want to go forward, that's a totally different question than what's been asked here. Contractual relationship needs to be with the registry. You need to draft your contracts so that they are forced to have their back-end providers and sub-contractors deal with you in a timely and efficient manner or they're in breach, and if they disappear, that there's protection put in place where ICANN can step in as that functioning registry and take over for security and stability purposes.

That's the end of this question in my mind.

Avri: Thank you. Adrian.

Adrian: Just very quickly, yeah, I think that you can view this in isolation, but the whole point of registry file-over comes into play also with certification, so that in the event a registry goes down, you've got a list of people that, in a further taking of this notion, further forward… This is maybe not a new TLD thing, but it could be that you could select… you could put yourself down if you wanted to go about getting this certification, and paying for it with ICANN. Then you would then be on the list, for yourself to be able to be chosen.

Avri: Okay, thank you. We have what, three more discussion topics in this one?

Kurt: Yeah.

Avri: Just so you know, we've already overrun this session by about 20 minutes.

Kurt: Okay, so… Okay. The next topic is about rounds, so we're going to launch an initial round, and also announce we're going to have a subsequent round at the same time. So the issue for us is the timing for that, and so this is sort of a nuts and bolts implementation question, but we think that there might be some tweaking of the process or some lessons learned from the first round. So I wanted to get some of the… we wanted to get some of the expectations about the timing between rounds and the specificity of the announcement on the second round, because we think there might be some learning to do at the end of the first round that needs to be input into the next.

Avri: [very faint] Okay, I have Ken, I have Adrian.

Ken:       Kurt, I'll make this very easy for you.  I don't think we need to spend that much time on it.  I think in the long run you guys are going to have to work on a schedule that makes it realistic for you.  I would not, frankly, consider making commitments that I was absolutely certain I couldn't keep.  Right now, we've run into too many issues like this in the past.  If ICANN has a commitment to an ongoing process that allows them to manage it in a way that is efficient, effective and fair, I think that's all the public needs to worry about at this point in time.

Telling them you're going to do something 18 months from now, you have no idea whether you can do that.  What happens if you get 800 applications?  I don't care how good your providers are, you could get 8 or you could get 800.  Why promise them 18 months when you may not be able to keep that promise, or it could be the other way around, you may be able to do something in 3 or 4 months.  So just commit yourself to a process that's orderly, structured, transparent and fair, and make it clear that you have resources…

You're committing resources and budgeting in a way that allows you to operate effectively.  You can't go way up, then cut way back, way up then way back, because cost burdens are going to get thrown all over the place on people.  Thanks.

Avri:      I have Adrian, and then Mike Palage.

Mike:      Yeah, I think, unfortunately, the recommendation states that you have to say when the next round's going to be, and we're not re-opening the recommendations.   So, if that's the case, I believe the recommendation was put in there so that you wouldn't get inundated by applications in the first round through fear of people thinking this was going to be the be-all and end-all.  So that, hopefully, people would see that there was a horizon, and that if you didn't get in this round, you would get in the next.  So I believe you have to put a timeline down.  And whether that timeline is a long period of time, you know, take a number and times it by five, in order to accommodate a ridiculous amount of applications, that may be one thing.

Secondly, as far as what the actual structure of the next RFPs going to be, I would personally try to keep that as loose as possible, because I think you're

right, Kurt, you are going to have to work in quite a few learnings from this process. And you'll learn every time you do it. So putting strict criteria down now as to what the next round may be may do you more harm than good.

Kurt: Yeah, thank you.

Avri: Thanks. I have Mike Palage, and I put myself in. I have Dirk.

Mike: Thank you, Avri. I would tend to agree with the points that Adrian raised. It was in a recommendation that there would be some type of benchmark for people to understand when the next round would be coming, and if in fact you're looking for a date, I think 18 months would be a good number, and the reason I use that is it allows one year for ICANN to learn about the complexities of the process. And as we saw in the 2004 round, the sTLD rounds, the problems were identifiable to the expert bodies early in the process. So within 12 months, ICANN should be able to get the on-the-job training that they need to allow for any course adjustments, and that allows for a 6 month, if you will, implementation or change of direction, to allow the next process to begin.

In the documentation, they talked about creating a list of reserve strings that would be excluded from that second round based upon those TLDs that were still being evaluated. My opinion is, I think that that is, again, the right approach. And unless you have some clear benchmark of when people would be able to come forward for that second round, you will only increase the number of people coming forward in the first round.

Avri: Thanks. I had me, Dirk, and then Ken. I was just basically going to say what Mike said, so I'll just pass the list on.

Mike: Did you have me on there?

Avri: Oh, yes I did have you on there. I had Mike, sorry.

Mike: No.

Avri: I had you after Dirk and before Ken.

Dirk: Okay, I think… Dick Krischenowski. I think this next round is an absolute must as explained. And we were originally discussing if this upcoming round

is starting with an on-going process where you can apply at any time at ICANN, and it's getting to be a round now, and I think 18 months is a quite long time. I would really shorten this. Why not having this in the last quarter of 2009? That's 12 months, and I can't think that so many issues, new issues, are really coming up to create a complete new gTLD process in the next 12 months. So 12 months would be fine for the next round, but 18 months is quite a long time. And if applicants see then another 18 months, so 36 months from now for the over-next round, that's so, so long. It's not really good, I think.

Avri:      Okay, I have Mike.

Mike:      So I just… I think that the reality is that people who are going to do a new TLD are going to do it in this next round. Nobody is going to wait for ICANN to come up with a second round, because I agree with Ken, you can't commit to a certain date, and even if you did, I think it probably wouldn't be believed, anyway. So yeah, I think the recommendation that I would make is just to have a loose time frame. Say that we intend to analyze the output from this round, the issues and concerns, and have a public comment period, say maybe six months after the application process, or something like that, but don't make any commitments. Just say that we anticipate there will be future rounds in 2010, or something like that.

Avri:      Okay, Ken.

Ken:       Well, if I was Kurt, and if I was the people involved in the budgeting of ICANN, I'd probably be taking a real deep breath now, because I'm going to have to significantly increase my staff to deal with the implementation of the TLDs that were awarded in the first round. And by that I mean, just because you've got a guy's signature on a contract, it doesn't mean it's all over with. You have the responsibility of getting these things up and going, and monitoring the implementation to make sure that the commitments that were made as part of the proposals are being kept. And you can't dump that on the existing staff that you have right now, because my guess is that those guys are already budgeted to do a certain workload that they were originally hired for. Now all of a sudden, let's assume for the hell of it, we end up with 30, 40, 50 new TLDs… easy number, easy number when you add IDNs and the various groups. You are talking about, not necessarily a nightmare, but a Herculean

task to monitor the implementation and putting these people on board. It isn't just a matter of dumping them into the root. You know that as well as I do. You have all of the arrangements that the registries have to have with re-sellers, you have… there's a million things. I think… that's why I don't think you can just pick a number out of the air and say it sounds good.

Avri:          Okay, I have Werner and Chuck.

Werner:      About the follow-on round, I've probably gone up to the mic every ICANN meeting to say that… to insist how important it is. You know, especially having seen what happened in the past. If there was no certainty, it would automatically delay things further, just by its own nature. If you just even consider making it an opportunity to improve the second round, it's going to be five years until the second round comes along. And that again means that not only do people jump on the first round, if they can at all. It means that those people who really should apply for a TLD, because that's the kind of TLD that we want, they will not even bother to, because it's just too insecure.

What ICANN owes to the Internet community is to make available a process that is reliable. Look at it as an engine. An engine has cycles, and that's how it works. If it just does one cycle, then stops, that's not a running engine. And it is of course economically highly inefficient if you have all the staff once, then fire them again, then five years later hire them again for the next, and so on. This is always going to be unpredictable. Only if there is a cycle that runs at a reasonable speed, in number of cycles per unit of time, I mean, do you have the predictability.

Which brings me, in the context of the current operation of ICANN, to one optimal cycle, which is six months. Then people will believe it. It means that, necessarily, these cycles will overlap, you know. Some of them will not be finished by the time the next application starts. Well, so what? Is that a problem? I don't see it as a problem at all. We have just initial, additional things to come up in the next deadline, and the follow-on deadline again, so people could easily plan. And I know many potential applications, potential TLDs who would not jump on the first if they had one for six months later or one year later. But if it's 18 months from the beginning that we're announcing, they will not trust it, and they will then either just give up all together, or jump on the first.

Avri:       Thanks.  I have Chuck.

Chuck:      For reasons already cited by Dirk and Werner, and I won't repeat those, we made a very conscious and deliberate decision to suggest that the second round should be announced when this thing goes out.  To change that now, and go back on something that was approved by the full council with various constituency involvements and so forth, I think would require going back to the full council, to change that direction.  I don't believe that the first round even has to be totally complete, if there are some stragglers in there, to start another round.  The majority of it will have been gone.  And nor do I believe that you've got to set a specific date and time, but a reasonable range, probably no more than three months, when a new process would be started, I think needs to be communicated.  And again, I won't repeat the reasons that both Werner and Dirk stated in that regard.

            And as far as the evaluation, it may still be going on.  And, in fact, I really think the evaluation of the process should be an on-going thing from the time it starts, so that we, you know, learn things as we go.  That should be an on-going process.  It won't be complete, by the time you start the second round, I don't believe, but everything we've learned could be included then.

Avri:       Thank you.  That's the end of the queue for this discussion topic.

Kurt:       Okay.

Avri:       We've got two more discussion topics, right?  Five more slides.

Kurt:       Yeah, so I think… so, they're big ones, though.  The next one is about string contention.  There's not really a policy recommendation about this, but there's an implementation guideline.  So, following that implementation guideline, it's the intent of that implementation to say that if any of the contending strings identify themselves as community-based strings, then they can choose to enter into a comparative evaluation among the other strings.  So there would be a comparative evaluation among contending strings, in the case where community-based strings are involved.  And then the implementation guideline says a process will be put in place to enable efficient resolution of the contention there.  So we view that as being an option at the end, to have an efficient disposition of what might be a valuable asset or not.  So, do you want to run the queue?

Dan:        You're welcome to run it yourself, if you want.  Adrian's in the queue.

Kurt:       So, let me see if I want to talk about… well, I guess we'll take questions.  You know, there's more slides about this, so I don't know if we want to kind of run through the slides and get to the discussion topic…  Yeah, so I think everybody has the gist of this.  And so… where are we?

What staff is doing right now is developing criteria for comparative evaluation, and we want to talk a little bit about that as one of the discussion topics.  And also, we want to discuss specifically what value being a representative of a community has.  And then, on the auction side, ICANN has done quite a bit of work to secure the services of an auction provider.  And, in the ICANN realm, if we're going to talk about feudalism, there might be multiple opportunities to use auctions.  In the case of a failed registrar, other registrars, successor registrars may want to bid on those names, so ICANN may want to run an auction for that, in addition to this proposed use, which would be the disposition of a string that's being contended for.  He said, dangling a preposition dangerously.

So the first topic, and we can get broader than the topic, but the first topic is that the staff took the GNSO input, the council input, from the very beginning of when we were debating whether or not there should be new TLDs and what type we should be.  We got input that community-based TLDs add value to the domain space, or have the potential for doing that.  So when you're doing this balancing, this comparative evaluation, and you're developing criteria, should you get a pebble in the side of, "Well, you represent a community."  And so, while it's not dispositive on the issue, in doing this weighing, you get some credit for being a community-based TLD.  So an example might be, you know, a generic TLD and a community-based TLD, all things exactly the same, you know, because you represent a community, you might win the comparative evaluation.  If you're representing a community of 100 and there is a generic TLD that will bring fantastic benefit not just to the Domain Name space but to society, or something like that, there's a set of factors that could win the comparative evaluation even if you're not a community-based TLD.

So it's kind of a hard problem. The gist of the question is, what kind of credit do you get for being a community-based TLD. The staff implementation envisions putting a pebble in that side, or a rock, but… is that all too…?

Avri: Okay, on the list at the moment I have Adrian, Paul, Steve, Eric, anyone else? Okay, Adrian.

Adrian: Yeah, it was just actually a clarification. I think Craig has made it for me. So, Kurt, you would only go to auction if neither party wanted to be comparatively…

Kurt: Right.

Adrian: Right. So "neither" party being the word there… "neither." So, one person has to… as soon as one puts up their hand, then you've got a comparative.

Kurt: As soon as one community-based party raises their hand, you go to comparative evaluation.

Adrian: Right. Okay.

Male: Who would pay for that? How do you envision that?

Kurt: So, there's a lot of ways to slice this, and it's not settled yet. You know, if you think about an auction, whoever wins the auction is going to pay for it, because the auctioneer is going to get his slice off the top, and so the fees would just go to the auction provider, and ICANN need not be a channel for that. In the case of comparative evaluation, we can, using the diagram before, assume that x percent of applications are going to go to comparative evaluation. It will cost this much, sprinkled over all the applications. We're going to raise everybody's application fee 1000 bucks. Or we can say, "Sorry, sadly, somebody else has applied for your TLD, so now you have to pony up another 10000 bucks…" I'm just making this up, but one's an order of magnitude bigger than the other, say. "…in order to go through comparative evaluation." You know, the staff leaning is just to make it part of the initial application fee, because whether there's multiple applications for the same string is somewhat serendipitous.

Avri: I've got Paul, Steve, Eric and Olga.

Paul:       My… I don't… We need to know, what are the criteria that are going to be used to evaluate, you know, each one versus the other one?  You said, okay, if one wins, forget the criteria for a second, if one wins, they get a pebble on their side of the scale, I presume.

Kurt:       If one is a community-based application.

Paul:       Right, so if one...  Is that the only criteria?

Kurt:       No.

Paul:       If one is a community-based application, they get a pebble.  So the other guy doesn't have any pebbles.  So of course that pebble's more like a giant boulder.

Kurt:       That's right.

Paul:       Okay, so they win, is what you're saying.

Kurt:       No, that's not what I'm saying.

Paul;       Okay.  Well, what other criteria balances that on the other side?  Can you give me an example of one or two?

Kurt:       Yeah, so, from the sTLD round, in slide 29 there, we list a number of things that… Because it was an sTLD round, your application should demonstrate you do these sorts of things that are on slide 29 for adding value to the name space.  These are, you know, qualitative measurements.  I don't know if…

Paul:       So if one party has a community, and nothing else, let's say, and the other party has all of these, then you're saying that the non-community party might win?

Kurt:       Right.

Paul:       Okay.  Or, actually, they would win.

Kurt:       Whoever has the most weightiest pebbles wins.

Paul:       My question is, how much does the community pebble weigh?  Is it a giant boulder, or is it just equal to one of these pebbles?

Kurt:       Yeah, so this is discussion topic number four.

Paul:       Good.

Kurt:       What does it weigh?

Paul:       My next… just to make people… I'm also curious about… let's say I'm the Stahura community, and I want to get STA. It's not Stahura. Is it going to be taken into account how far away… you know, I'm the W3C, can I get WEB? I represent the community, and it's big, it's the Boy Scouts of America. Can I get BOY?

Kurt:       That's three scenarios in one sentence. That's pretty good.

Paul:       It's the same idea, okay? How far away is the actual string from my name or my community? Is that going to be taken into account? Or just…

Kurt:       Maybe… that's a good point. Maybe that's one of the… maybe that increases the size of your rock, right, if the string is clearly identified with the… You know, sadly, in this portion of the evaluation, these are not objective judgments.

Paul:       Yeah, but we need to know what they are ahead of time. These need to be answered. Like a FAQ, or something.

Kurt:       Oh, yes, and as part of the clear, published process, they will be.

Paul:       It'd be nice if there were some examples, you know. Even specific examples. W3C can apply for WEB, and it's close. Boy Scouts of America can get SCOUTS, but they can't get BOY. Or the pebble is giant for SCOUTS, it's huge, very big for BSA, and it's tiny for BOY. I would like to see specific examples so everybody knows what the real rule is, so there's not a lot of rumors and guessing.

Avri:       I'll put myself down for a comment later. I've got Steve, Eric, Olga, Ray, Richard, me.

Steve:      Steve Metalitz. There are two questions here, and the way you had phrased the question in the materials that were sent out is a little different than the question you just asked. Being a community-based…

Male:        [inaudible]

Steve:       Yes, I will.  Being a community-based applicant means that, looking at the chart down here in sort of the south-eastern quadrant, where there's string contention, if there is a community-based applicant, then it may go to comparative evaluation.  If there isn't, then it will only go to auction.  So one quest-…  I thought you were only asking the question of could somebody game the system by claiming to be a community-based applicant and force a comparative evaluation, rather than an auction.  Was that the question that you were asking, or was it… It was more the question of, when you're in a comparative evaluation, how much does this community basis weigh?

Kurt:        Yes, the second one.

Steve:       Well, okay.  I mean, I think for that one, I agree with what's been said, that there's a…  That we would need to have a fuller examination of what the criteria would be in the comparative evaluation process, and I guess that's part of the RFP that you're talking about.  And I would certainly agree that we want it to be as predictable and as detailed as possible in advance, but yes, inevitably there's going to be…  This is why we would have a provider that is to make a decision in this area.  And I think the weight of the pebble, I think we'd have to look at what the other pebbles would be.

Kurt:        Did you have 27 up there before?  Could you put it back?  Am I reading this wrong?  Not 29… 29.  Okay, thanks.

Steve:       The one that just flashed up there raised the other question, about whether you can self-identify as a community and therefore divert it into a different path.

Kurt:        Yeah.

Steve:       I think there probably should be some sort of mechanism for facially frivolous claims to be a community, solely for the purpose of getting it into that path, there probably should be some way to screen those out.

Kurt:        Right, and certainly self-identifying in the original application leads to contractual restrictions on how you can operate later on.

Steve:     I would just say that identifying as a community-based applicant has other significance in this process, farther up in the objection process too, but that's not what we're talking about here.

Kurt:      Correct.

Steve:     We're just talking about either there hasn't been an objection or the objection has been dismissed…

Kurt:      Right.

Steve:     …and you're down to string contention.

Kurt:      Right. So these are some of the other criteria that were identified in the sTLD round, and I don't know if there should… So, we're hob-nobbing with consultants and developing criteria, but besides, you know, Paul's good comment about the nexus between the string and the organization, which I think is a really good one, whether these sorts of things are too vague, or are there other criteria?

Avri:      [Inaudible – not on mic]

Craig:     Thank you, Avri. In part, I want to thank Paul for his opening, that is, for the first part of what you had to say, Paul. If the community is not dispositive, but merely a pebble, and we don't yet know if it's a large pebble or a grain of sand, I'm afraid that we're looking at a question that, to rephrase it less elegantly, is "How wealthy do you have to be to lock out a community?" Are we really back to the point where we have motor car companies buying out tribal names because they have more money? Or is the answer always going to be, if it's a small group of Amazonian Indians versus VeriSign, that the right answer is always VeriSign? Not to pick on Chuck, but you're the biggest gorilla here, so why not? [laughter]

Kurt:      Chuck loves it when you say that, you know.

Male:      Yeah…

Male:      [Inaudible – not on mic]

Craig:     I want you to know I'm getting paid for having mentioned VeriSign and Chuck.

Kurt:       Twice.

Craig:      But let's suppose that we did adopt that principle, which I think is a sick principle to adopt, but let's suppose that we did adopt it, and there was some theory of merit, other than community of origination of the proposal that leads us to… leads ICANN, leads the Board to make a delegation towards the non-community proposant. Why are we adopting this theory of merit, or why are we certain that we are only adopting this theory of merit during the initial award? How do we know that we're not actually adopting this theory of merit for re-delegation of existing ones as well? And if it is some kind of merit about how well… what additional things the successful applicant is bringing, which isn't part of the community, how do we know we're not opening up the can of worms that's already partially open, that is, IQ is not being run well enough, so we can involuntarily re-delegate it? Or, perhaps Myanmar is not run well enough, so it can be involuntarily re-delegated.

So if we have a theory of merit that isn't based upon some originating property, such as the community proposal, the community-based proposant as being dispositive. If it's not dispositive, how big is the can of worms that we are opening when we say that we have some other theory of merit that allows us to determine the award? Thank you.

Kurt:       Can I rise to a point of order?

Avri:       Sure.

Kurt:       The next slide is actually discussion topic five, which are… let's discuss examples of other criteria that could be used to resolve comparative evaluations. So they're really kind of closely related. So we can kind of catch up a little bit, and…

Avri:       So you're asking if we can go through those slides and then continue the…

Kurt:       No, so I've done it. The last topic is after the one just before, which lists some other potential criteria, so…

Avri:       But you seemed to already be talking about that.

Kurt:       Yeah, we're already talking about that, so that question's on slide 30. So we're talking about the 4$^{th}$ and 5$^{th}$ question, that have a close relationship.

Male:        [very faint – off mic] So it would be an exercise to write a switchback if you wanted to comment on the previous slide.

Kurt:        Yeah, but you can't leap ahead to the end of the presentation like you did before.

Male:        Okay.

Avri:        Okay, I have Olga next.

Olga:        Thank you, Avri.  This is Olga Cavalli.  It's a comment about auctions.  I have experience with auctions for a spectrum for wireless services, and as far as I have participated in these tenders and these processes, usually the spectrum goes to the company that has more power and more money.  So if communities are going to be participating in these auctions, and it's something that we talked yesterday night with Paul in the dinner, he said something which I think is relevant.  Perhaps you could think about how to design the auction, and not to make it so… the amount of money so relevant, and give opportunities to others that are not so wealthy.  Thank you.

Avri:        Thank you.  I've got Ray, Richard, myself, Paul, J. Scott and Ken.

Ray:        This is Ray Fassett.  I think it is important to point out that slide 29… sorry to jump back on you, Kurt… but those are all things that the sponsor team in the round that we participated in… that I personally participated in with ICANN, said they had to make future, subjective interpretations in order to arrive at any kind of conclusion.  So I think the last thing we want to do is go back to those particular criteria on slide 29.   I think the intention of creating separation, if you will, from a community-based application from the gTLD, PDP process we went through was to try to find a way to measure support.  That was the intention.  Does the applicant really have support, and then how can you measure that support?  Which is an entirely different concept versus assessing added value of the TLD, which was really, I think, proven… in our round that we went through, proven impossible for any impartial party to come up with any objective way to accomplish that.   But we thought from the committee that there was… could be an objective way to determine, an impartial adjudicator, for example, to determine whether the applicant truly does have support.  Thanks.

Avri:       Thank you.

Kurt:       So I have a response to Eric, and your comments.  So this comparative evaluation, you know, is a subjective evaluation, and so it's difficult from that point.  And so, I was listening to your comment, Eric, and then I kind of filed it away, and then I looked at this, which was sort of our… sort of the definition that was put forward for how sTLDs, how sponsored or community TLDs, create benefit.  But if you can create this benefit and be a generic TLD, then you're also bringing this same sort of value to the name space.  So I understand your comment completely, but I can visualize a gTLD that would bring more benefit by satisfying more of these criteria, than a community-based one.  So I'm not comparing VeriSign and some small community-based, I'm comparing, you know, another TLD that happens to be generic, not community-based, but provides all these benefits to the community in some other way other than just a community representation. Anyway.  It's the best answer that came to mind at that time.

Avri:       Dan, did you want to comment on that?

Dan:        Not a comment, but just, like, a question.  One of the things you want to get views on is, what did you guys have in mind?  And one of your recommendations was that the criteria have to be objective and measurable. And when we have stuff like this on the board, I want to know, are we meeting that recommendation?

Female:     No.

Kurt:       Right.

Avri:       Okay.  Right, yeah.  I've got Richard, myself, Paul, J. Scott, Ken and Kristina. So Richard.

Richard:    [Inaudible – not on mic 03:35:43]

Avri:       Okay.  Most of mine were already made.  One of the ones that I was kind of concerned was Paul's request for examples.  And while examples are… seem like a really good idea, almost any example I can conceive of having any validity would in some ways be talking about something that was possible.  And probable, and would somehow be trying to almost preclude…

well, then Boy Scouts of America can't apply, because we've already used them as an example. And it's not quite that strict, but I have trouble… There's a comforting notion in an example, but I really have problems with it, and an example, in that you either preclude something or it's totally unrealistic and has no bearing on reality. So I just wanted to bring… and now it's you.

Paul:   I'll start with that. Yeah, that's true, what you said. But also, if you don't have some kind of concrete examples, it's just too nebulous. You know, if I want to apply for dot BOY, and, you know, whatever… because it's Boy Scouts of America, and it kind of makes sense that, they really shouldn't get dot BOY, in my opinion. They should get maybe BSA or SCOUTS. Might be kind of funny. I'm trying to think of another one off-hand, but it doesn't matter. I see what you're saying, but we need precision and objective. And the only way I can see it getting more and more precise is by giving more and more examples, but I understand your point too.

I have three points. One was, for Steve Metalitz, about gaming it. If… I agree with him. If you say you represent a certain community, and it goes down the path, and it turns out you don't, well I think a pebble should be taken off your side of the thing. Otherwise, you're going to get people to say they represent it on the off chance that it runs through and it… there's no risk to them to say. So we should make some risk that if they lose, a pebble is removed. Maybe it's not a boulder, maybe it's a piece of sand removed, but some kind of negative consequence if you do that.

Number two, I had… Kurt said, well, if you claim a community, it's going to lead to restrictions. I think something like that he said. I'm wondering, like what? You know, what would the contractual… what would the restrictions be, and what happens if you, you know, if you break those. I mean, it seems like history shows, these restricted TLDs, once you get it, you kind of don't want the restrictions.

Male:   [Inaudible 3:38:42]

Paul:   Right. So maybe people are like, you know, "Oh, I have a community, and it's whatever, W3C, or the Boy Scouts…" Pick one, W3C, and I get dot WEB, and now, you know… it was supposed to be restricted for members of my consortium, or… they could just say, well, it's for everybody, and I represent

the web, so I should get dot WEB. What are the restrictions, is my question there. And I have a third point, or do you want to answer that one?

Kurt: We discussed earlier, thanks Paul, we discussed earlier that one area where there'd be a special place in the application among all the criteria would be identification as a community-based TLD, because we identified that as important in these policy development discussions. That was raised as an important issue, and that it therefore was important to have that community identification as part of the agreement. So that is the one area where agreements would probably be different.

Paul: So my question then is, if you claimed the community, can you not have any restrictions, or you must have some kind of restriction? If I claim a community, I'm W3C and it's dot WEB, can I say "I don't want any restrictions. It's totally open for everybody"? Or does that like negate my community claim?

Kurt: Right. So never say never, and never say always. My personal opinion is that a community identifier leads to restrictions.

Avri: Okay, so I've…

Male: That's one.

Paul: My third one, yeah. One last one. It's sort of related to the "Okay, I'm the Boy Scouts of America and I claim BOY," that seems kind of far away from Boy Scouts of America, maybe SCOUTS is closer, maybe BSA is really close. Okay, so maybe my pebble is bigger based on that judgment. Okay? Sort of like that. You know, when I kind of listened to all the previous meetings and whatever we've had over the years, when I hear "community," people talking about it, it's really from like governments, and it's more of a geographical thing, okay? Berlin, or Germany, or people in wherever, Samoa, want to get TLD, or the Catalonians, or whatever. So is that another kind of gradient there? Like, if you claim a government or a state or a city or kind of a geopolitical ethnic group, do you get more pebbles versus if you claim, you know, I'm the National Orange Pickers' Association? And I want ORANGE.

Kurt: Because that community is…

Paul:       Is not geographical.

Kurt:       More clearly defined.  A geographical community is very clearly defined.

Paul:       I don't know.  I'm just wondering.  In my listening, I think it's more… "community," the definition of community is more of a geographical impetus to having community.  And now it seems like we're getting far, far away from that, and any kind of community is always the same, because it has the word "community" in it.  And is there more weight given to a geopolitical ethnic group or that kind of community, versus some other community that doesn't have that?

Kurt:       Right.  So that's a good point, that could be a modification of the criteria, or included in the criteria.

Avri:       Okay, I have J. Scott next.

J. Scott:   To a point raised way earlier in this whole discussion, I think the costs should be spread, because if you don't spread the cost…

Kurt:       I'm sorry, J. Scott, could you start over?

J. Scott:   Yeah.  To a point that was raised earlier in the discussion, I think the better format is to spread the cost of comparative analysis across all applications, because if you don't, you're going to get into gaming, where some bigger entity says, "Well, what we can do is get rid of all these smaller groups by just saying we want comparative analysis, and everybody's got to pony up an additional 10,000 dollars."  So I think if you want to eliminate gaming, that's one of the things.

            Secondly, with regards to example, while I appreciate your need for clarity, if you start doing this, as Avri has pointed out, what you're going to get is a lawsuit where everyone's going to claim BOY is to boy scouts as x is to y, and so you've made a decision that doesn't fall in line with yours, and we've got 15 experts that will testify that BOY is as close to scout as it is to boyfriend, and that's not where you want to go.  I think that Ray's point of making them show that the community they claim to represent agrees that they are representing them… how you do that, I don't know.  But is a better model for deciding on whether they represent a community.

Avri:       Okay, I've got a long list at the moment, I've got Ken, Kristina, Ray, Chuck, Robin, Adrian, Eric. I've also got to notice that we are an hour later than the schedule at the moment. I expect that the lunch has started showing up, because we are in the lunch break thing, and the first… final thing I want to bring up is, I'm wondering whether the direction that the… and this is a question for the staff… Is the direction that the conversation is going in, general and on principles and whatever, enough to actually be fulfilling the purpose of answering questions, or are we going a little bit too far down particularist issues at times. And I just… it's a question. I don't know that it has a quick and easy answer, I just want… I'm concerned that you guys are getting what you need out of this, as we reach the half point. Now, do I want to take the rest of this queue now, before we break for lunch, and we are one whole topic behind?

Male:       [Inaudible – not on mic 3:44:47]

Kurt:       What? I think sometimes we go down a little bit too deep into details, but I wouldn't know where to draw the line or try to stop somebody, so I…

Male:       [Inaudible]

Kurt:       Yeah, I think so. Is it being… I mean, it's supposed to be mutually helpful, so…

Robin?:     This is [inaudible]. Yeah, just following up on that, I think… going forward… It is a very difficult line to draw, but going forward, if we could make sure that during the course of the rest of the conversation, we hear from council members who were involved in the development of the new gTLD final report, and that we make sure that we hit the issue points that Kurt has previously listed, and in general keep in mind that there will be a long comment process and question period for those who want to submit applications in the new gTLD round. So our limited time here should really be focused on making sure that council members share their views in how they came to the decision that the Council put forward to the Board, and to focus on the issues that we've listed here. Thank you.

Avri:       Okay, so I'd like to quickly go through the list I've got, and then we'll break for lunch, and I won't add any more to the list until after lunch. So I've got Ken,

Kristina, Ray, Chuck, Robin, Adrian, Eric.  And I hope that we get to lunch sometime.  Ken.

Male:     [Inaudible 3:46:10]

Avri:     No.  Ken.

Ken:      Yeah.  Thank you.  I'm very concerned about one thing – that is, the tenure of the conversations we've had all morning have been primarily in the area of ASCII TLDs.  We have some significant issues in community.  Anyone who was in Dubai would understand what I'm talking about.  But I'll give you a perfect example with respect to the Arabic script.  You have Farsi, you have Urdu, you have the languages that are spoken primarily in Saudi Arabia.  If you assign the Arabic script to one of those, you automatically exempt certain characters in the other languages as a result of this.

          So the point I'm trying to make very simply is that we need to make absolutely certain that as we move forward, that the guidelines that we're going to be using for measuring TLDs, measuring the assignments… these people are being lumped in the same category, so please be very, very careful as you get into the area of defining communities.  And remember that there are significant impacts in assigning specific character sets to specific communities, and they can act… inadvertently act in exempting.  I know this is… it's much more highly technical, but all I'm doing is counseling ICANN to make sure that policy stuff that we're talking about here works for both sides of the coin, ASCII as well as international characters.

Avri:     Okay, thank you.  Kristina.

Kristina:  I'll be quick.  I think Ray really kind of hit the nail right on the head.  We were never… and I'm thinking back to the conversations that we had in Lisbon, we were never really talking about the community aspect from a value add.  It was really more of… to show support.  And I think we came up with the context of having the applicant identify whether it had community support as a way to indicate that at the very beginning.  And if we focus on it from that perspective, not only do you avoid the situation of all these extraordinarily subjective criteria, but you also get rid of another problem, which Olga's comment about auctions prompted me to think about, is that if you're going to use these criteria, you really create the possibility for sham applicants, for

straw men, for somebody who's got really deep pockets and really wants a string that they recognize could be considered to be a community-based string, to go to whomever they think would be the appropriate candidate and say, "Look, we'll give you guys 10 million dollars, or whatever, and you guys be the applicant. We'll show the support," and so on and so forth. There's really… I mean, you see that all the time, or at least you heard about it all the time in the context of the wireless spectrum auctions. And I just think that if we focus really on the support angle, it makes things a lot cleaner and a lot easier.

And as to Paul's questions about the types of communities, I don't think, and correct me if I'm wrong, but I don't think we were every talking about it in the context so much of political, you know, geographic communities. At least, I don't recall that being kind of the motivating characteristic. We're really talking about, kind of organizational communities, whether it's librarians, and I think the big example we always used was banks, or, you know, that type of thing. But the geographic and geopolitical issue…

Male: Shouldn't add any more weight.

Kristina: Well, GAC's going to disagree with that. But yeah, I mean, I think that's probably somewhere that we really want to try to avoid going down that road.

Kurt: So, Kristina, can I… with regard to a comparative evaluation step, you're recommending that that would still remain in place, that…

Kristina: I actually have some concerns about a comparative evaluation where you're talking about community support. Because once you do that, then implicit in that is the assumption that you can take these two communities, who could have totally different bases or characteristics, and say that we can compare the two of you and decide that one of you is better, or one of you is more deserving. Because that is essentially what you're doing. So, you know, I've never been a real fan of the comparative evaluation for community support. I just think it's problematic.

Avri: Okay, I've got Ray.

Ray: Just a clarifying point, on the community support. The concept was, does the applicant have community support, not does the string have community

support. Those are not one and the same things. So, you know, to Paul's point of "Is it boys, is it Scouts?" that's not even part of what this is. The idea is, that if it goes to an educated, impartial party, can seven out of ten people reasonably determine that this applicant does have community support, or don't they? That's really… needs to go no deeper than that, really has nothing to do with the string.

Avri: I've got Chuck.

Chuck: In Ray's earlier comments, a light went off, and you reinforced it, Kristina, in terms of what we really talked about, when we talked about this. And it looks like it's been broadened much more so that what we intended. I believe, in my recollection, that Ray was right, that this was really intended to only be used in cases where there are two or more bids for the same TLD from the same community. And the idea was to compare… to evaluate, then compare, the support that the have from the community, in those cases. This looks like it goes way beyond that.

Kurt: So… so this is good. The implementation guideline says that, "If there is a claim to support a community by one party, will be a reason to award priority to that application." So isn't that different than what you just said?

Chuck: I don't think so, necessarily.

Male: Could you say it again please, Kurt?

Kurt: Yeah. Can you put it up? 24. 24. The… for those of you viewing at home, we're looking at the second dash. So…

Male: That assumes that only one party is making the…

Kurt: Right. Well, that's my plain reading of it.

Male: No. Possible we didn't word it accurately, but I don't believe… and please, there's lots of you in here that were part of that process …that we ever intended that community support trumps, for a TLD, trumps everything else. I don't think we ever meant that.

Kurt: Right, and I don't think you meant that, but I think you meant that there was concern that a relatively small TLD representing a community would always

lose out to the large one, and so what criteria could we… what process could be built to give some deference to the idea of a community-based TLD.

Male: Let me defer to others, because there are lots of…

Mike: This is Mike Palage. If I could get in the queue.

Avri: Well, actually, I cut off the queue. We've got three more people, and then I cut off the queue for lunch. So we'll keep talking about this perhaps after, we'll have to come back to it some more. But I had cut off taking a cue, and I've got Robin, Adrian and Eric before we stop for lunch. So Robin.

Robin: Okay. Um, yeah, could you go to slide 29, because that's the slide I wanted to talk about. I'm really concerned about this criteria here. It seems like we're moving into almost a beauty contest here, where we're evaluating based on entirely subjective, entirely arbitrary things. Does something have value? Well, what has value to me might not have value to someone else. What is important? Well, what is important to me might not be important to someone else. All of these things, I'm really concerned, are just so much further afield from what we had originally said, which was, can they show some level of support? And if they can, okay, we're done with it. But now, this beauty contest of comparison where we're going to be making value judgments about what is value and what is important, and, you know, competition for whom. And I'm just really concerned that we're going much further than we ever intended to go, and we'll cause all sorts of problems down the line if we continue down this path.

Avri: Okay, I've got Adrian and Eric, and then I've had a special request to let Marilyn and Mike Palage also speak, as they were participants all the way through. And then we will break for lunch. So. Okay, so Adrian, did you have a…?

Adrian: No.

Avri: Thank you. Eric.

Eric: Uh, thank you. Back in 1999, I wrote a draft for the very first proposal to have a sponsored TLD, which was a community TLD, and rather than just… I want to thank Kristina, Ray and Chuck for bringing up the Lisbon… the decision

made at Lisbon that… I don't think I need to say anything more about that, so thank you very much, all three of you.

Avri:     Thank you.  Okay, Marilyn.

Marilyn:  Thank you.  I'm going to try to just recap some of the turns that I think we did take when we were working in that task force.  And there was an extensive discussion about how we avoided sending all decisions to the Board, and putting the Board in the position of making the decision on the vast majority of the applications.  We discussed the idea that we needed to develop as predictable as possible a resolution process.  We did discuss the idea that small communities should have the ability to come forward, and I believe in many of our examples, we did acknowledge the fact that dot ASIA and dot [CAT 03:57:21] are in fact geographic, or non-geographic, but have a unique characteristic to them, in that they represent a community.

So we have a history here that I think we had to take into account, and we tried to take into account.  I'm not sure we can undo, nor should we try to undo, all of those debates that we went through.  I understand people who are very nervous about the idea that we're going to choose an expert panel, and that expert panel is going to have to make a decision based on certain criteria.  But I think we all agreed that that was better than sending the vast majority of the decisions to the Board to make.  So my view on this is, we did agree that we are going to have to use a contention resolution approach, and that some of the lessons we've learned is the approaches we used in the past on sponsored names or on the allocation of a name like dot ASIA, etc., which determined… the community determined and supported the idea that that was a community.

I am hearing some repeat of objections from those of us who debated all those turning points.  I respect the fact that we all still have cautions, but I want to go back to what I thought the decisions were that we had reached, and that is that we would have as predictable as possible a contention resolution process.  We would find… we would have criteria.  It won't be perfect, but it will make decisions on the vast majority of the applications.

Ultimately, I recall we understood that the Board will, in some cases, still have to make the decision, but I think we all agreed we wanted to avoid that as much as possible.

Avri:       Thank you.  And last speaker before lunch, Mike.

Mike:       Thank you, Avri, and I'd like to build on and add to the comments Marilyn made.  When we were talking about this community-based aspect in Marina Del Ray about a year ago, the one example that was constantly repeated, I believe, was the example of dot BANK and dot LIBRARY.  And what we talked about was that the evaluation process had to take into account that an application for a dot BANK or a dot LIBRARY, it represented a community, or a claimed community, needed to be taken into account.  Because if it automatically went to an auction process, it was most likely that some VC that was able to put up one dollar more than this community would win out.  And I think that was one of the comments that was mentioned earlier, that although there are a lot of problems, as Robin Gross has accurately identified with some beauty contests, there are also certain inequitable aspects to an auction process.

So what I thought, and what I tried to articulate last year, and which I will try to articulate again at this point in time, is that what ICANN needs to do in the evaluation process is, in, if you will, a beauty contest or an evaluation-type RFP process, they only should go down that path if in fact the outcome is to produce a clearly identifiable prevailing party.  So, you know, I think that is something that was potentially done in the dot ORG, where there were representatives of what community was being represented.  When you look at what happened with the dot NET application process, where Telecordia produced a report that basically was decided because VeriSign got one more blue mark than, I think, New Star.  That was not the type of, if you will, RFP process that produced a clearly identifiable winner.  And in that scenario, it not only placed the ICANN staff but the ICANN Board in a rather difficult situation.  In that  case, the auction is clearly the much more… is the much more preferred allocation method.  So I agree that if in fact one person claims to be representative of a community, the RFP should be the appropriate approach, if there is a clearly identifiable winner.  But if it is unlikely to produce a clearly identifiable winner, the auction is probably the best fall-back

mechanism.  That was my recollection, using the dot BANK and dot LIBRARY that we discussed last year, Chuck.

Avri:  Okay, thank you.  I think at this point, I'm sure we'll continue talking about all this in a less formal way.  We've got lunch, and I guess we'll be back at 1:15.  Yes Chuck?

Chuck:  Yeah, 1:15 is good.  Actually, the schedule says 1:30.  I think 1:15 is better.

Avri:  And that way we at least start…

Male:  So you're allowing 30 minutes to eat and check out?

Avri:  Yup.  That's why Chuck left the meeting…

**[end of audio]**