Ad hoc group on recommendation 20 from the new gTLD recommendations
Teleconference
TRANSCRIPTION
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http://audio.icann.org/gnso/gtld-sg-rec20-20070711.mp3

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

Attendees:

Victoria McEvedy for NCUC
Chuck Gomes - gTLD registries
J. Scott Evans - IPC
Miriam Sapiro - consultant

Apologies:
Philip Sheppard - CBUC
Tony Harris - ISPCP
Mawaki Chango - NCUC

ICANN Staff
Karen Lentz - gTLD Registry Liaison
Liz Williams - Senior Policy Counselor
Glen de Saint Géry - GNSO Secretariat

Coordinator: I'd like to inform all parties today's conference is being recorded. If you have any objections, you may disconnect at this time.

Liz Williams: I'd love to be (other) disconnect, that will be fantastic. But I'm going to (lab) too.

It's Liz Williams speaking. If you can identify yourselves for the recording, that would be helpful because I use the transcripts to do the work behind the scenes.

If it's okay with everyone, perhaps I can just go back a steps particularly for (Victoria's) benefit because she's very kindly stepped in for the NCUC's guides because they are short of people and Robin was on a plane. Just to setout what we're intending to do for today's call if that's all right.

Chuck Gomes: Please do.

Liz Williams: Yup. (Victoria), I sent you this morning the 9th of July email that I have sent around to the group so that you could get a flavor for what recommendation 20 is trying to do.

They turned drafting as the recommendation says, an application will be rejected if it is determined based upon public comments or otherwise that there is substantial opposition to it from among significant established institutions of the economic sector or cultural or language community to which it is targeted or which it is intended to support.

At last week's conference call on Friday, it was general support from the majority of constituencies except the NCUC that that language would be helpful to frame an objection process. For us to deal with

essentially sponsored top level domain where there would be objections to the – objections to the string.

One of the issues that we've had and (Karen) can speak more in detail this from the implementation team is that the language as it's currently drafted is very subjective, has some subjective elements to it, must not I believe substantial opposition.

What is substantial? Significant and established institutions, what is significant and what's established? And then the measurements of – to it to just targeted or what it is intended to support.

Philip Sheppard, he's not on the call. And J. Scott Evans has come back in the email correspondence which is going on since the Friday call to express support for the recommendation as it's drafted. And Philips' particular recommendation was that we did some significant work on the implementation of it which would include some expanded definitions to facilitate with the subjectivity of the language as it's currently drafted.

Avri sent some suggestions on three specific terms. The fist one is substantial opposition. The second one is establishing institution. And the third one is formal existence.

And she's provided some definitions that given the lack of comments about those three definitions, I think people genuinely accepts that what she's suggested in an implementation framework would be useful.

There's a missing element here which is the usefulness of public comment within the application around. And the use to each public comment will be put in an evaluation of an application.

So, that just gives some general background. I wanted to just open it up to him ever to either raise issues or ask questions or give a different take on what I've just said. So just go right ahead.

(Victoria):   (Unintelligible).

Chuck Gomes: (Victoria), you're kind of jumping in…

(Victoria):   Yeah, yeah.

Chuck Gomes: …fresh on this. So, do you have any – any question?

(Victoria):   Yes, I do. Thank you, Chuck. And thanks Liz (it was help of that) background are three helpful. And I guess that my six questionnaires just so that I have the overview. I have read the material that you sent me this morning. But I haven't read of course all of three. It's going back and I haven't…

Liz Williams: Yes.

(Victoria):   …recently the earlier calls. My first question really is just to build on what you see it. I'm looking now at the implementation guidelines as they currently stand.

And it looks to me and just, Liz, you can correct me if I've got this wrong. But it looks as though the relevant implementation guidelines

would be IGF and IGH. So, we've got external dispute providers under H on complaints. I don't know if it's reported…

Liz Williams: Yup.

(Victoria): …on this recommendation.

Liz Williams: Uh hmm.

(Victoria): And on the F, we've got procedure dealing with contentions of strings with the final decision by the board using advising stuff and expert panels. Are those the two relevant recommend – two relevant implementation guidelines?

Liz Williams: Yes.

(Victoria): And how to they relate to each other?

Liz Williams: There are two separate things. One is that disputes would not and (Karen) jumping here because (Karen's) for the implementation team person. The dispute resolution process which includes the handling of contention with is an objection by this process would be handled by the independent panel of evaluators. It would not be handled at the staff level.

(Victoria): Uh hmm.

Liz Williams: So, that process would be setout prior to the opening of the application round, understood by all applicants and clearly setout criteria for evaluators to make judgment on either a dispute or an objection. And a

lot of work has been done (Victoria), on establishment of the objection evaluation process to establish standing, to establish institution, to establish whether someone (compare to see) to establish it whether, they're just didn't – unhappy about last (will begin to us) and everything or they have a specific objection they wish to lodge on specific criteria.

(Victoria): Okay, so…

Liz Williams: So, those two implementation guidelines are general. And a lot of work is being done on the detail of them particularly with respect to objection resolution.

(Victoria): Okay. So would it be correct to say that the contentions scenario – I haven't read all those. Or all the (CR) would need to have a look at the more detailed (follow trace) to get a bit of grip of it. But would it be correct to say that IGF is with this contention. Is that where there are two applicants speaking the same string?

Liz Williams: Yes.

(Victoria): And disputes of the objections under 20?

Liz Williams: Okay, fine. Okay. That's really helpful. Thank you, just so – I'm just so unclear about that.

Chuck Gomes: Now, disputes, (Victoria), there's few other recommendations where the dispute process may come on the play too. But our focus in this group is on 20.

(Victoria): All right, yup. Oh, but 20 is the dispute. I mean, they dispute…

Liz Williams: The 20 is an objection.

Chuck Gomes: Yeah.

(Victoria):   It's an objection?

Chuck Gomes: Yeah.

(Victoria):   But…

Chuck Gomes: Three and six are two other examples of objections I think that the committee have…

Coordinator: Excuse me. J. Scott Evans joins.

Chuck Gomes: …has, you know, pretty much come to agreement of six just a few minutes ago apparently are at least the subcommittee has and they will put it to the full committee on Friday.

(Victoria):   So, okay. Well then, IGF deals with contention. And IGH deals with complaints. And so we're of objections, in the implementation.

Chuck Gomes: Well, recommendation 20, the way it's worded now. Someone could file an objection to the strings if it's a string that is targeted for a particular community. And if there is, you know, a substantial – if there's substantial opposition from that community that's targeted, then they could file an objection. It's up to the independent expert panel to…

(Victoria):   Okay.

Chuck Gomes: …make a decision on whether that objection is valid or not.

(Victoria):   Okay, and final appeal?

Chuck Gomes: Oh, the appeal process is something different, right Liz? I mean, a…

Liz Williams: Yes, it is. And just (Karen) you can correct me if I'm wrong here. Part of the other element of the work that Miriam – oh, Miriam you're on the call – Miriam can speak to…

Miriam Shapiro: (Of course I'm on here), Liz.

Liz Williams: Thank you Miriam. But I'm just going to speak for you, if you don't mind. So you don't have to come off mute.

Miriam Shapiro: Sure.

Liz Williams: Miriam and the implementation which includes (Karen) is doing some work on the way in which a final appeal would be handled. Because that would be inserting the new instructions to applicants about – well you're going to go into this objection process. These are the rules. The decision is binding. There is (either) and appeals process without reasoned because that is not fixed yet. So, that will all be stated for applicant's price in the process actually beginning.

                 I'm just – we fully break in J. Scott welcome. Thank you for coming. We actually started without you. So…

J. Scott Evans: I've (figured) (unintelligible) I just had – I (unintelligible)…

Liz Williams: No, no. I know you did. I've got your notes. Thank you. So, we're just getting (Victoria) up to speed on…

J. Scott Evans: Okay.

Liz Williams: …(what is that) so would be intention of the recommendation 20. And what the work is at actually needs to be done. And we've got to resolve the question around public comments and any other questions (Victoria) might have on the definitions of it.

So, (Victoria), are you okay with all of that?

(Victoria):   That's great! Thank you very much. I really appreciate that. It's very, very helpful. I mean, all the – see, I'm not having read all the – I'm not having read some of the more detailed material that you referred to. I mean, I can only speak to be generally.

But I think with discussing this in the (city) genuine level of extraction of today, anyway, right? So, I mean, I certainly, at this point, to tell you what I've – what the NCUC position is, which I'm sure won't come as any surprise too anyway. Because I've mentioned that it's been it already and the lead out to where we are today.

But of certainly the here a three basic issues that we have issues that we have – should I run over them or you (unintelligible)?

Liz Williams: Yup, go ahead.

Chuck Gomes: No, no.

(Victoria):   Great! Okay. So, our real concern is, I mean, I - actually, I'm sure this is being explained fully before. I mean, the real concern here is that, you know, the objection – by allowing the objection as to the I know sort of without the held criteria particularly criteria focused on legality.

You know, essentially, we're moving towards the sort of standards. We, you know, anyway to find something a sense of – or it's a sense of sensitivities or they just isn't the – you know, there's been an inability to reach a consensus. Then that is a ground for vetoing an application.

We would prefer to see that restricted to very narrow ground forward trademark, must use – must represented, (I'm saying) competition, or very defined criteria or at least. Because, you know, this requires basically that any applicant seeks the agreement of the world.

And even on trademark law, I think we've put this is in our constituency statement. Even in trademark law, you know, you can succeed over, over an opposition.

So, that's the first issue. The second is the established institutions with criteria of that language. Because, you know, certainly there's no president legally anywhere that the longer you've been in business, the most standing you have. Do you know what I mean?

For example, on the business context or we just – there should be any establishment requirement. I mean, new entrance into market. That new entrance in market, you know, and in the economic theory or anything else, has just as much standing legally and anybody else.

And so, I'm not really sure what that criteria means. I mean, I think it's probably put in there in there on the sense that, you know, it was probably designed to be helpful on the sense that, you know, just we don't want to be see through to the public, for anybody to just sort of trying to extract shell.

I'm not sure that that is helpfully adding structure on the way that it's help. And it's probably just discriminatory. And perhaps that needs to be thought about.

And I think that – the third point of course is the concern of the creating language and community rights which again have no (unintelligible). And I tell you, while ICANN, you know, on a very general level, clearly ICANN is making new policy in breaking new grounds on numerous issues all the time.

The thing is the balancing it needs to be – you know, for example, you know, you know, you know, we're all familiar with how much work goes into sort of treaty – treaty negotiations and development of international trademark law or out of systems of law. You know, there's usually great deal of academic analysis (than what have you).

And so, if those sort of new rights are going to be created, then some real thoughts in these are ought to be given to making sure that, you know, all interest balanced. And so, they the three consist on a very, very general level.

Chuck Gomes: Let me – this is chuck. And let me comment. First – and I would appreciate if others would correct me if I'm wrong on this, but whereas in other recommendations of where an objection maybe filed, we've

tried to tie it to international law. I don't think we can do that in this case. Am I wrong there?

(Victoria):   Why not?

Liz Williams: Well, what you just said where is the law of established institutions.

Chuck Gomes: At the same time, those of us on the committee have felt like this is still valid area where objections could be filed.

(Victoria):   I mean, I think there are two (sheet) for the issues for you. And I'm not sure if they're related to each other. I mean, I don't – just to clarify. I'm just saying that no we also know the establishment institutions have president of over new businesses or any other kind of institutions.

                So, that some presidents is in – I don't – and no ones giving me a rationale for it. Not the – very open to hearing what it is.

Chuck Gomes: Well, again, you know, what I'm saying is that we're not tying this recommendation to established law. So…

(Victoria):   What and – what's the rationale for that?

Chuck Gomes: Well, the rationale is very simple. Let me give you an example. What if somebody proposed the .mail or a top level domain which is an indigenous group New Zealand as I'm sure you know.

(Victoria):   Maori.

Chuck Gomes: Yes.

(Victoria):   Yup.

Chuck Gomes: And there was substantial opposition from the Maori community. Is that not something we should take into consideration?

(Victoria):   Well that's just as I said earlier. Community rights had no basis and or – I mean, maybe it is (unintelligible)…

Chuck Gomes: We're not trying to base it in law because we agree with you in that regard.

(Victoria):   Okay, leaving that, I mean, you know – leaving that just that example to one side because it's very easy for us in these discussions, I think to come up with examples that, you know, and then you know, working backwards there, where I'm not sure is – may sincerely helpful. I mean, clearly, I think, it's to say, that's one of their issues. You know, there is support NCUC for giving protection to community rights.

                    And so, I'm not in anyway disagreeing with that example that you've given because I think that's a good one.

Chuck Gomes: Okay, now keep in mind that this particular recommendation relates to strings that are proposed to target a specific community, whatever that might – community might be.

(Victoria):   Well, it isn't so limited. It was – (unintelligible)…

Liz Williams: Yes.

(Victoria):   It's only the – so this – so…

Liz Williams: (Before in that second)…

Chuck Gomes: Yeah, read it again.

(Victoria):   Yeah, read it again.

Chuck Gomes: Our wording may not be perfect, yeah. But read it again.

(Victoria):   Yeah, it's just – I didn't realize in with the entire wording was limited by that last sub clause at the end. And so, we – I mean, in ICANN terminology, is that a sponsored, is it a sponsored?

Liz Williams: Yes.

Chuck Gomes: Well, except we're not going to use that term anymore. But yeah, you heard Liz used the word sponsored. It's very similar to what – what has been called the sponsored TLD although in this particularly case, I don't – a TLD application wouldn't necessarily have to have a sponsoring organization. They could still target a community whether they have a sponsoring organization or not. Am in correct on that? Anybody, feel free to correct me if I'm stating that…

Liz Williams: Yes, chuck. Yes, chuck it's definitely right.

(Victoria):   So, is – would .sex targeting a specific community?

Liz Williams: Nope.

Chuck Gomes: Well, it depends on the application. Does it not?

J. Scott Evans: Yes. If the application stated that .sex was going to be a special
                 domain that only pornographers are – or people who dealt in adult
                 oriented content could register in, that that was a baseline. They don't
                 have a sponsoring organization, but that's who's going to be able to
                 register there. So…

(Victoria):   Okay. So, it's an (unintelligible) right.

J. Scott Evans: If you're Disney, you're not going to have Disney.sex.

(Victoria):   Okay.

J. Scott Evans: They're going to say no. Then if a group of 50 industry organizations
                 for the adult entertainment industry said, we don't want a .sex. We
                 don't want to be forced there. We don't want – they could file objection.
                 They would then be considered.

(Victoria):   Okay, within – I thought that is very, very helpful. So basically, what
                 you're saying is we're not using it with sponsors. But let's just say these
                 are targeted applications we're dealing with.

J. Scott Evans: Right.

(Victoria):   And there are eligibility requirements for those.

J. Scott Evans: Well, in their…

Chuck Gomes: What do you mean by that?

J. Scott Evans: There's no eligibility requirement. But in a target – the way it's always happened before is as it if a .xxx which was not a sponsored TLD. It was an open TLD…

(Victoria): Uh hmm.

J. Scott Evans: …suggested that they we're going to market themselves to a certain segment of the world, okay. And they put that in their application. That was their market differentiation. We're not going to be a .com. We're going to be a .xxx but we're going to use the general understanding throughout the (international) (unintelligible) for what that stands for to market and create a segment on the online community where that segment can operate.

(Victoria): Well, I think this maybe the way to – this maybe a very helpful way of us being able to reach an agreement. If we consider not the language about that, then we may have listed an issue from an NCUC point of view.

J. Scott Evans: Well, why don't we just…

(Victoria): But I – yes…

J. Scott Evans: …do it at the beginning and say, an application which targets a specific whatever…

(Victoria): Well, I think we'd want it to be a lot more precise than that, that I think this is – I mean, you know, there's a need to drop on the applying

sincerely but let's just – if we could just - if I could just talk around a little bit further, but I just think that maybe the way forward.

But, you know, if these are intended to be effectively – you know, this isn't intended to effectively a tax formed to TLDs only or fix them. We either are eligible to the requirements. You know, I'm thinking of things like .travel you know. Was that – is that a good example. I mean when really had to be part of the community, you need to be a travel agent for example.

Chuck Gomes: Well, yeah. I think .travel is an example so that it's specifically targeting the travel industry. So, what this recommendation is suggesting is, is that if there's opposition from people in that targeted community. They could file an objection. And then a decision has to be made whether that's substantial or whatever. And that's where some of the subjectivity or where we're going to try and minimize the subjectivity in those kind of decisions.

J. Scott Evans: And I would say .Asia qualifies as well.

Chuck Gomes: Sure. Yeah.

J. Scott Evans: Because .Asia is an even bigger form because it says that you have to be, you know, you have to qualify – I couldn't register there and the citizen of United States North Carolina unless I could have a business or domicile in an Asian country.

Chuck Gomes: Now, another – another thing to keep in mind, and we loose focus on this because we obviously need to focus on the objection process. But there's – we think there's another advantage to this kind of

recommendation. It makes it very clear to applicants right upfront that there is going to be a challenge process.

And in this particular case, for applications to target a particular community, or whatever term we want to use, so they know right upfront that if – that it's smart for them to make sure that they have good support from that community or at least not opposition of any significance. So…

J. Scott Evans: And I think also it helps, Chuck, in the sense that those groups that are dissatisfied with it and try to bring some sort of legal challenge against the applicant, it strengthens their case that ICANN had a procedure. And that they could – they placed an objection and after reviewing the objection, it was decided that the objection was not significant enough to forego the denial of the application.

Chuck Gomes: Right.

J. Scott Evans: And I think that strengthens the applicant's case. Listen, you have a chance to complain. And once you did complain it, after objectively looking at it, if your complain was not legitimate enough to forestall the addition of that name into the group.

(Victoria): Can I just make a comment as well? I mean…

J. Scott Evans: Sure.

(Victoria): I think – I mean, on a practical level, I mean, this will – I mean, on one just, you know, putting aside free speeches or anything like that for a second. On a practical level is, it got to be in a disaster. I mean, a

nightmare on the sense that, you know, in business, I mean, you know, in a particular industry, for example, let's take an industry example. So it is the .travel, right.

Let's just leave the communities in then (break) for more (continuous) and (since) to the ones to a size, if you look at something like .travel, I mean, the nature of sort of business litigation and competition issues and what have you, I mean, of course, you know, (unintelligible) business, of course going to use the objection procedure to stop the competitors for registering something they wish they've (got off).

You know, there's going to be an awful, awful large number of objections. And it's going to spin like it'll be a whole industry. I would have said.

Chuck Gomes: It's – we're very aware of the fact that this one is probably the most difficult to word in a way and provide criteria for that avoids gaming and the kind of things you're talking about. At the same time, we think that there's also the chance of a disaster if there isn't something like this in there.

Because if communities – if some third party can just come in and target their community without any support from that community…

(Victoria): Yeah.

Chuck Gomes: …imagine the disaster that that would create after the fact.

(Victoria): Yeah I accept that. And I completely accept that. I mean, there is probably some nature of, I mean, as you say, I think it's particularly, in

terms of indigenous communities in particular localities and what have you.

It's just a question of shouldn't – should business – because the business, I think…

Chuck Gomes: Yeah, and I don't know that we can really, you know, I mean, we obviously give some examples in the way the recommendation has worded right now. But in my opinion and I stated this on the list, you probably didn't see it, I don't think those examples like economic sector or culture or language community were intended to be inclusive.

But because I'm not sure we can predict – I'm sure we cannot predict all of the possible types of communities that could be impacted in something like this.

(Victoria): Uh hmm, I mean, you know, to get – I mean, arguably, the more precise of recommendation is, you know, I mean, working by example is not necessarily the most ideal way.

Chuck Gomes: Right.

(Victoria): Because it's so vague, you know, and it doesn't provide the transparency and the certainty. I mean, it might be better that (certainly) there would be more – much more detail on the recommendation. And that sounds from what you're saying as though, you know, I mean, I suppose that – you know, it is quite useful to divide them off and it's interesting to sort of look at it that way.

And is there a cons – I mean, you know, what is the positioning in relation to .travel if you've got, you know, competitors if all in that scenario, all competitors are going to try and complain and there's going – do you want to try and limit that, or...?

Liz Williams: (I'm with them to make complain), (Victoria)?

(Victoria): Well, I mean, for example, so someone applies to register .travel – or, you know, well let's say, someone .Gov, widgets or whatever, right? All the other widget, you know, all (five), you know, to see the industry, you know, at least ten other widgets make us complain, right?

Basically just out of – just on the competitive ground. You know, I mean, let's say if I can…

Liz Williams: So, dealing with first of all, your .travel example, it's not allowed on the recommendation too which these things must not be confusing the similar to an existing top level domain.

J. Scott Evans: We'll put aside. I think it wasn't there now.

((Crosstalk))

(Victoria): Yeah, I mean it doesn't…

((Crosstalk))

(Victoria): I mean, I just said .widgets, I mean…

Liz Williams: Yes. So, say it's .widget. There is nothing the work that we've done on the establishment of standing that is any objective ground for where we just think - we didn't think of it first and we ought to object. That isn't the ground for objecting.

(Victoria):   What are the grounds for objecting? That's what I'm missing. Where are they?

Liz Williams: Wait a second. I have just received from Greg. Just a second. I can step back a step because this is helpful for J. Scott and to you (Victoria). We had a meeting in Marina Del Rey just prior to the San Juan meeting that really drilled right down into the depths of this stuff which was looking at recommendation by recommendation.

                  We looked at for example in two recommendation two which says strings must not be confusingly similar. Grounds for objection were that the propose string was confusingly similar. And that the proposed string was confusingly similar to another application.

                  We went through each and every one of the existing objections that said who could object, what was the rationale for the standing requirements, and what does it relate to in terms of the discussed – staff discussion point document.

                  Now, the one that you're dealing with is for example, we went through the reserved word, we went through to generally accepted legal norms which is because they fix which was six and then we went down to recommendation 20.

And this is not – I see not updated on the basis of the current discussion which says the proposed string, the grounds for objection or the proposed string relates to a defined discreet community which is represented by the established institution. Hang on a second. I'm just going to cough, sorry. And the applicant does not have the support of the institution.

The person – the group that has standing is the established institution like the world hope organization or let me think Baxter Pharmaceuticals because someone is trying to register one of their products. And the minute says, the standing for objection is to prevail in the objections process, the challenge a must of the established institution.

Now, this work is not complete. We need to do much more thinking about tightening as you've suggested, the guidelines for the implementation. What we're trying to do here though in this recommendation is to deal with the grounds for objection. And that doesn't lead us into a situation where we have objection on any ground because it's competitive and I want the string that is not a grounds for an objection.

Ground for objection is that I'm an established institution or I'm a cultural or language community sector. And this particular applicant is holding themselves out to represent me and our community. And we don't think that's (organization's) case.

(Victoria): Well, that's not what this recommendation says because this, I mean, this is – and that's what – and this comes back to we owe it to add more add more language in here and be more precise and might be on this recommendation because this is not why that they're met.

This says, if anyone of the substantial about – this space (should be) (unintelligible) substantial opposition to it from amongst significant established institutions of the economic sector. So, my word the example means all the other widgets based on this which is always what we – that's what we've got in front of us right now, okay.

Liz Williams: Uh hmm.

(Victoria): You know, that's not what this is. This is all the other widgets make us can complain.

Chuck Gomes: If they're targeted.

(Victoria): No. They just joined just because they don't like.

Chuck Gomes: No, no, no.

Liz Williams: It's a targeted.

(Victoria): No?

Chuck Gomes: That's not correct.

(Victoria): That's not, no, we'll – we used to say okay, I'm looking at the language here. There is a (unintelligible)…

Chuck Gomes: Look at the end of the sentence.

(Victoria): Okay, but that would be executive because they are widget makers.

Liz Williams: Not on in generic applications.

(Victoria):   Okay. So, I'm sorry – I don't get this. I mean, it affects them. They are on an economic community or sector, right?

                  It's targeted that they even all the customers.

Liz Williams: …idea but they're not necessarily targeted by the applicants.

(Victoria):   But the customers have. It's the same economic sector.

Liz Williams: No. Wait a second. What this is trying to do is to say that – oh, I've got my Nokia mobile phone in front of me. I want to apply for .Nokia and I want to have all the other city Nokia users to buy pieces of plastic black crap from Nokia. Then I've claim that I have – that I represent the Nokia sect. Because (unintelligible)…

(Victoria):   But, because at my – okay. Fine, isn't it .bank what I (unintelligible) we're doing. We've had the .bank discussions up and down. .widget – the example of dot, I mean, we can all give so many different examples. And they would sound a bit different when you give them.

                  My .widget example is exactly the same with the .bank example, okay.

J. Scott Evans: Okay, well it's .bank registered. Bank of America is not going to be a legitimate complainant. But the top five loving organizations throughout the world and the World Bank complaining about the organization that's claiming these .bank is a far different matter.

(Victoria): Okay. Well this language doesn't do anything like that to my mind.

Chuck Gomes: Well, let's work on the language.

J. Scott Evans: I mean, we have broad based consensus here, based on this, based on the last call. It's the NCUC…

(Victoria): Yeah.

J. Scott Evans: …that has a problem so you need to give us some language that you feel is comfortable with that we can consider. Knowing now what our rationale…

(Victoria): (Unintelligible) I mean, I completely – I mean, I'm not going draft on those line. I'm not going to do it without (unintelligible)…

J. Scott Evans: I absolutely don't know – well, I don't think anybody is asking you to that. And I don't think you can because I think you're constituency have to agree.

(Victoria): Absolutely, exactly.

(Victoria): Look, I mean, I gave you the three precise of (unintelligible) – I mean, I'm not sure where we're going to go with all this right now. But, I mean, I've given you the three precise points. But I think that – I do think just as a matter of drafting, this doesn't achieve the results that people think is going to.

Chuck Gomes: Well, me tell what our timeframe is on this, okay.

(Victoria):   Uh hmm.

Chuck Gomes: As the hope was – and it was an optimistic hope that this small
                subgroup could come back with recommended language by the
                meeting on Friday. Whether or not that's achievable especially since
                we're not going to be able to draft on this line here, I don't think. It's not
                for debate.

                But regardless of whether we can do it by this Friday in very short
                order, and I would suggest and Liz, correct me if you think I'm wrong
                on this, not later than the meeting next week not this coming Friday.
                We're going to have to firm this one up if – even if that means leaving
                the language the same or with some line or tweaks if we can't come to
                consensus on some improved language.

                Like J. Scott said, you know, there is strong support for this
                recommendation. Most people are open to some improved wording of
                it like we've talked about. But if we're not able to reach some sort of an
                agreement with everybody's support, then we will probably go with the
                strong consensus position with a minority statement from the NCUC.

(Victoria):   Yeah. The NCUCs are very strong indeed about this. Well, they might
                not even be in the end of the matter. But just what we can – I can
                certainly go back immediately at the NCUC and we can talk about the
                language further. And we can see if we can come back with the
                proposal.

                And I can imagine we can decently do that. It's probably within
                tomorrow provided people are available. I can't promise that they are

and can turn their attention to us. But I imagine we could – when we met timeframe and see where we get to.

I think this – just, you know, and I'm thinking about it further, of course I'm sorry I'm coming (to those like). Because I know this is no help to you…

Chuck Gomes: Not – it's not your fault.

(Victoria): (Unintelligible) anything and I'm sorry.

Chuck Gomes: We understand that.

(Victoria): I really apologize. And, so you know, the part of the problem obviously with this is that the significant established institution, you see that, I mean, to my mind, I'm afraid, I'm a lawyer so, you know, I look at language in a particular way. It was not the way normal people probably would.

But, you know, in no way that that suggest they have to be represented to organizations like the World Bank or loving organizations or trade representatives. That suggest that, you know – certainly you're paying lawyer and we use establishments to mean businesses, you know, (been tried law or anybody else) competition lawyer and establishment that's like a business.

So, we're at – on undertaking we're used as well. So, that is not precise enough. If you are looking at sort of a high level of obstruction rather than just ordinary businesses, so if the bank of America really

can't protect .bank that the World Bank can, then this language doesn't do it.

Chuck Gomes: Yeah, and let's not spend time not on that because I think it's sounds like you understand what's trying to be accomplished here.

(Victoria): Yup.

Chuck Gomes: You have recognized some concerns. And if you can go back to your constituency, and come back with some suggested language improvements and then the subgroup can consider that. And then if we're comfortable enough as a whole, we can put it forward to the full committee on Friday. Or that would be nice if we could do that. I suspect we – the most time we'll have is the following week. And I think the meeting will be on Thursday the following week.

(Victoria): Uh hmm, because I would have thought, and of course, I can't speak without the (composing) the constituency but…

Chuck Gomes: I understand.

(Victoria): …I would have thought there really might be some room. I would have thought that there ought to be some room to agree with this myself.

Chuck Gomes: Well, and you – we hope you're right. That's why we're doing this call.

(Victoria): Yeah.

Chuck Gomes: If we didn't think that, we wouldn't have formed this group.

(Victoria):   Yeah, sure. Of course, cool.

Miriam Shapiro: This is Miriam. May – can I ask a clarifying question? Again, I'm just
                   trying to help…

Chuck Gomes: Please do.

Miriam Shapiro: Okay, I hope you can hear me. I'm trying to help make implementation
                   as smooth as possible. So, just to understand the intent of the people
                   on this call, if for example, I apply for .art, A-R-T, because I want to
                   launch a registry as an art lover, could an individual museum or could
                   an association of museum come forward and say, I don't think a
                   private sector for NGO person, individual or small organization should
                   be able to do that. Is that – could that be encompassed by the current
                   text?

Chuck Gomes: The first question Miriam, in my mind is, is the tld .art targeting a
                   particular community, is it just targeting art lovers...

Miriam Shapiro: Art lovers.

Chuck Gomes: …or is targeting art museum?

Liz Williams: Uh hmm. And are there registration limitations at the second level?

(Victoria):   So, that's the (unintelligible) thing.

Miriam Shapiro: If it's art…

Liz Williams: Yes.

Miriam Shapiro: If it's art lovers, anybody can register. Would that group fall under this objection?

Liz Williams: No.

Miriam Shapiro: Would that proposal fall under or not?

Liz Williams: No. Because they're not reporting to…

Chuck Gomes: I don't think – I don't think so.

Liz Williams: They're not reporting to represent any particular community.

Miriam Shapiro: Okay. Now, does the museum or the museum association might feel this may (lead), I mean, they might feel like, you know, it's primarily going to be targeted or marketed to our constituents.

J. Scott Evans: If the application is to have set that out, and if it doesn't set it out, we can't just assume that that's what they're going to do base on this board string.

Miriam Shapiro: So if smart applicant with a…

J. Scott Evans: But that would be a legitimate complaint. If it's set in the – if it's setout an application, if this is what we're setting out, this is what we're going to do –we're going to target art galleries and art museums…

Miriam Shapiro: Right.

J. Scott Evans: …throughout the world, then an association of art galleries or an association of art museums just say, we don't want that.

Miriam Shapiro: Right. Okay. So, if smart applicant within their applications day, this is not targeted to XYZ. This is intended for any art lover anywhere in the world.

Chuck Gomes: Yeah, I think it sounds okay. I mean, obviously…

Miriam Shapiro: Okay, I just had a bit of sense of where the group is on.

Chuck Gomes: Yeah.

Miriam Shapiro: (Who's) returned the implementation…

J. Scott Evans: The reality though is…

Miriam Shapiro: …developing criteria, et cetera.

J. Scott Evans: …the business reality is though that – while that's wonderful, it's not as easy as sell as it is to have targeted application to go to targeted people that however big is that group maybe.

   .Asia is far more marketable than .Corp, C-O-P just for corporations around the world.

Miriam Shapiro: Uh hmm, yeah.

J. Scott Evans: Because there – people have a buy end to that. And there are
                    restrictions. Someone in the United States can own a .Asia. So, that's
                    who we're aiming to help are…

Miriam Shapiro: Uh hmm.

J. Scott Evans: …those communities that will be targeted…

Miriam Shapiro: Great.

J. Scott Evans: …that they should be able to sell flat…

Miriam Shapiro: Right.

J. Scott Evans: …somebody who comes forward. And, you know, of the smart
                    applicant is who already going to have these people behind them.

Chuck Gomes: Exactly. And that's exactly what I was going to add – jump in and say.

J. Scott Evans: The smart applicants done this before they ever got to ICANN.

Chuck Gomes: Yup.

J. Scott Evans: Because the reality is even without this process, people are going to
                    write the board, and it's going to get vetoed.

(Victoria):   Okay, I mean…

J. Scott Evans: We're just trying to educate the applicant and say, you better make
                    sure…

(Victoria):   Uh hmm.

J. Scott Evans: …you got the backing of the people you're trying to represent because this exist.

(Victoria):   Well, I'm not sure that that should be imposed on (legal) quite frankly. I mean…

Chuck Gomes: Well, they don't have to do it, (Victoria).

(Victoria):   Yeah, I know, I know.

((Crosstalk))

Chuck Gomes: It's not imposed but they're going to know right upfront that there is this possibility

(Victoria):   Uh hmm .

Chuck Gomes: …of complaint.

J. Scott Evans: This is merely a recommendation to tell applicants as I understand it. If you want to have the least possible problem, follow these recommendations. You don't have to. It's a recommendation.

(Victoria):   But, you know, business doesn't always work that like the – people often don't like change or innovation or anything they think is going to threaten their business model. Do you know what I mean?

J. Scott Evans: Uh hmm.

(Victoria):   So, you know, with the (best well) on the road, there's lots and lots of applicants would never be able to get it run to agree.

Chuck Gomes: Okay. We're going to – I think we're going to try and keep this to an hour which gives us only about that most 15 minutes more. So, I want to change directions on this if nobody objects. Because I think there are a couple other issues we need to talk about and (and) this may impact the wording of the recommendation. But certainly they may impact the implementation too. And I think it would be good if we spent a few minutes on those things.

The first one, Liz mentioned is public comments and how they come into play here. I think even if that ends up being an implementation detail. I think that we need to understand how that's going to happen.

Should – if we have an expert panel that makes a decision on something like this, if there is not complaint filed to do public comments matter at all, if there is a complaint file to the public comments be considered by the expert panel in addition to the complaint. I think there are questions that we need to get a handle on of the answers of to fully proceed with this recommendation. Especially as it's worded now where it says based on public comments.

Now, sorry to complicate things on that but I think this is an essential part of – especially the way it's worded right now.

(Karen):   Right. Well, this is (Karen). Can I ask a question…

Chuck Gomes: Sure (Karen).

(Karen):   …on that? You know, there are public comments on every application.

Chuck Gomes: Right.

(Karen):   The public comments are just a part of the process regardless. So, what I'm not clear on because this public comments are mentioned specifically in this recommendation is that you know, whether it's people's intention that, you know, this is a community based type of objection whether public comments have some special standing in regard to this type of objection or scenario that they wouldn't have. And, you know, if there's an objection on some other ground.

So, you know, my question is are public comments mentioned specifically here in this context for reason or how is that?

Chuck Gomes: Correct me if I'm wrong, Liz. But I don't think we dove down into the public comments issue that much until just recently.

Liz Williams: No, that's right Chuck.

Chuck Gomes: And that's why I was the one that raised this particular issue because I think it is one that - we need to answer your question, (Karen). But I don't think that that committee has yet.

(Karen):   Uh hmm.

Chuck Gomes: There's a broader question. Not necessary – not restricted to recommendation 20…

(Karen):   Right, right.

Chuck Gomes: …but the whole package in that how well public comments come into play. Is that something that only the board considers? And like J. Scott said maybe they veto something because of public comments? Or is – you know, and a very question, we need to ask ourselves, if we're going to ask for public comments and they don't matter, why are we asking for them?

So, there's some – you know, some logistical questions there that we need to think about in this whole thing. And make sure that we can respond in a reasonable way.

(Victoria):   Can I just speak to that one?

Chuck Gomes: Sure, I mean, clearly, I'm not reading this. I mean, that would need – I mean, it's a very, very good point that was just made. I mean, I would have – I understood we're not having focused on that (least) but there would be a formal procedure for opposition. This is an objection procedure, right?

Chuck Gomes: Right.

(Victoria):   So, I would assume threes a formal objection. I think public comments entirely in inappropriate. Because what my concern would be is that at least then the opportunity open to ICANN play as participants staff, you know…

Chuck Gomes: Uh hmm.

(Victoria):   …we're looking at with the transparency and objectivity and neutrality here just stitched together arguments from different kinds of public comment because it's entirely inappropriate.

Chuck Gomes: And I understand the problem with that. Now, I'm going to throw another question back at you, (Victoria). And so, should public comments come into play anywhere in this process?

(Victoria):   Absolutely, not. And people could call me…

Chuck Gomes: And if not, why do we have public comments (for it)? Are you – would you suggest that there be no public comment period?

(Victoria):   None. I think there should be a – people should have to file in a formal objection.

Chuck Gomes: Even individuals?

(Victoria):   Yeah, come on. It can be the (unintelligible)…

Chuck Gomes: No, no. I was asking your opinion

(Victoria):   Yup.

Chuck Gomes: …and then you gave it. So that's…

(Victoria):   Sorry.

Chuck Gomes: So that's fine.

(Victoria):   It can be just form, you know, it can be something very simple to do. You know, that you don't need to consult a lawyer or do anything like that for. Or, you know, it's just like it could even be a sort of textbox form on the ICANN website. It doesn't need to be difficult. But, you know, people can't be bothered to do that and to make a formal objection.

And I think it's – and also, at the end of the day, you know, this is an objection – you know, it should be formalized rather than just the idea of putting people's applications out for just throw away sort of picking. And you know, it's inappropriate.

Chuck Gomes: Yeah. Okay, got it. Now, what – I'd like to hear from others on this same issue. And if anybody wants to…

Miriam Shapiro: Chuck it is Miriam. I just want to clarify something. By objection process, at this point, the intent seems to be to setup a formal objection process. Thing for example, of the EVRP, not because of the substance but just because you have somebody filing an objection, the other side have say, 30 days and sometimes less I think to respond. It's that kind of formality.

So, I just wanted to distinguish that from a more or a less formal sense of the word objection which can mean, you know, filing a one page statement or somehow indicating a concern by picking a box.

Chuck Gomes: How did - from an implementation point of view, Miriam. How do you think that – let's go back to the public comments. Do you agree with what (Victoria) said? Just your own personal opinion, I'm not asking to

speak for ICANN or anything. In terms of should the public comments not even – just public comments. During the public comment forum, not come into play in terms of any of the objection processes?

Miriam Shapiro: Well, I don't have a personal opinion or a vote unlike you Chuck. So, let me say that…

Chuck Gomes: I don't know that I do either. This is a tough one.

Miriam Shapiro: I know. You know, I think the all the other processes have had public comments. And I, you know, imagine that there are number of instances where they've been helpful. And they also be seem to be part of the ICANN structure.

So, it was more to your general question when you framed it earlier. There's a specific question for this recommendation. And there's some more general question which were – are just giving into now.

You know, I think the council should be give very serious thoughts to position of not having - not encouraging public comments on aspects of the application. If we…

Chuck Gomes: Yeah, and we certainly shouldn't say based on public comments here…

Miriam Shapiro: Yup.

Chuck Gomes: …if they're not going to be considered.

Miriam Shapiro: Yeah. Now, there – now there I think your specific question is varying just in this because I believe this is the only recommendation that refers to public comment.

Chuck Gomes: It is, yeah.

Miriam Shapiro: You know, I think that needs to be thought through by the council very carefully as to what is their intention here.

Chuck Gomes: Now, Liz…

Miriam Shapiro: That's the way you've framed it as earlier that if a specific question for this recommendation, then of course there's question.

Chuck Gomes: Yeah, right. And the broader question, I think it would be very helpful, Liz and (Karen) and Miriam, if you guys took that back within ICANN staff and talked about that. Because people get very irritated when we have public comment periods and they're ignored.

At the same time, you know, how do you really incorporate them? You know, (Victoria) make some good points there. And so, but that's something we don't need to talk about here. But I think if you guys can look at the higher level question in that regard, it would help us in the next few weeks.

Liz Williams: Good idea.

J. Scott Evans: I get – this is J. Scott – I am amazed that it's the NCUC that it's against the public comment because having not been involved – been involved in ICANN and this perception. I know that the reason that public

comments are considered and the reason that those mechanisms are put in place especially on something like this comment where you're worried about somebody affecting a very small unsophisticated group of ethnic group or language community or something like that.

It's because it's the bottom of organization. It wants the stakeholders who are involved to be able to have involvement and comment and get their comments out there and affect the processes.

(Victoria):   Do you it's – well, I think that's a fundamental misunderstanding of our position really. I mean, and what our concern is, is that this will be misused really. I mean, my real concern about this entire recommendation is that this will be abused by incumbents to prevent, you know, to maintain the out (officials case) so that we still have and to prevent the registration reason that's slightly bothers anybody who's already a player in the market.

The NCUC already deals with, you know, is a structured, you know, in a way democratic kind of ways for the public's concerns to be dealt with. You know, so I think that's a misapprehension of that – of really where we're coming from.

Chuck Gomes: And how would…

J. Scott Evans: This is…

Chuck Gomes: …the incumbents misuse us?

J. Scott Evans: I don't see that this is a…

(Victoria): Well, let's take the .bank example, where I have one more question which I really liked to clarify that because, you know, this is what this whole recommendation really comes back to quite frankly.

Yes, there is the issue about, you know, local communities and language or what have you in the Maori. .Maori is a good example of that. And that is a valid issue. I mean, at the NCUC, I didn't think – we're concerned about that and can send a support from protection there.

What I'm very concerned about is .bank. Okay? Because in your example, I'm not quite sure who is .bank targeting.

Chuck Gomes: Well, it depends on the application. If the application is supporting banks around the world and there are, you know, global banking organizations that that or an opposition to it. Is that a situation that we want to promote?

(Victoria): When you say, (unintelligible) and get – you know, I mean, I started with .widget but it's exactly the same as .bank okay? The thing is it's very easy for bank of America to get – you know, the bank is organization or the bank is association to stop some bright clear the young entrepreneur from registering .bank, right? Then nobody's got anymore right to .bank then (they're pissed and they came up with) idea of us. Do you know what I mean?

So…

Chuck Gomes: What…

(Victoria): … that's the very scenario that I've been – I think is (unintelligible)…

Chuck Gomes: Yeah, but I'm not sure I agree – I'm not sure I agree with that. It's the little entrepreneur does that and is…

(Victoria): But now it has (unintelligible)…

Chuck Gomes: …planning to support the banking institutions of the world. And he doesn't have their support, should that happen?

(Victoria): Well, I don't think anyone one the internet thinks someone has read this .bank is claiming to represent the banks, so there was (unintelligible)…

Chuck Gomes: No, no, no.

((Crosstalk))

Chuck Gomes: Don't forget, we're talking – if the entrepreneur is not targeting the banking industry and banks of the world. It's a different scenario. But if he's planning…

(Victoria): (Unintelligible)…

Chuck Gomes: …the support…

(Victoria): Uh hmm.

Chuck Gomes: …provides services for those institutions, then…

(Victoria): Well that was my question here, wasn't it? When is it targeting? When – will you tell me…

((Crosstalk))

Chuck Gomes: In the application.

J. Scott Evans: (Unintelligible) application.

(Victoria): Okay, I'm afraid if we're trying to deal with this at a policy level, that's not acceptable answer. You should – you need to be able to extrapolate one or the other. You know, you need to be extrapolate that example that's – it's the defining example at everyone's ease about this recommendation, (unintelligible)…

Chuck Gomes: I personally think you're making it more complicated than it is. It's a fairly (unintelligible)…

(Victoria): It is complicated.

Chuck Gomes: …issue for…

(Victoria): No, it is complicated.

Chuck Gomes: Yeah, well.

(Victoria): It's important and it's complicated. And it has massive impacts on numerous businesses.

Chuck Gomes: Yeah, okay.

(Victoria):   And I think, you know, and this policy (should in) context. We have a –
                we ought to be ought to extrapolate, you know, what the possible –
                who might be targeted under what circum – if that's their example, let's
                own it and work it through.

Chuck Gomes: Okay, all right. So you're going to – now, the other thing I think it's
                important for us to talk about is – now, by the way, does anybody think
                we should leave in the based on public comments phrase there? So,
                that nobody really thinks we should leave that in? Okay.

Liz Williams: Chuck, it's Liz here. Can you hear me?

Chuck Gomes: Yes, I can.

Liz Williams: Oh, good. Okay. I've tried to be taking notes whilst the call has been
                going on. And one of the things that I think needs to come out off this
                call is any amendment of the language, which one need to go back to
                the group on Friday?

Chuck Gomes: Uh hmm.

Liz Williams: Are you now going back to a drafting thing?

Chuck Gomes: Well, because we – I'm trying to get some closure on the…

Liz Williams: Yes, right.

Chuck Gomes: …public comments issue in the wording the way it is right now. I haven't have heard anybody supporting that phrase based on public comments.

Liz Williams: So if the text well then read an application will be rejected if it is determined that there is substantial opposition to it from significant established institutions.

Chuck Gomes: For which you're targeting, yeah.

Liz Williams: Blah, blah, blah. But that what that means is then that takes out public comments from the evaluation process and what it does is then sets up in an implementation context the way in which opposition would be framed.

So, it takes out public comments and then it establishes for us the series of takes that said if you wish to subject this application to an objection, this is how you would do it.

J. Scott Evans: Right. And I think that's what (Victoria) said. And it could be very simple, as a simple form.

Liz Williams: Yup, yup exactly. Okay. I've got that, no problem.

Chuck Gomes: Yeah, and – our wording on it will be rejected. I don't – I've seen a few comments on that. That – we may be able to improve that. I don't think we have time to do that right now.

Obviously it's not a predetermined fact. It's got to be evaluated. So, I guess, I personally lean towards maybe rejected.

Liz Williams: Maybe, yup.

Chuck Gomes: Yeah.

Liz Williams: May.

Chuck Gomes: Rather than will be because it sounds too strong to say will be. It's almost sounds like it's automatic. And that was not the intent.

Liz Williams: Yup.

Chuck Gomes: There's going to be an evaluation process.

Liz Williams: Chuck and the group, it's Liz here. And I decided one other thing that I wanted to raise before the end of the call which what J. Scotts know, so I'm sorry to put you on this spot J. Scott. But we said – you said on your posting about that you sent to Mawaki about abuses of the process. And you said unfortunately there's no way in my opinion to craft the recommendation on mechanism that cannot be going to abused. The most practical way is to have a challenge process which is serious and charge fees.

I just wanted for the purposes of this small group whether if you wouldn't mind, if we just had a bit of a go around on that as well, because that's another element. Public comments is one part of it, the drafting the recommendation is one part of it. And the way in which the objection process is structured is another one.

Chuck Gomes: It's okay with me.

J. Scott Evans: I personally think if you're trying to have – solve (Victoria's) problem is that anybody can come along and (come) up the system. Then you've got to up the (NT) and make it something that somebody's got to pay for if they have a problem.

(Victoria):   I'm not sure that I agree with that.

Liz Williams: How do we recover our cost as an institution, (Victoria)? How do we – and it's very expensive to establish independent panel. How do we…

(Victoria):   You know what, it's such a good point. And that comes back to my – you know my general concern that we make this as well worded. And don't create an industry, you know, where we get lot – where the ICANN is deluge with these things, right?

Quite frankly, I mean, it's just that we thought, you know, we I mean – I certainly am not able to address that issue right now. I haven't looked at anything that been proposed or anything. And I'm still dealing with the principal level. So, I'm sorry I can't be of any help.

Chuck Gomes: Well, and other thing in this regard that I think we need to spend a little bit of time on and I'm not trying to skip over what you suggested there Liz, but I think it's related. And that is the definitions that Avri suggested.

Liz Williams: Yup.

Chuck Gomes: That they seem – and you know, again there at the, I think the implementation level. But still something that I think we should

consider, in my opinion. And I haven't spent a great deal of time on them. They seemed to be on the right track. They may not be completely there yet. But they're on the right track.

The only objection I had is that I don't think you – we want a ten year guideline on established institutions. In the internet world, that's on an eternity. I think that something like five years is enough and still have an exception procedure. If you have ten years, you're going to have an awful lot that'll be in the exception procedure.

Liz Williams: I'm conscious of the time but I don't want to cut off the discussion. It seems to me that there's a couple of the things that have come out. If the group are willing to just let me summarize quickly.

Chuck Gomes: Go ahead.

Liz Williams: First of all, dealing with the text of the application – or text of the recommendation, I'm sorry. It seems to me that we have two amendments and application that may be rejected if it is determined that there is substantial opposition to it from blah, blah, blah deleting based on public comments or otherwise. Those five words need to come out. Is that correct?

Chuck Gomes: Yeah. And that – I think that's correct from my view. The other question I would raise in the wording of that. The way it's worded right now, it seems to – could be thought of to eliminate to the economic sector, the culture or language community is that our intention. As I stated earlier, I didn't think it was that thought are more examples, but I could be wrong.

Liz Williams: What I'm trying to…

(Victoria):   Oh, I'm sorry. I completely misunderstood. Sorry, could we just run that over again. I'm sorry, I'm completely confused now.

Liz Williams: I thought that what we were trying to do was deal with (Victoria's) issue with the public comment and objection. And that meant removing it from the recommendation. That was the first piece of it. The second piece of it was dealing with Chuck's concern which was a "Will" was too strong a term and it should be substituted with "May".

Chuck Gomes: Yup.

Liz Williams: The third piece of the concern was Chuck, it seem to me that you are looking for example of economic sector or culture or language community?

Chuck Gomes: No, no, no. What I'm saying is – and I don't think we're clear in this. And I'm not sure what the committee's intent was. When I saw established institutions of the economic sector or cross cultural or language community, I didn't originally take that to me and those are the only established institutions that…

Liz Williams: …that could, yes…

Chuck Gomes: …that could file a complaint from those three categories. But that those three were examples. Now, I maybe wrong on that. But it seems to me it's pretty hard for us to define in advance what possible types of communities, one that may not fit one of those categories may have the same concern.

Liz Williams: Chuck, I wonder if I could help with the drafting here. And to be…

Chuck Gomes: Please do.

Liz Williams: …consistent then with three and six.

Chuck Gomes: Okay.

Liz Williams: And I wonder how this fits with you guys.

(Victoria):   I'm sorry, I'm really not (unintelligible) the draft on the (fly) here as I
                  said earlier.

Chuck Gomes: That's…

Liz Williams: No, we're going to have to deal with something (Victoria). And I'm
                  proposing to…

Chuck Gomes: Yeah.

(Victoria):   Well, I'm not going to be obviously agreeing to this. And I would like to
                  have a look at anything on what have you. And I just…

Liz Williams: Well, of course you would.

(Victoria):   …don't agree with this process of that turnaround in this call off in this
                  way quite frankly because we haven't reached to any kind of
                  agreement.

Chuck Gomes: We heard you on that. So…

(Victoria):   Except (on) public comments. And also Chuck, what you've just said about the examples is entirely contrary to what you said earlier which (unintelligible)…

Chuck Gomes: I don't think so. But let's not argue with that now. Hey Liz, go ahead.

Liz Williams: Here's my suggestion for how we could perhaps deal with this. So, I'm going t read something and then I'll see if it works. An application may be rejected if it is determined that there is substantial opposition to it, full stop.

Yup, full stop. Then we could put something like we've got in recommendations three and six which says examples of opposition could be from established institutions of the economic sector to which an application is being targeted, or opposition from culture or language communities to which the application is being targeted.

Chuck Gomes: Now, I like the example before. But you left out one key ingredient in the first sentence.

Liz Williams: Yup.

Chuck Gomes: And that is the targeted issue.

Liz Williams: Okay.

Chuck Gomes: Because then that leaves that wide open to anything.

Liz Williams: Okay. So…

Chuck Gomes: And the intent really was – okay.

Liz Williams: Let's see if we can reinsert that. An application which addresses a targeted community – an application which addresses a targeted community may be rejected if it is determined that there is substantial opposition to it.

Chuck Gomes: That's better on my mind. Now, you know, I think…

J. Scott Evans: I would say, substantial opposition to it from the targeted community, period. (Then full stop).

Chuck Gomes: Well, but you need that conditional phrase in there. An application that targets…

J. Scott Evans: Right.

Chuck Gomes: …a specific community may be rejected and so on.

J. Scott Evans: If it is – yeah, may be rejected…

Chuck Gomes: If there's a substantial opposition to it.

J. Scott Evans: If there's substantial ops to it from the target.

Chuck Gomes: Oh – yeah that's right.

J. Scott Evans: From the targeted community meaning not anybody can…

Chuck Gomes: Yeah, good point.

J. Scott Evans: …only the targeted community can come forward.

Chuck Gomes: Yeah, that's right. That's right, good point.

J. Scott Evans: And then say, go into the next. And it's a good example.

Chuck Gomes: The examples, yeah.

J. Scott Evans: Of where – who might object.

Liz Williams: (Victoria).

(Victoria):   Yes, what? (Unintelligible).

Liz Williams: We're trying to come up with a language that addresses the NCUC's concerns because the existing…

(Victoria):   Okay, I just (unintelligible).

((Crosstalk))

(Victoria):   I'm not really comfortable (if we do this on the slide).

Liz Williams: But…

(Victoria):   I'd like to the (unintelligible) to have a look at those

Liz Williams: I haven't finished my sentence. What I'd like to do is to propose some alternate language to be distributed to the small group that are dealing with recommendation 20 to try to improve this.

And then on the basis of that, perhaps you could go back to the NCUC and say does that satisfy what you're trying to do.

(Victoria): I would much prefer if I see that (unintelligible) on the call that – I mean, it asked the heavy of the stage. I think everybody has said that this – vaguely in consensus, except that. So, I think it's much more appropriate that if I offered earlier that I go back to the constituency tomorrow. And that we come back to you before you do any revisions. You just kind of…

Chuck Gomes: Well, we're supportive of that but I think you should take back what the rest of us think is the…

(Victoria): Oh, I will, decently.

Chuck Gomes:: …the fast version of what - where we're at because otherwise, we're going to have the federation again.

(Victoria): Well, we'll have to do that anyway.

Liz Williams: Well, actually, you want to…

Chuck Gomes: Maybe not as many times.

Liz Williams: And (Victoria), frankly the iteration that you won't have because unfortunately there is a whole bunch of consensus fatigue. And we can

stick with the proposed language if we can have the NCUC the position of having to submit a minority report.

What we're trying to do is to reach a position which we think is the best possible in terms of the recommendation that addresses your concerns which just come up with an (unintelligible) consensus (unintelligible).

(Victoria): Okay. I mean, I made a number of varied detail I mean, for the number of pretty detailed concerns. And I think this recommendation is a great deal of work on a drafting front. And so, I just think in like two minutes at the end of this call we're going to be able to achieve anything. And…

Chuck Gomes: Well, we're not trying to do that, but…

J. Scott Evans: All we're trying to do is do this and you could take it back to your constituency and come to us with what you think is possibly…

(Victoria): Okay. Well if you'd like to just email with whatever you like to send back, I will forward it, all those. I mean, I'm not in the position to agree to anything now.

Chuck Gomes: We're not asking you…

J. Scott Evans: We're not asking you to do that.

(Victoria): So, I mean, I think what I'll do is leave it to you. And if you want to forward it to me, I will incorporate it with my comments and report back to the constituency.

Chuck Gomes: Excellent.

(Victoria):   And we will come back to you tomorrow.

Chuck Gomes: That'll be – that'll be very good. Now…

Liz Williams: Guys, I'm sorry. I was taking notes and thinking and writing at the
                  same time. Would you mind if I just read it again. And I'm writing this
                  down so I can email it to you. An application…

Chuck Gomes: Go ahead.

Liz Williams: …may be rejected. No, an application that is targeted to a specific
                  community may be rejected if it…

Chuck Gomes: If there is. If there is.

Liz Williams: If – thank you Chuck – if there is substantial oppositions to it.

Chuck Gomes: From – or from that targeted community.

Liz Williams: From the targeted community.

J. Scott Evans: I think you need to put in (in case) it is determined.

Chuck Gomes: That's good.

Miriam Shapiro: Can I ask a – I have a question, it's Miriam. Do you mean to drop the
                  reference to significant established institution?

Liz Williams: No, it's going to go in the examples a bit Miriam.

J. Scott Evans: Okay, did…

Miriam Shapiro: Okay. So, it could be any part of the targeted community raising the objection. It doesn't have to be…

J. Scott Evans: No, that's going to be in the second sentence.

Miriam Shapiro: …established…

J. Scott Evans: We're just working on the first sentence.

Liz Williams: We're just working on the first sentence, hang on.

(Victoria):   Well look, if you don't mind, I will leave you to this. And I'll have a look at this when you forward it.

Chuck Gomes: Okay, thanks…

(Victoria):   Thanks.

Chuck Gomes: …(Victoria). I appreciate you filing in here.

(Victoria):   Thanks a lot. Thanks for your help. Bye.

Chuck Gomes: Okay, maybe it would be helpful Liz if you can go on to the second sentence and then we can come back to Miriam's concern if it still exist.

J. Scott Evans: Well, I just want to make sure did you put in that, if it is determined language? Because that's important.

Chuck Gomes: Yeah, and it – I…

Liz Williams: Yeah, wait a second I'll go back again, J. Scott. An application that is targeted to a specific community may be rejected if it is determined that there is substantial opposition to it from the targeted community.

J. Scott Evans: Yes, that's better.

Liz Williams: Voila.

Examples, to get to Miriam's point of that opposition may come from established institutions, et cetera, et cetera, et cetera of the cultural, economic sector language community to which they started their own intended to support.

Miriam Shapiro: Just to be clear – I don't have a position on this but just to realize that the language that Liz just read, anybody from the targeted community can object. Period.

J. Scott Evans: Well, I mean, if Chuck is – I think Chuck was pointing out, that was his concern is.

Miriam Shapiro: Uh hmm.

J. Scott Evans: His point was, I believe that the original recommendation was not to be limited to the three groups that are set forth in the recommendation.

Miriam Shapiro: Right, no (unintelligible)…

Chuck Gomes: And I think Miriam is talking about something different.

Miriam Shapiro: (Unintelligible).

Chuck Gomes: Did we leave out the word substantial?

Miriam Shapiro: No, you two left out. And I know they're probably been including this too. But I just want you all – you know, I just want a clear guidance from you. We all do. If you leave out – if significant established institution is no longer in the first sentence, then anybody, any member of the community or three members of the community can object.

Chuck Gomes: Yeah, yeah I hear you. Yeah.

Liz Williams: I see (it was the same).

Miriam Shapiro: And that could be your intention, I just want you all to be clear…

Chuck Gomes: No, I think actually we sent…

Miriam Shapiro: I think to do is limiting – it has nothing to do with releasing a lamentation on…

Chuck Gomes: Yeah.

Miriam Shapiro: …economic playing with cultural but…

Chuck Gomes: Yeah, yeah, yeah, Got you. Yeah, no, no I understand. And I think you're probably right that – and I'm trying to think back to the committee work on this and the established institutions and the word substantial were put in there for very specific reasons to try and avoid what you're talking about. So, I think it's okay to be…

Miriam Shapiro: I think everybody has their own questions. They've raised their own questions about what does that mean, how that (unintelligible)…

Chuck Gomes: And no, no, I understand. But again, Avri is taking a first crack at trying to deal with that from an implementation point of view. So, I think that those could be put back in there.

J. Scott Evans: Yeah.

Chuck Gomes: J. Scott and Liz, what do you think?

J. Scott Evans: Why don't we just put it there's substantial opposition to it…

Chuck Gomes: From, from…

Liz Williams: From established institutions.

J. Scott Evans: Significant established institutions…

Chuck Gomes: In – from the targeted…

J. Scott Evans: From the targeted community.

Chuck Gomes: Yup.

Liz Williams: Yup.

J. Scott Evans: Yup.

Liz Williams: Yup, yup, yup.

J. Scott Evans: And I think you've done that. Then you've raised the bar and that what Miriam's concern is we've lowered the bar.

Liz Williams: Yup.

Miriam Shapiro: I know I don't have the position, just be clear on which way you want to…

Chuck Gomes: Yeah, no, it's taken (unintelligible)…

J. Scott Evans: No, I didn't think you were – I think you're raising a concern not a position or to highlighting a ramification of our (unintelligible).

Chuck Gomes: It's a good catch.

Miriam Shapiro: Precisely.

Liz Williams: Okay.

Chuck Gomes: Now, where are we at?

Liz Williams: So, what I'll do then is, we've done a lot of helpful work for the NCUC who are no longer on the call.

Chuck Gomes: Yeah, that's okay. But I think it would be good because if you read
                 exactly what you're going to send them, and I'm sorry to put you on the
                 spot. And if you need a few minutes…

Liz Williams: Yes.

Chuck Gomes: …to do that…

Liz Williams: Already do – already do it right now.

Chuck Gomes: …because of the way the she was – that (Victoria) was reacting, I think
                 it's – we don't want to be tweaking this after you send it to them.

Liz Williams: Okay, I'll read it to you. An application that is targeted to a specific
                 community (to) may be rejected if it is determined that there is
                 substantial opposition to it from significant established institutions
                 within the targeted community.

Chuck Gomes: Okay, and the next sentence.

Miriam Shapiro: What within the representing, just a question.

Liz Williams: What (unintelligible)? Sorry Miriam I didn't hear you.

Miriam Shapiro: Is it better – do you all want to say within or do you want to say
                 representing?

Chuck Gomes: Representing is a plus because…

Liz Williams: Within.

Miriam Shapiro: It's kind of oblivious, I guess.

Chuck Gomes: And…

J. Scott Evans: You know, I want to stick with within.

Miriam Shapiro: Okay, I just want to raise a question.

Liz Williams: Within the targeted community.

Miriam Shapiro: Uh hmm, yes.

Liz Williams: Okay, I'll read it one more time just for everyone. I'm sorry to be boring about it. But it's good to get it right.

                  An application may be rejected – no. An application that is targeted to a specific community may be rejected if it is determined that there is substantial opposition to it from significant established institutions within the targeted community.

J. Scott Evans: Period.

Chuck Gomes: Okay, period.

Liz Williams: Period, full stop.

Chuck Gomes: Okay, and the next sentence.

And this – the reason I'm pushing you to get that one too is because I think that's going to be another where the NCUC is going to – going to…

Liz Williams: Well, I think Chuck that what we need to do is see if we can get that then we have to say how we would define significant established and targeted…

Chuck Gomes: No, no. Forget that a moment. I want to hear the next sentence that talks about the examples.

Liz Williams: I have no idea.

Chuck Gomes: Oh, I – you had proposed that earlier.

Liz Williams: No, I just heard you said the (unintelligible) of that opposition may come from, I mean, da, da, da, da, da.

Chuck Gomes: Also, we wouldn't even have a sentence about…

J. Scott Evans: Yeah.

Chuck Gomes: …the examples of economic from…

Liz Williams: Nope.

Chuck Gomes: Oh, that maybe okay.

J. Scott Evans: Because you've got significant established institutions from the targeted community. Targeted community…

Chuck Gomes: Actually that's okay.

J. Scott Evans: …could be a language community.

Chuck Gomes: Yeah.

J. Scott Evans: It could be a business community.

Chuck Gomes: Yeah, yeah. Yeah.

J. Scott Evans: It could be an (unintelligible) community.

Chuck Gomes: And that addresses the concern I had.

J. Scott Evans: Yeah?

Chuck Gomes: So, that I'm okay – I'm okay with that.

Liz Williams: Fine.

J. Scott Evans: I was comfortable with that.

Chuck Gomes: I was just making sure we've had closure.

J. Scott Evans: Because it's – what it does is it says only certain application will fall
                  within the preview of this recommendation, right? Targeted
                  applications.

Chuck Gomes: Uh hmm.

J. Scott Evans: And they can only be opposed when there is substantial…

Chuck Gomes: Yup.

J. Scott Evans: …right? Substantial problem with it from significant institution or so - you know, one of the other – established institutions. And we've put as much qualifying language to narrow this the key.

Chuck Gomes: Yup. I said, okay, no, no, I like it.

J. Scott Evans: I'm comfortable.

Chuck Gomes: Yeah.

J. Scott Evans: Are there others on the call?

Chuck Gomes: (Karen) do you have any thoughts?

(Karen):   No, I think with the moving the established institutions part of the first sentence, I think that achieved what you want to…

Chuck Gomes: Uh hmm.

(Karen):   …appear intended.

Chuck Gomes: Thanks. Okay, I think…

J. Scott Evans: (Unintelligible) what we've send to them and that's what we take to the meeting on Friday.

Chuck Gomes: Yeah.

J. Scott Evans: Provided that they don't come back to us between now and Friday with something that we can massage into this until we're comfortable with it.

Chuck Gomes: Right, yeah uh hmm. And the meeting early Friday so…

J. Scott Evans: At 8:00 East time, I think. Chuck you're over here with me then. Aren't you? On the (unintelligible)…

Chuck Gomes: Yeah, I'm at the moment on the East Coast. So I don't have to get up at 5:00 like today.

Liz Williams: Guys, I just wanted to see if I could wrap that up and send it to the group. What I could just…

Chuck Gomes: You may.

Liz Williams: …to sort of recommendation six was to send out the amended text…

J. Scott Evans: Yeah.

Liz Williams: …to the small group.

J. Scott Evans: Yeah.

Liz Williams: And I'll do that. And then what I also said was if there was not substantial oppositions – to it, then I would send it to the big group

prior to the Friday meeting so that the group have it prior to the meeting.

Chuck Gomes: Yeah, they probably won't have hours with much leave time because I'm sure it'll take the…

J. Scott Evans: Yeah, I don't think we should (unintelligible)…

Chuck Gomes: I think with what you have, you could send that – I mean, (Victoria) can go ahead and send what you're going to send to us to…

Liz Williams: (So right).

Chuck Gomes: …the NCUC. Yeah.

Liz Williams: Yup. That's (unintelligible).

Chuck Gomes: No use delaying that.

Liz Williams: Nope, okay. All right, and then what are the result – I'll take J. Scott's points about these and leave aside the section of examples and I'll...

J. Scott Evans: (Unintelligible) if this…

Liz Williams: And I'll remove the reference to public comments.

J. Scott Evans: If this don't have to be a profit source, they can just be covering from…

Liz Williams: No, there are any cost recovery J. Scott.

J. Scott Evans: Yeah, but if they are, at least there is a fee which means that somebody who wants to complain is going to be serious about it.

Chuck Gomes: Now…

J. Scott Evans: Then economic…

Chuck Gomes: Yeah.

J. Scott Evans: …hey, you have to put your flesh on the table.

Chuck Gomes: Now, (Karen) and Liz and Miriam, from – in your work on implementation, have you considered the question of whether or not there can be multiple complaints. And if so, are the fees different when there are multiple complaints? Is it the same? I don't necessarily need the answers but I think that's something that will have to be dealt with.

Miriam Shapiro: I have raised a question…

Liz Williams: Miriam, didn't we just close about that?

(Karen):   Yes

Liz Williams: Can you hear me?

(Karen):   Yup.

Miriam Shapiro: Yup, yes. Oh, I have raised a question and it's definitely on the list of…

Chuck Gomes: Good okay…

Miriam Shapiro: …of the answers that we need but I don't think we have ones for you yet, Chuck.

Chuck Gomes: Yeah and no, that's fine. I didn't necessarily expect you to. But it is one that needs to be answered because you may have different significant institutions of a particular targeted community that aren't – that don't complain together…

Miriam Shapiro: Right.

Chuck Gomes: …for, you know…

J. Scott Evans: Yeah.

Chuck Gomes: …a variety of scenario. But you're ahead of me on that which is what I expected so that's good.

J. Scott Evans: I, you know, this is a good movement. It certainly have tightened up this from my point of view. I mean it's not specifically illustrative of everything of we could think of but we can't do that. Again, this is just as I understand these recommendations, they're only for an applicant to be able to look at and say, here's delay of the (land) to help them and putting together the applications. So maybe they don't step in to any mine field.

Chuck Gomes: Yeah, and if they do step in to a mine field, they're going to know what the consequences are.

J. Scott Evans: That's right.

Chuck Gomes: You know…

J. Scott Evans: I mean – and I think this is far more guidance than earlier applicant's guidance.

Chuck Gomes: Yeah.

It is, yes.

J. Scott Evans: So…

Woman: (Unintelligible)…

Chuck Gomes: Liz is there anything else we need to cover today? Well, I think we're going to have to postpone discussion of the clarification of the terms that Avri did.

Liz Williams: But, well, actually Chuck, I don't think that you are. I think that once you get this recommendation language right, the definitions that Avri has proposed and anyone else can propose definitions go straight into the implementation guidelines.

Chuck Gomes: No, that's fine.

J. Scott Evans: Okay.

Liz Williams: Is that all right with you?

J. Scott Evans: Yeah.

Chuck Gomes: Yeah. And the implementation guidelines will be part of the final report that goes with the board, right?

Liz Williams: Yup.

Chuck Gomes: And that's what the council approves?

J. Scott Evans: Yup.

Liz Williams: Yup, absolutely.

Chuck Gomes: Yeah, that's – that's great.

J. Scott Evans: Okay, I'm going to dive off then.

Liz Williams: Yeah, okay guys.

Chuck Gomes: I think we all are. Hey thanks…

Liz Williams: Thanks very much.

J. Scott Evans: Thank you Chuck.

Chuck Gomes: Thanks everybody.

Liz Williams: Okay.

Miriam Shapiro: See you then.

Woman: Bye.

Chuck Gomes: Bye-bye.

END