

**ICANN Transcription
New gTLD Subsequent Procedures Working Group
Monday 04 April 2016 at 2200 UTC**

Note: The following is the output of transcribing from an audio recording of the New gTLD Subsequent Procedures Working Group call on the Monday 04 April 2016 at 22:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-new-gtld-subsequent-04apr16-en.mp3>

Coordinator: The recording has started.

Michelle DeSmyter: Great, thank you. Good morning, good afternoon, good evening.
Welcome to the New gTLD Subsequent Procedures Working Group call on the 4th of April, 2016, 2200 UTC. In the interest of time there will be no roll call....

((Crosstalk))

Michelle DeSmyter: ...Attendance will be taken in the Adobe Connect room so if you're only on the audio bridge could you please make yourselves be known now.

((Crosstalk))

Steve Coates: This is Steve. Just a reminder to mute your phone. I hear someone talking in the background thankfully about Twitter.

((Crosstalk))

Michelle DeSmyter: ...I would also like to remind participants to please state your name before speaking also for transcription purposes. Please keep your phones and mics on mute when not speaking to avoid any background noise.

Steve Coates: Thank you. So I believe – I don't see Avri on yet. Avri was traveling at a conference today and will be hopefully chiming in later today. Jeff and myself will be on for today. Going through the agenda we'll have roll call, next on the agenda is the discussion on the letter from Steve Crocker and the board and our draft response.

Next, discussion regarding the principles from the 2007 final report. Discussion on Subject 1, our first big question to tackle is should there in fact be new gTLDs at all. And then Subject 2 if we have time, should we differentiate on the types of TLDs such as dotBrands. And finally AOB.

For roll call can I ask that we take all the participants who are dialed into the Adobe chat room to be noted. And then anybody who is calling in to please make themselves known so they can be added to the roll call. Anyone dialing in who's not on chat?

Hearing none we'll move on to Statements of Interest. If anyone has not submitted their Statement of Interest as a participant to the working group if they could please do so. Steve, can I put you on the spot, I believe last call we did not have any outstanding SOIs, but Steve, can you remind us?

Steve Chan: Thanks, Steve. This is Steve Chen from ICANN staff. And I am indeed on the spot. I think we had one missing last time. I'm scrolling through the list right now and there's still only one. The GNSO Secretariat will follow up with the single person for missing SOI. But otherwise I think we are looking quite good as a group in that regard. Thank you.

Steve Coates: Thank you, Steve. Next on the agenda, discussion on the response to Dr. Crocker. So Steve Crocker had sent a letter on behalf of the Board of Directors I think – can't remember the date. We had discussed this in our last call preparing a relatively short and sweet response. Julie, thank you for drafting that. And Steve Chan, for chasing the process on how to respond to the letter. You can see it in the chat room up above in draft form. It addressed the only three issues that we discussed on.

Our proposal is to send this response to our GNSO liaison who is Paul McGrady, who I'm not sure is on the call or not. I'd like to open this up for discussion. Any concerns, questions or comments would be greatly appreciated, thank you. Don't see any hands or comments in chat. Seeing none I see no objections. We will proceed with the letter.

Moving on to the next item on the agenda, Item 4, discussions regarding the principles from 2007 final report. I'm going to move this over to Jeff Neuman to discuss. Thank you for putting that up on the chat room. Jeff, are you ready?

Jeff Neuman: I am ready. A little quicker than I thought but, yeah, I'm ready to do it. Can you hear me okay?

Steve Coates: Excellent. I move through these agendas quickly. I'll pass it on to you, man.

Jeff Neuman: Great. Thank you, everyone. So what I want to do here, and we did a little bit of this in Marrakesh for those that were there. But I think it's really important to go through the high level principles and the high level recommendations that were decided in the 2007 final report to go one by one through them to make sure that we set a baseline of where we are and to govern our discussions through the different work team and in fact even the other overall issues.

What would be great to achieve is to go through these and then as we get into the specific subjects to relate those back to those principles and say, Number 1, did the program the way it was implemented in 2012 adhere to that principle? If not, you know, what could be done to adhere to that principle if these are principles that we agree with?

A number of these principles and recommendations are ones that are going to be tweaked throughout the course of this working group but I think, again, to kind of start with a baseline is helpful. And if anyone has any suggestions as to new principles or recommendations then, you know, just speak up on this call.

And one thing I also want to do, which I'm doing a little research into. I have not been as involved as some people like I know Alan Greenberg has been involved in the CCWG. But I know that they do not – the way that they operate it from what I've observed is that they do not make any decisions on calls unless it's been discussed on at least I think – Alan, correct me if I'm wrong – at least two different calls. So I want to make sure that we proceed in that manner as well so that if someone does miss a call that they don't necessarily miss the discussion which should take place on the mailing list.

But any kinds of – and I'll use a lower case “agreement” or things that we come to consensus on in any one call. I really like the way that that worked. I'm sure that there are people here that could describe it a lot better than I have. But I really think it's important not to make – not to make decisions on any one particular call. Alan, do you want to comment on that because you know it a lot better than I do.

Alan Greenberg: Yeah, thank you. Yeah, that certainly was generally the rule. And I think it's a good one. The other thing, however, they did, and pretty religiously is made sure that any decisions that were going to be made on the next meeting were documented via email. So it's quite possible that people can't be at consecutive meetings.

And, you know, although everyone should listen to transcripts and, you know, watch the Adobe Connect and everything like that, it's certainly or – sorry – listen to recordings or read transcripts – it's certainly good practice to make sure it's documented on the email list so that there's no question that this is a decision, you know, any decision can always be reopened again under duress but the more you do that the more you're going to get bogged down and do this forever.

So I support what you're saying but also request that we try to document it via email as best we can before that decision is made at the next meeting. Thank you.

Jeff Neuman: Great. And I think – and Cheryl has just corrected me, that this was started in the ccNSO so thank you for that, Cheryl. I agree with you, I think it is really helpful and I also agree with the suggestion that we document any decision that's going to be taken on the next call or anything that's, you know, even for a first reading discuss decision. I think that's very helpful.

And Cheryl has pointed out on the chat that if we could keep a decision log that might be helpful as well. So we will look into doing that and hopefully if we ever stray from those principles let us know. They will be unintentional and we'll make sure we get back to doing it in that way. So is there any other comments on that moving forward? Great.

Okay so with that in mind – oh and I have to apologize because my other phone is going off that I thought I turned off. The high level principles – that ringing will stop in the background any second now. The high level principles – the recommendations – there are principles and recommendations. The recommendations for the most part are at the high level but some of them go into detail.

So when we get into the recommendations we can discuss whether we should just kick those into one of the work teams or one of the other questions or whether we can just move past them and say, yes, this sounds reasonable. And when we get to them you'll see why they are pretty high level in general to begin with.

So with that said, and now there's some fire engines in the background. This is great.

Sorry about some of the background noise. Alan, you have your hand raised, maybe I can mute it.

Alan Greenberg: Yes, thank you. One other thing, there were some exceptions made to these principles as we went along in the first round. And I think to the extent that we can remember them and note them they should be identified as we go forward.

Jeff Neuman: Yes, Alan, that's right. I do believe that a lot of these will not necessarily – not even just exceptions but also will be tweaked to under things and lessons that we've learned. And also I expect these principles and recommendations – I expect, one, that we'll add to them so that, you know, as we go along. And, two, that we will tweak them as we go along as we get into specific subjects and then come back to the principles and say, oh yeah, we said this but it really needs to be tweaked in one way or another.

So the first one which, relates to something we'll get into the overall subjects, is a new gTLD – or new generic top level domains, gTLDs, must be introduced in an orderly, timely and predictable way. I'm going to kick this one to the overall discussion that we'll have in a little bit. But I think to move to the second one unless someone has a comment now, I think it does relate to the overall issue of should there be new gTLDs.

Okay I'm just waiting to see if there's any hands. Okay the second principle – some new generic top level domains should be internationalized domain names subject to the approval of IDNs being available in the root. Does anyone have any questions on that one? It's a pretty high level – I think the subject – if anyone recalls, and Avri would have been helpful to have on this part, the subject to approval of IDNs being available in the root. We do know IDNs are available now in the root. They were not back in 2007.

So the – so that, I mean, if anything that principle may need to be modified. Alan, you have a comment.

Alan Greenberg: I would say this principle isn't needed anymore. It's de facto the case. It's like we didn't have a principle saying we should allow ASCII letters in top level domains because it was simply the fact. So I'm not sure we need this one as such.

Jeff Neuman: Yeah, I think that makes sense. I'm watching the chat. Kurt, the things you're outlining are definitely questions, overall questions that we will be talking about or that they will relate to, but I think they're a little bit specific at this point. It was in initial terms of reference in 2007 that the – or maybe I should restate it in case just for the transcript.

Kurt is putting down some overall questions that were terms of reference of the initial – in 2006 I believe it was, the GNSO Council came up with four questions as part of their terms of reference that they issued a call for. One was whether there should be new gTLDs. Second one is what are the allocation criteria?

The third one was whether – I'll try and remember exactly. I might be doing this out of order. Oh the criteria for which new gTLDs should be awarded. And the fourth one was are there any contractual conditions that should be imposed or what are the contractual conditions that should be imposed on the registries.

I think that those are some good overall questions but I think they touch on a number of different areas. The principles, I think, relate to the overall program and just set a baseline. So the third – sorry, back on the second principle, is this something anybody else has a comment on as far as Alan Greenberg has said that this may not be relevant in terms of a principle. Vanda put on the chat – and if anyone wants to say this into the transcript I'd love for you all to raise your hands but I'll read it right now.

Vanda says, "Maybe we just state a principle that new top level domains can be in (unintelligible) for either ASCII or/and IDN format. Perhaps that's a good way to say it as a principle." It may be stating the obvious, as Alan stated earlier, but it might be just good to get out there and see. Okay I'm seeing some Vanda plus ones so perhaps we substitute Principle B being that language that Vanda has stated. Okay, and seeing some other plus ones. Thank you, Vanda.

So I'm pausing a little bit just to look at the chat and also whether anyone wants to jump in. The second or Principle C, which I think will relate to our discussion in a little bit about should we have top level domains. But the reasons that were given back in 2007, and like I said, we'll go over this again, is that at that point in time there was demand from potential applicants for new top level domains in both ASCII and IDN formats.

In addition, the introduction of new top level domains application process has the potential to promote competition in the provision of registry services to add to consumer choice, market differentiation and geographical and service provider diversity.

I'll also note for the record that this goes to the heart of what the CCT Review Team is looking at as to whether the 2012 round had accomplished this principle. So this is one of those principles I think we might need to park

initially until we get feedback from them and also until we discuss the overall issue.

Just again pausing to see if there's any questions, comments. Okay moving to the next principle. And like I said, if anyone – if I'm moving too fast just interrupt.

The Principle D and E I think are pretty self-explanatory. But a set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet.

Okay going to – Carlton has – “I would like to see a principle...” – Carlton Samuels says, “I would like to see a principle here that take out and make geographic and service provider diversity a major goal.” Okay. Kavouss.

Kavouss Arasteh: Yes, on Number D, Principle D, a set of technical criteria must be used. Who establishes this technical criteria? It says (unintelligible) must be used so it is a free selection of the technical criteria or it is among a series of criteria to be used or (unintelligible) so how this is to be implemented? So my question about this principle I have no problem with all of them are good but this is always a problem for me that a principle is (unintelligible) if it is implementable. Thank you.

Jeff Neuman: Yeah, thanks for the question. And back in 2007 we did not define the who or the technical criteria. It was assumed that ICANN staff would implement these principles and recommendations. There were some technical criteria that were set out like following relevant RFPs. But most of it was left to the ICANN staff. We have a – or the idea to go forward is to have a technical work track, that's I think Track 5, to look at the technical criteria that were established in the previous round and to...

((Crosstalk))

Jeff Neuman: Are you okay? To look at the criteria from the previous round – I'm sorry to look at, yeah, the technical criteria from the previous round – I'm sorry, to look at, yeah, the technical criteria from the previous round to analyze that and then to see if any other technical criteria are needed. So the who in 2007 was ICANN staff. But I think in moving forward the who is, number one, our evaluation of the technical criteria in Track 5, and any additional criteria that may need to be added.

The other comment I have, and this may be just to get the principle in line with the proposed new bylaws. The old bylaws back in 2006, 2007 had talked about stability, security and global interoperability of the Internet. And that related back to I believe the mission of ICANN. To the extent that the mission of ICANN is being revised because of the CCWG Accountability work we may have to or we may want to revise that principle to use that same wording.

And maybe Greg or Alan or Kavouss and others on that CCWG have some more information about that. Okay, Greg.

Greg Shatan: Thanks, Jeff. Greg Shatan for the record. And certainly while we are making a lot of significant changes through the instrumentality of the CCWG and CWG in the ICANN bylaws I think as far as it goes to D, these criteria I believe remain unchanged. So I don't think there's a reason to change these criteria.

Jeff Neuman: Okay. Thanks, Greg. I was, you know, haven't been following it as closely as you all have. I didn't know if things like resiliency was added in there or some others but great.

Greg Shatan: Well I mean, we should – that said, Jeff, I think it probably makes sense, you know, look at the – I'd actually got the draft bylaws open on my computer, sadly, and I can take a look at them and see, you know, if there are, you know, any, you know, tweaks like that.

I mean, certainly there would be more additive, you know, certainly none of the criteria that are listed here, you know, stability, security and interoperability, none of those have been taken out. So if something has been added to kind of the baseline technical criteria that would be possible. But I'll tell you.

Jeff Neuman: Okay great. Thanks, Greg. Alan.

Alan Greenberg: Thank you. Just looking at D and in fact E and F, although we haven't gotten to them yet, it strikes me that I – of all the criticisms we've had of the new – of the new gTLD process, these are not among them. We might have been a bit overzealous in how we did some of these evaluations or the repetitive nature of them in some cases, but I don't think these are ones that there's been any real criticism that we blew it. So, you know, we obviously have to go over them but I just don't – doesn't strike me as the things that we're going to be focusing on that this point.

Jeff Neuman: Yeah, thanks, Alan. And I know it's a little tedious to go through them. But I think it's right. I think we always have to keep these principles in mind just to make sure that whatever we do and whatever we decide is in accordance with these baseline principles. And I think the recommendations go to those. So I really appreciate everyone's patience in moving forward through that because I think it gives kind of a baseline and a measuring stick.

So you brought up E which is similar to D, it just says instead of technical criteria it's really a set of capability criteria for a new gTLD registry applicant to provide an assurance that an applicant has the capability to meet the obligations under the registry agreement.

And this was eventually translated into financial and operational capabilities. I still believe that I think those are still relevant. But it's – what those criteria are, obviously, maybe – or should – I think will be the subject of a number of

discussions. But just to make sure everyone agrees with the principle that not only should registry applicant meet technical criteria but they should also meet certain financial, operational capabilities as well. Anyone disagree with that principle or have any tweaks?

Do we want to clarify that a capability criteria means operational and financial? Are there other types of – because I always thought that principle was kind of vague. All right, that's just a question that's out there if anybody wants to – Alan, great.

Alan Greenberg: Yeah, I think on all of these principles we're going to end up having some sub paragraphs this time. And there we can, you know, go into some detail about what are the specifics. And, you know, perhaps areas where we feel the first round we're overachieving and/or underachieving. So I – at this point I think these points still need to be there, exactly what they mean and how they're interpreted I think we're likely to provide more guidance than the first round did.

Jeff Neuman: Yeah, thanks Alan. I agree with that. So your recommendation is we just keep this as capability criteria and then we can further describe it in kind of an explanation...

Alan Greenberg: Yeah and if, you know, after we've done this for a year or whatever this is going to take, we decide that we should really rephrase D, E, F in some other form, so be it.

Jeff Neuman: Great. Okay thanks, Alan. And I'm also noticing there's some good conversation in the chat about how to reword C, which I agree would be important. We have to obviously we have to test whether people still agree with those reasons to have it as a principle. But if those – if we do agree that those – that reasons still exist that would be great wording that Robert from Pillsbury has posted on the chat. So we should keep that writing but

obviously we have to make sure that we all as a group agree with those – that rationale going forward.

Okay F very similar, maybe we can just go through these quick instead – well operational criteria must be set out in contractual conditions and the registry agreement to ensure compliance of ICANN policies. I think that's pretty self-explanatory though I'll pause to see if anyone's got a comment.

Okay and G, which is probably the most detailed I think of the principles, are that the string evaluation process must not infringe on the applicant's freedom of expression rights that are protected under internationally recognized principles of law.

I don't know if anyone's got any comments on that. I'm sure that when we get into discussing this in detail especially in the tracks that talk about the objections and contentions and other things we'll certainly get into this in more detail. Greg.

Greg Shatan: Thanks. It's Greg Shatan. When I look down at the next set of items, which are labeled, "Recommendations" and I'm not exactly sure what the difference is between principles and recommendations, although I have an idea, that somehow principles are more inviolate than recommendations, and the recommendations are kind of open to negotiation more than principles.

I look down and I see a lot of things that look a lot like G and are phrased very similarly to G like the first sentence of 3 almost seems to be a mirror image of G. So I would suggest that G should be made a recommendation rather than a principle because it seems odd to have one thing that's a lot like the other thing in a different category. As you say, you know, it's detailed and specific in a way that the others aren't. So I think it's really out of place in the list of principles and should take its place kind of in the row of recommendations.

You know, of course the whole taxonomy of principles and recommendations is something we could reopen for discussion. In the CWG we debated principles heavily for nearly our entire time because we thought the principles were supposed to be kind of an overarching sort of magna carte with a different level of meaning. So I'm not sure that we necessarily need those levels of meaning but if we do I think G falls into the list of recommendations. Thanks.

Jeff Neuman: Yeah, thanks Greg. I think I tend to agree, at least in the fact that we may not choose to keep this taxonomy and we may choose to just abandon the whole principles recommendations. I think for now before we end up talking about where something belongs, I think we should discuss whether we agree with the lower case P, principle, as we move on as opposed to where it's placed. Because we're so early on in the process.

But I know that Kavouss has his hand raised.

Kavouss Arasteh: Yes. I don't believe that we could mix up the principle with recommendation. Recommendations has a lower status or power than the principles. And I think G is a principle. The only problem with G that I have is whether it is old wording. In the second line of (unintelligible) protected under, I would say that that is provides it under, but not protected.

If you want to add protection I don't know who protects this principles or this freedom of expression. There is no protection. There is a right which has been provided. And the G says that the string evaluation process must not infringe the applicant's freedom of expression as provided but not as protected. This has been provided or has been prescribed or has been separated but not protected. I don't know where protected.

And then in the last part of this section under the recognized principle of law, I think – I don't understand the word "principle" in that middle of that.

Internationally recognized law or rules but not principle of law. I don't know what is the meaning of principle of law.

So I have two suggestions, first of all, replace the protected by provided; and then delete principles in the second line of that and retain G as a principle but not as recommendation. Thank you.

Jeff Neuman: Okay. Thank you. And is it Julie that's scribing this? Are you – Julie, is it you that's putting the rationale there or the things under the right side of the screen? Or is Michelle or...

Julie Hedlund: Hi, this is Julie Hedlund. I'm trying to capture some things and bring them over from the chat. I'm not sure I'm getting everything but I'll just – people should know that there will also be, in addition to the recording, a transcription. So I can't say that I'm going to perfectly thorough in this respect but I'll try.

Jeff Neuman: Okay. So I think Kavouss had two recommendations. One – and let me know if I get this right – one was to change the word that are – or change the protected to provided. And then the second one was to take out principles – oh the word principles of – and then it just says, "under internationally recognized law." Kavouss, did I get that right? Oh, he got disconnected.

Can you guys hear me? Can anyone else hear me?

((Crosstalk))

Greg Shatan: Everyone hears you.

Jeff Neuman: Okay great. All right so hopefully we can get Kavouss back to the – on the line. Does anyone have any reactions to his comments? Okay, again I think we can come back to the argument or to – not the argument – to the

discussions of whether these things should be principles and recommendations and what it actually means.

I'm sure we'll come back to this a number of times. The – at this point I just want to make sure that people agree with the note – I'll call it the notion – as opposed to classifying it as a principle. So hopefully, like I said, we'll come back to that.

The first – what's called recommendation, again without kind of – without labeling something. And I always thought this – I didn't know whether this personally belonged as a principle or recommendation or what the decision was, was that ICANN must implement a process that allows the introduction of new gTLDs. I thought that first line was more kind of a principle. But then it goes on to say the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and nondiscrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria fully available to applicants prior to the initiation of a process normally, therefore, no subsequent additional selection criteria should be used in the selection process.

Now I know we're going to go back and take a look at whether this was followed. There are a number of things that were introduced subsequent to the process. And, you know, whether that was good, whether there should be more flexibility or not. But as a recommendation or high level notion does anyone disagree with that overall notion?

I'm looking at the chat and I see some comments about whether that happened or not. And I will keep my own personal thoughts to myself on that. But should we – I mean, the question is should there be a way to – or a method in the recommendations to have some flexibility to add things that are either based on new circumstances, based on anything that comes to light that maybe wasn't anticipated prior to the – prior to the criteria being set?

And remember, if we do this on a – if we choose to do this on a rolling basis it may not be in rounds, then how do we account for changes to that criteria or the – sorry, of the evaluation and selection procedure but still keep this recommendation in mind?

So I'm going to, with those questions, turn it to Alan and then Greg who are in the queue.

Alan Greenberg: Thank you. I think we're coming down to the difference between principles and recommendations. And that may cause us to revise where some of these things fit. The security and stability of the Internet is sacrosanct. And if we find we blew it, as we did on string collision, then we have to fix it regardless of whether we're in the middle of a round or not.

There are other things which maybe are less sacred and can go by the wayside and not be fixed. In this – in the current round the potential confusion between singular and plural was something we swallowed hard and accepted even though some of us felt we shouldn't have allowed it but it was too big a change to make on, you know, in the – on the fly. So we may be coming down to what are principles and what are recommendations and not everything can be absolutely sacred. Thank you.

Jeff Neuman: Okay, thanks. Greg.

Greg Shatan: Thanks. Greg Shatan again for the record. Certainly agree, you know, we're kind of getting down to, you know, what are the differences between principles and recommendations. I also think it's interesting to note – and I know this is a point that Kavouss might like or might not – the principles are all phrased, well, most of them are phrased in terms of must. And even the beginning of Number 1 is phrased as a must, the first sentence and so is 2 and 3 are musts.

This last sentence, though, is a should rather than a must, which really sounds like a recommendation and not a principle or even more like a recommendation than the other recommendations. And it's also prefaced with normally which gives you even more kind of wiggle room. You can say well we've hit something here that's, you know, outside of the norm and therefore we can and should, you know, go against this particular recommendation.

So I have a little trouble with some of the recommendations being musts because that's kind of – it's almost oxymoronic that a recommendation is a must. But clearly this is a recommendation, one might even say a near recommendation.

Finally I think your point on non-rounds versus rounds is extremely well taken. This is a very round-based point. If there is a continual flow then, you know, there has to be a – the ability to kind of, you know, learn while things are in progress. One advantage of rounds, I guess, is that you do get a chance to catch your breath, as we're doing now, and, you know, do a post mortem lessons learned and make changes. But if it's going to be a continual process saying that we can't change the criteria ever just doesn't work.
Thanks.

Jeff Neuman: Thanks, Greg. Kavouss. Glad to have you back on.

Kavouss Arasteh: Yes, I agree with that part of the Greg's statement that recommendations shall not be seen as a must because recommendations are recommendations and they are optional, they are not mandatory. So in the recommendation part we should not use the word must or shall. At the maximum we could use is should or similar to that but not shall and nor must. I agree with that (unintelligible). Thank you.

Jeff Neuman: Okay so that brings up a couple – both Greg and Kavouss comments bring up a couple of different points. You know, to the extent that – to the extent that people or this group feels that some of these concepts should be a must,

does that rise it to the level of a principle or does, you know, or is it really the intent that they just should be the word should and they're truly recommendations?

As Kurt points out in his comment, really is these recommendations have formed the heart of what the new gTLD policy was that was approved by the board. So, you know, we need to, in addition to having the high level principles, the feeling was at least in 2007 and when the GNSO Council approved it that there were certain things that we wanted to make sure were adopted in the new gTLD process. And whether you call them principles or recommendations they were certainly intended at that point to be musts.

So I think we might have a terminology issue but let me go to Alan and then Greg.

Alan Greenberg: Thank you. Greg just captured what I was going to say in the chat. We – you can't get caught up on the semantic definition of the word recommendation. In ICANN we use the term recommendations coming from an SO as a recommendation to the board. Once the board approves them they're not recommendations anymore, they are law. Now the law may have a must or may have a should and may have a maybe or may have wiggle room in it but the word recommendation is the transfer medium from the SO to the board so we shouldn't get caught up on the meaning of it in this context. Thank you.

Jeff Neuman: Thanks, Alan. I think that's a great point. Trying to catch up on – oh Greg, great. Greg, you're in the queue.

Greg Shatan: Thanks. Greg Shatan again. At the risk of beating a dead horse, I think these, you know, calling them recommendations, which are something to be considered, I think is intense obsolete. We are of course working off of in a sense a 2007 document here so, you know, these once were recommendations. But they are not recommendations any more. Strings must

not be – a reserve board – strings must not cause any technical instability.
Not quite sure what the difference is between that and D.

But in any case I think again we go back to the fact that this taxonomy is kind of woefully out of date. Now if we want to create a hierarchy then that's fine. We'll have a lot of fun doing that. But I think this taxonomy kind of indicates a pre-go live sort of setup. Now we're kind of beyond that. So I think maybe this whole – calling this whole section recommendations is out of date. It maybe should just be called policy which is I think what we would tend to call it as Kurt points out. Thanks.

Jeff Neuman: Yeah, thanks Greg. That's a good suggestion. I mean, again I'm just – we put this up here just to show as it was in 2007 but you're correct that to the extent that we all agree with these policies maybe it should all just be, you know, numbers or letters A-Z and just all be listed as policies that that could be as well.

I guess I'm looking also for some comments on the substance of the – of what's in here. Do people, putting aside the must or the shall, do people generally agree with, you know, the evaluation selection procedure for new gTLDs registries should respect the principle with fairness, transparency and nondiscrimination.

I'll go to – Greg is that the same leftover hand or is that new?

Greg Shatan: It's a dead hand.

Jeff Neuman: All right. Kavouss.

Kavouss Arasteh: Yes, I agree with Greg that if we change the title of recommendation to policy we may be resolving many issues. But another thing that I have to mention that just back to my experience, long experience of years, must is a term that is the most strongest and highest level of application. Usually another

mandatory slightly lower than that is shall. So we should be very careful that not use must if it is not required.

So first proposal, agree with Greg, replace recommendation by policy. And, second, to minimize the use of must to the minimum absolutely necessary when we have a very high degree of requirement. Thank you.

Steve Coates: Looks like Jeff just got dropped. I'm sure he'll call back in a second. Reluctant to pick up. I think we were on Recommendation 2?

((Crosstalk))

Jeff Neuman: ...just me?

Steve Coates: Excellent Jeff.

Jeff Neuman: Sorry about that. I missed that last point. Were there any comments on the last point that was raised?

Steve Coates: Kavouss was summarizing his thoughts on distinguishing between must and should and being sure to use them where appropriate.

Jeff Neuman: Okay. Yeah, so I think that's an important point and probably one we'll come back to a number of times when we – when we, you know, draft our recommendations. Sorry, I shouldn't use the term recommendations, draft our initial report to go out to the public for comments. I think, you know, that's – we'll probably address this several times.

So there's a question there, can someone advise what exactly what is meant by string should be fully defined? Okay, I'm not sure we're there yet. So the second one – I'll go to the second what's called here recommendations. The strings must not be confusingly similar to an existing top level domain or a reserve name.

Alan, this one there's a couple inherent questions and, you know, that you may – that we may be asking or we may be moving towards drilling down and that's obviously what is a reserve name. And what is confusingly similar meaning. And I think there were various ways that these were defined in the guidebook or even subsequent to the guidebook coming out either through the contention procedures or, I'm sorry, it was actually really through the objection procedures, and the evaluation criteria.

And then ultimately there were – there was GAC advice and other discussions of either adding things to the reserve names or I don't think any were taken away but I think there were some additions. So this is one of those areas where there was a subgroup in 2007 that worked on what – the 2006 2007 that worked on the definition of what is a reserve name. And if you go back to the report that is referenced on the wiki, the final report, you will see a specific chart of certain names that they felt at that time should be reserved and ones that they believed should not be reserved.

Some of those were adopted. Some of those were adopted and then gone back on. And some of those were not adopted at all and chose to take recommendations from other organizations instead. So for example, the Reserve Names Working Group advised that two letter characters, no matter what they were, should not be reserved.

But we all know that throughout the discussions with the Governmental Advisory Committee and ultimately prior to the guidebook being approved, that we all know that two characters were initially – all two characters were initially reserved. There's been some methods to deal with those two characters. You know, subsequently ICANN staff decided that they would allow two digits, for example, or a letter and a digit to move forward.

And of course there are procedures now being worked on on how to deal with two characters that match a country code. So there has been some – I won't

call policy work but there's been some work that has been going on on those. And, you know, the question of – and Jon is actually giving a good point. You are correct, Jon. I am – I was going on at the second level. Sorry about that.

Even I messed this up. So scratch what I just said. This is at the top level. Strings must not be confusingly similar to an existing top level domain or a reserve name. And I think that's why they use strings as opposed to the term domains or – but we could have used top level domains in there. Thanks, Jon. I am – I appreciate that. I was going on second levels, which I think is another recommendation.

So strings here in Recommendation 2 points out to top level. So strings at the top level should not – must not be confusingly similar to an existing top level domain or a reserve name. And so what was reserved initially were the two characters because they were reserved for the country codes, the two characters at the top level. And then there were a few others that were not allowed at the top level like example.

So the principle – or the recommendation here or strings must not be confusingly similar to an existing top level domain or a reserve name. Obviously this needs to be drilled down as to what does confusingly similar mean and what does a reserve mean. Existing top level domain in this case would mean any of the 1400 or actually there'll be more than that – of the TLDs that were there.

But we may want to drill down on confusingly similar, as Craig points out, in allowing plurals and maybe we want to discuss that. Kavouss.

Kavouss Arasteh: Yes, I think you started to say something that I had difficulty with that, Number 5, saying that the strings must not be a reserve word. I don't understand what the word means. And I don't understand very much what the reserves mean. But you describe that the reserve means any of these 1930 domain names or whatever or (unintelligible).

Perhaps we should modify this text to be visible and understandable by people who are not attending this meeting to see what the – what are the – or what is the meaning of the reserve word. We should put it more explicit and clear. This is Number 5. And I have something for other, I come back later on when we reached that area. Thank you.

Jeff Neuman: Yes, I think that's a good point for Number 5 I think just seeing these without the context is difficult especially for people that aren't as intimately familiar with the final report. So I think in this one there is a notion that strings must not be confusingly similar to an existing top level domain or reserve name.

Keeping in mind that we will have to work on what's – on defining these terms. Are people comfortable with at least moving forward with that notion subject to of course defining those terms which will be important to define. Okay I'll move on for now. Obviously we're not making decisions on this call but just to move on.

This one I think is an interesting one that had a lot – Number 3 – that had a lot of discussions. And the recommendation was strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. And then it went on – the recommendation went on to cite different examples as to what those may be. But of course it was a nonexclusive list.

So this was used to basically create some of the objection criteria for the new gTLD – for the 2012 round. This one I think is going to be – this one is one that we will certainly discuss in one of the tracks that has this on there. It's not necessarily a rights protection mechanism because those usually apply to the second level domains, this is at the top level.

The one they use again – when they use strings here, as Jon corrected me earlier, this refers to strings at the top level. So dotWhatever must not infringe

the legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Now – oh Alan dropped his hand.

Alan Greenberg: No, sorry. Is this the one that was the morality in public order discussion or is it 5 or 6 that was that one?

Jeff Neuman: Six, it was 6 that...

Alan Greenberg: Okay.

Jeff Neuman: ...that related to.

Alan Greenberg: Okay thank you.

Jeff Neuman: This was – yeah, this was used more for trademark – the – the objection was called the legal rights objection. And I believe all of them were trademarks based. So although it didn't say trademark in the recommendations I think it's what it was generally interpreted to be later on.

Okay, moving on to the next one is strings must not cause any technical instability. I would think that's not contentious to go back to Greg's point earlier, when he didn't know necessarily what the difference was between 4 and Principle C. The difference is Number 4 basically was used to make sure that we did not have certain – well ultimately it came to be decided that the strings or initially recommended by certain security groups that the strings of home and corp may cause some technical instability.

That's still obviously being debated. That's not a given at this point. But I think that's what it was meant, you know, are there strings that would be introduced that would have some instability. I believe it was also the reason

why ICANN did not want any single letter top level domains for fear that that might cause some technical instability as well.

Greg.

Greg Shatan: Thanks. Greg Shatan again. Thanks, Jeff, for that. I think, you know, if you look at, you know, the other difference between say, D and 4, D goes to evaluating the registry applicant whereas 4 goes to evaluating the string.

Jeff Neuman: Right.

Greg Shatan: So again, kind of points to the faulty taxonomy here. One could say that G and Recommendations 2-6 are principles relating to strings and A through – well maybe it's at least D-F plus 7-10 or 7-9 or whatever, are principles relating to applicants since, again, we're talking about must. So maybe the point of this is that we should ignore the concept of principles versus recommendations and just comment on these concepts as concepts because if I'm going to get caught up in principles versus recommendations it just gets me thinking into a dead end. And so we're better off commenting on what these concepts are rather than trying to, you know, say one is more important than the other. Thanks.

Jeff Neuman: Yeah, thanks Greg. I think I actually – I like that suggestion of calling them concepts without differentiating between the taxonomy. So does anyone have any problems if we kind of change the nomenclature to be concepts and then we can, at a later point if we decide there is or should be a taxonomy, we can work through that later? Okay, I'm seeing a yes to that. Great.

Number 5 Kavouss pointed out earlier strings must not be a reserved word. We will set out what that's meant. Those were – there were not many of them but we should make sure that we define that and give more context in the notes and also just cover that as well on subsequent calls.

The sixth one, this one I'll read it with the understanding this one got modified incredibly throughout many discussions and even a – I'm not sure if it was a formal PDP or just a cross community working group that was started and Avri, I think, was one of the chairs of it. But so I read this one with a bunch of caution here.

It says, strings must not be contrary to generally accepted legal norms relating to malady and public order that are recognized under international principles of law. And then it goes on to cite some of the principles of law. And again, it's nonexclusive. My strong recommendation on this one is that the group that's going to – the work track that's going to deal with this read – look at how it was eventually defined, put the as a concept and then work on that specific concept.

So I think if we discuss it now it will get into a little bit of a black hole because it was changed substantially based on initial GAC advice and then many discussions and work that involves the GNSO, the GAC, the ALAC and maybe even others that were on that working group.

Okay Number 7, applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that that application sets out.

Now this is kind of interesting because this was a recommendation but in the end what you'll find is that unless it was a community application that actually ended up going to community evaluation I'm not sure that – yes, they had – there was a technical evaluation on whether the registry could be a registry in general, but – and I'd love to get comments on this – I was not left with the impression that the evaluation consisted of ICANN's evaluators looking into the purpose that the application set out.

So, for example, if an application said I would like to launch dotSocks, so that I could serve people who are interested in socks. I don't believe that ICANN

actually looked at whether technically one could serve the sock multi-community. I believe they just looked at whether the registry could run as a registry.

So this is one of those that we will probably come back to because I know that there were comments received that there was a – for example, in the application there was a Question 18 that said, you know, what is your business model? Why do you want to do this? And people stated why they wanted to do it. But that was not a scored criteria and that was really just published for public comment as opposed to actual evaluation.

Does anyone have any comments on that? So this is one I think that should be bracketed. Alan, I'll go to you and then to Kavouss.

Alan Greenberg: Yeah, thank you. I actually – in addition to questioning how it was used I question whether it makes any sense. I'm not sure what "technical capability to run a registry for the purpose the application sets out" means. Does that mean if it's a registry that says it's going to only have Swedish websites that they have to have staff that speaks Swedish? That's about the only concept I can understand that it makes sense. And I don't think that's what we meant. So I'm not sure what this meant.

Jeff Neuman: I think it's – and this is going back so many years, 10 years, I think what it meant was that if a registry said or predicted it would have 20 million names that there would be some evaluation that that registry could actually support 20 million names and that it could handle the expected, for example, DNS queries that a 20 million name registry would have or at least they anticipated on certain models.

I believe that was the initial intention but I don't think that that was fully understood or implemented in that way.

Alan Greenberg: So capability was really capacity.

Jeff Neuman: I think so in remembering back from 10 years. But I do agree with you that either this is something that needs to be completely clarified if we think that that's something that should be analyzed or we get rid of it. But, Kavouss.

Kavouss Arasteh: Yes, my question also is about 7 and we say the applicant must be able to demonstrate. How this demonstration is made, a piece of paper or with some showcase to demonstrate and the technical I think maybe instead of technical capability or technical capacity or technical ability but still I have difficulty with the demonstration. I have no problem if we say that must be able to provide evidence that they are able technically or are technically able to run but not demonstrate. So that is just a question of the wording and replacement of capability with ability. Yeah, thank you.

Jeff Neuman: Yeah, I think that's – that's a great, great comment. I think in the way it was interpreted for the application was that they basically demonstrated their knowledge of what they had to do and then in pre delegation testing, as Rubens is pointing out on the chat, after you signed an agreement with ICANN you needed to demonstrate you had the ability of running a registry, not necessarily for the purpose you indicated but that you had to demonstrate you have the ability to, for example, accept a registration request, produce the DNS zone to produce an escrow file.

So all of that was done or is being done during pre-delegation testing but it was not done prior to the – or during the application process prior to the contract being signed. So one could sign a contract without demonstrating their abilities.

So we may – one of the things we may want to consider as a group, if we do go down a path of accrediting technical providers, which again is an open question, it's been something that's mentioned, if we do go down that path it may be something that we do think a demonstration prior to being approved or accredited as a technical provider may be beneficial.

You know, but that's something I think that, one, the policy question in Track 1 will need to be discussed as to whether we want an accreditation process. And then if so, Track 5 I think would look at the technical criteria and whether a demonstration is appropriate or not. So it's a great point about the demonstration.

Eight, applications must be able to demonstrate their financial and organizational operational capabilities. So this is one of the concepts that, again, it was never really asked to demonstrate in the sense of, for example, financial capability, it's not – ICANN didn't actually look at the bank accounts but it did receive statements and it did receive financial information in the form of either audited financials or unaudited financials that were certified. There were criteria to demonstrate financial capabilities.

Organizational operational capability, there were questions in the application process where you had to talk about your, you know, who the key personnel were and the officers and directors. But I'm not sure there was much more than that. Any comments? Everyone think that that concept is still relevant?

Okay, I'm trying to look at the chat now. As Rubens said, Recommendation 8, the process ended up only looking at financials with the angle of commercial registry while brand registries and community registries could be financed very differently than through registration revenue, we might choose to let financial be only a due diligence requirement for contract signing but not an application evaluation criteria.

Rubens, that's a great point. We should certainly look at that in the relevant track. Is the concept still – so the concept that's there now is that they must be able to demonstrate their financial and organizational operational capability and your comment relates to – I think it's still in line with that concept, it's just an implementation detail of how that concept is interpreted.

Is that correct, Rubens? So it wouldn't necessarily result in changes to this concept but just on implementation? Okay Frederic says yes, okay.

Great, so on Number 9, there must be a clear and pre-published application process using objective and measurable criteria. So there were criteria set out for the last round. And I think if – one of the things we should definitely do is not only look at the ICANN implementation report but for this one when we talk about what's a pre-published application process should be we will certainly want to look at the – or get some comments in from the actual evaluators as kind of a post mortem.

Because I do know that then they were initially given the job or evaluating it they didn't have the – they had to – to say they made it up as they went along would be too harsh. But they obviously didn't have that much to go on other than some RFPs that were out there, there was not that much detail for them and they had to kind of create it as they went along. So I think it would be great to get some comments by them. But the concept here is that it could be pre-published, clear, objective and measurable. Kavouss.

Kavouss Arasteh: Yes, what you explain – in my view better than what is written here. There must be a clear and pre-published application process. Who should publish that? ICANN? That means you just order ICANN to prepare an application process and publish that? Or the applicant should – to whom this Number 9 is addressed? And what does it mean pre-publish application process? Are we talking of a particular chapter of the guidebook or what?

And using objective and measurable criteria what is the relation between the objective and measurable criteria and pre-published or maybe that including or indicating but using – you mean that to prepare a publication we must have an objective and measurable criteria for the publication? So the combination of these two are not coherent – these two parts of 9. Could you kindly either reword that or clarify what we mean by the second part using objective and

measurable criteria. Using that will – publishing the application process?

Thank you.

Jeff Neuman: Yeah, thanks Kavouss. So if you go back in context or the history of this in the 2000 round, when they selected generic top level domains, there was very little in the way of objective criteria. It really was – and if you were around for that process the ICANN Board received about 50 applications to run TLDs but they did not, in advance, set out the criteria by which they would select the registries.

So if there were multiple registries, and there were, for example, there were multiple registries for dot or applications for dotBiz, ICANN's Board, during a fairly lengthy meeting in 2000, in October 2000, basically just said well we kind of like Neustar better. They, you know, and they gave some reasons. But those reasons were not believed by many to be objective. They were very subjective. They were – in other words, they were very opinionated.

They were, you know, I believe that this – that Neustar comes from – was a rollout of Lockheed Martin and therefore, you know, they're a solid company and we believe that they would be good in running this. You know, it was all based on belief and subjective feelings. And so this was a reaction to when you select registries going forward it should be objective, meaning you shouldn't – it shouldn't just be able to lobby the board as to which registries should be chosen or which registries should be chosen.

So there should be some criteria by which we can measure. And then an objective process for determining which registries ultimately should be able to run that TLD. So that's the context by which it came. But I agree that – I agree that we can word this better to mean essentially that there should be standards or criteria that are set out in advance, that's what they meant – mean by pre-publish, that's it's written down, it's in advance so that applicants know how they're going to be measured.

Okay I'm just picking up the steps. Okay great. Number 10, sorry, I'm losing my voice here. There must be a base contract provided to applicants at the beginning of the application process.

So – oh I'm sorry, Alan, I missed you. Sorry, Alan.

Alan Greenberg: That's okay, I put it up right at the end. Just a note that on 9, yes, that's a good target. But there were criteria and things like confusingly similar, and a number of related things are inherently objective. And we put in the case of the last round we put in place panels to make what were essentially subjected decisions on our behalf. So I think any rewording that has to factor in that there may well be some things that are not objective but we will try to put in processes which are nondiscriminatory.

Jeff Neuman: Yeah, thanks Alan. I think that's a really good point that there definitely were some areas that were not completely objective where, for example, the example you raised but also in the community evaluations there were some subjectivity to that. Certainly in GAC advice in and of itself had some subjectivity.

And obviously there were criteria that they believed they couldn't set out in advance and that's why they created the early warning process and the – ultimately the GAC advice because there were certain things that the GAC believed it needed to reserve in order to provide their comments.

But nondiscriminatory is something that is a – probably a good add. I do note that that's in one of the principles already but certainly would not hurt to put in here as well. Trying to look as to where it was in the – I think it was in the principles or was it in another concept. But I do agree, I think that that's a good add.

Alan Greenberg: Yeah, it's Alan. Just I think the crucial issue is to acknowledge the fact that not everything can be objective and measurable.

Jeff Neuman: Perhaps it's something – perhaps it's except as otherwise set for, you know, here and then let the legal language and there's probably better ways to say it. But essentially it's except as otherwise provided in these recommendations or these policies it should be objective and clear. Or objective and measurable, sorry. Greg.

Greg Shatan: I think maybe something simpler let's just say, where possible objective and, you know, clear criteria – objective and measurable criteria.

Jeff Neuman: Yeah, thanks Greg. That's a good add. And better than my legal language. Thanks.

Greg Shatan: That's what you get for trying to practice law when you recovered from it.

Jeff Neuman: Yeah, I like the where possible. I think that's a good add. Recommendation 11, probably the most controversial, just really kidding because that was eliminated and replaced with Recommendation 20.

Going to Recommendation 12, disputes resolution and challenge proxies must be established prior to the start of the process. I think this is an interesting one in that if we did it in rounds, as we talked about before, we can certainly adhere to this. If we do this on a rolling basis or some other way, I think this one is another one that would have to be in some way – we need to build in some mechanism to have changes if necessary.

But I think the concept is that someone – or an applicant should know before they submit an application what dispute – what disputes, policies or procedures could be exercised against them before they submit their application and spend the money and the resources to do so so I think that was the concept.

Okay, thank you, everyone for bearing with me. We'll do one more before we end. And we did not get to the other topics but that's okay, we can get to them next week, although, Julie, you have your hand raised. Is there something...

((Crosstalk))

Julie Hedlund: Yeah, unless I missed it I don't think you covered 10?

Jeff Neuman: Oh, good point. Thank you. Right, there must be a base contract provided to applicants at the beginning of the application process. Thank you. This is one where there have been comments that were already received on, you know, maybe there should be different base contracts depending on the different types of TLDs. We'll get into differentiation.

But the concept is that whatever the TLD is, even if we decide to have different base agreements, that the applicant should know when they apply what contractual terms are going to apply to them if they get selected to be a registry.

So perhaps this concept needs to be reworded to not at least state that there could only be one base contract but leave the flexibility for us as a working group to decide whether or not there may be one or more than one base contract.

So does anyone agree with the concept that essentially what this is saying is before you apply you should know the contractual (tones) that apply to you. This one was a little bit – I don't want to say this was violated, this recommendation, but in essence there was – there were provisions of the registry agreement that were added after applicants submitted their applications relating to some material aspects including how the agreement could be amended in the future and some other ones.

So I believe, and this is one we might want to pick up the next call, but I believe this is something that we should talk about not only when we do talk about the base contract or contracts, this is certainly one that that track – I think it's Track 2, may want to talk about whether there should be a process for introducing subsequent changes prior to an applicant signing an agreement and how that process would work. If we agree that there should be or circumstances warrant it.

Because if you signed an agreement there's a process for amending that agreement. But if you're an applicant there's no process on amending an agreement while you're in that that – I'll call the limbo state, while you're in between being an applicant and a registry. So I think that's a topic for the second track to talk about.

And as people are pointing out on the chat, they believe, you know, that this concept may not have been adhered to. Okay, with that I think, Steve Coates, is there anything we absolutely need to cover or can we just call it and then take over – take it over on the next call?

Steve Coates: Yeah, this is Steve Coates. Since we only have one minute I think we can end the call now and return to Points 4, 5, 6 and 7 on the next call. I believe I will not be here for the next call but Avri and Jeff will. And if there are any concerns or questions I think we can resolve these by email in advance of the next meeting.

Jeff Neuman: Okay and the next call, Julie or Steve Chan, is what time UTC? Oh, there it is, 1400 UTC. Thank you very much.

Steve Coates: Four-seven.

Jeff Neuman: All right, yes. All right – oh no, Julie is saying 1600 so it's 1600 UTC. All right, 1600 UTC. We'll talk to everyone then. Thank you, everyone, appreciate everyone staying on. Thank you very much.

Steve Coates: Excellent. Bye.

Cheryl Langdon-Orr: Thanks, everyone. Bye.

END