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CHAIR – HEATHER DRYDEN: Good afternoon. We're going to start in about 10 minutes. We had a delay with identifying staff to brief us this afternoon unexpectedly. I'll explain later. So in about 10 minutes we'll begin. Okay?

CHAIR – HEATHER DRYDEN: Good afternoon, everyone, if we could begin our plenary session this afternoon. So apologies for the delay in beginning our session.

For those newcomers to the GAC, it is a bit of a tradition that we don't quite manage to start on time. But Kurt Pritz, who was going to be presenting to us a bit later, has fallen ill. So we've been trying to identify staff that could provide us an update on new gTLDs. So a couple of staff will be coming to join us in about 15 minutes.

So let's take care of some business items before then. And then, when they arrive, we can move to that session.

So welcome, everybody, to Costa Rica. And, as usual, if we can begin with some introductions around the table. And then we will begin the proper session. So I'm looking to my right. If I can ask you to begin, please.

(Introductions)

CHAIR – HEATHER DRYDEN: Thank you for that. One quick note, the microphones aren't able to give us as much volume as usual. So we're being asked to speak as closely to the mic as we possibly can just to make sure everyone can hear. Okay. So, please.

(Introductions)

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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CHAIR – HEATHER DRYDEN: Thank you very much. Is that everyone that we've introduced? Yes, please.

(Introductions continued)

CHAIR – HEATHER DRYDEN: So, for the GAC meetings this week we have some interpretation available to us. So we have French, English, Spanish, French, Portuguese, and Russian. And also, with the Toronto meeting this year, which takes place in October, from that meeting forward we will have all U.N. six languages plus Portuguese at all our meetings. So that's welcome news. So make sure you have your headphones for that interpretation.

In terms of materials for the meeting, what you have in front of you is for today. So it's today's schedule and the related materials for this afternoon. And, by the end of today, you will receive the materials for tomorrow as well. And you also have an agenda for the week. So that's what we will be reviewing before we move to our discussion of new gTLDs. We're also circulating a sheet for participants to identify their name and where they're from so that we can track attendance.

On that sheet there are two extra columns. And one is for the gala event this week. The hosts have asked us to provide a list of names. So, if you can please ensure that your name is there and indicate that you would like to come to the gala, then we will provide that information to the hosts. And, also, we've been invited to a breakfast on Tuesday morning that's hosted by businesses from the generic name supporting organization. So, if you can indicate there whether you will be joining that breakfast. And we can see in the agenda, when we go through it, what that breakfast is. And that also allows us to provide some numbers to them in order to plan.

Okay. So what I suggest is that we run through the agenda. And then our colleagues from ICANN will be joining us to provide us with a brief regarding new gTLDs.

There have been a few changes to the agenda as the ICANN schedule has changed a bit, so we have tried to accommodate those changes in this version, this new annotated version, and also to ensure that we are accommodating some of the requests to spend more time, for example, in discussing conflict of interest. So we've managed to accommodate that by making a few adjustments.

So, if we begin with this afternoon, you will see that we are spending the main part of this afternoon's session discussing various issues on new gTLDs.

And then on Sunday we begin with a consultation of the membership by the chair and vice chairs regarding the secretariat issue.

And then in the afternoon we have scheduled the board/GAC working group to continue the work-related to the accountability and transparency recommendations that have been made. And then that's followed by a discussion of the issue of law enforcement and the registrar accreditation agreement negotiations.

In the afternoon we'll then be discussing conflict of interest. What we did is we were able to push back the session with the GNSO that was originally scheduled there, so that we can spend some time on that. So that's the main change, I believe, to this particular day.

And then on Monday is community day. So this means we don't have GAC plenary meetings. And this is when there are various workshops and public decisions so that GAC members are able to attend those. We schedule around this day. And, of course, this begins with the ICANN welcome ceremony.

So you might want to note that some changes have been made to Monday's schedule from what was initially anticipated.

I will point out that the demo that we were anticipating for the Web site and for early warning, I think we will try to schedule it for Monday. We had identified covering that at the end of Sunday's session, but it's a very long day. So we're trying to find a better place to accommodate that.

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So look for an updated time and most likely on Monday at some point.

So then on Tuesday this is the breakfast invitation to the GAC. And various agenda items have been proposed by our business colleagues. If anyone wants to provide some feedback to them about the topics for discussion, we are invited to do so. Otherwise, this is what they are proposing to discuss with us over a nice breakfast.

Then that's followed by a session with the at-large advisory committee. And then following that a session with the WHOIS review team to review the draft recommendations that the review team has developed. And, following that, we have a session with the security and stability advisory committee and various items related to that.

And then we had a period of 30 minutes that we had gained when making some adjustments to the schedule. So this is an opportunity for the GAC as a GAC to talk about what advice we may wish to generate at this meeting or in the future.

And then, as is the usual approach, we have a meeting with the board at the end of that day, so we will prepare for that. And then we have a fair list of items that we anticipate raising with the board. And these agenda items have been communicated to the board as well so that they are anticipating what we may raise.

And, for those from the Asian region, dot Asia will be presenting about dot Asia to those GAC members, as I say, from Asia that may take an interest. So that's not part of our regular plenary meeting.

And then we have music night.

And then on Wednesday we begin with a session with the country code name supporting organization and quite a list of topics that have been composed there by the ccNSO. Then, following that, we're proposing to have a discussion about a high-level meeting of the GAC perhaps in June this year in Prague.

And then, following that, we're trying to schedule a session with the ASO who had requested a meeting with us and these agenda items.

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But, initially, we had declined to meet with them because we had a full schedule. But, as it turns out, the security, stability, and resiliency review team is not yet ready with draft recommendations or a report for us to look at at this meeting. So what we have done is agreed that we would meet at the next meeting. And, hopefully, they can update us on how that work is progressing.

But, in the meantime, this seemed like a good opportunity to meet instead with the ASO or NRO.

And then Wednesday afternoon is spent, as usual, finalizing the communique. And that will conclude the GAC meetings on this week. And then on Thursday we again have a community day. And that is when the ICANN public forum is held.

And then Friday there is anticipated an ICANN board meeting. I'm not entirely sure whether that is confirmed. I know we've been looking at trying to shorten the week. And I don't know whether we're going to succeed this time around. But, anyway, as is usual, there is at least now an ICANN board meeting scheduled for Friday.

So with that, that is the proposed agenda. Are there any comments on the agenda?

EU Commission, please.

EUROPEAN COMMISSION: Thank you, madam chair. I'm (saying name) from the European Commission. Thank you very much for the resume of the agenda. I would like a confirmation that the paper copy that was distributed is, indeed, the agenda that you have just mentioned. Is that correct?

CHAIR – HEATHER DRYDEN: I believe so, yes.

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EUROPEAN COMMISSION: Thank you. Then just a couple of comments. Mostly support of the -- and a thank you to the -- for the efforts that you and the vice chairs have made to accommodate all the requests, including the one from the European Commission to have some time to discuss conflicts of interest. Thank you very much. The agenda looks extremely packed and ambitious, which is a good thing. So I think I would simply call for a collective call to myself and to the GAC colleagues to be very disciplined. Because, otherwise, I don't think we will be able to cover all of this.

And last, but not least, I personally think I do understand why initially you decided to decline the invitation of the ASO to present their work. But I'm happy that in the end it was possible. I think what the ASO is doing is very relevant for the GAC and is not always given -- for understandable reasons, is not always given the time and space it deserves. So thank you very much.

CHAIR – HEATHER DRYDEN: Thank you, EU Commission.

Egypt, please.

EGYPT: I know it's too early to talk about the communique, but I'm just flagging out that there was some consensus that the communique should follow a certain language to highlight where the GAC advice is. And we have somehow agreed that it may -- we're going to go through detailed discussions in the joint working group meeting. I know people start working on the communique early session by session. So, if we agree to start GAC advises board so and so, maybe this would be a format to follow. Because last time, when we were discussing the communique itself, we were not sure whether to go by topic or by organization. Thank you.

CHAIR – HEATHER DRYDEN: Thank you very much for that. It's never too early to consider the communique. And this is very good news that you've made progress in

being able to advise on how to structure the communicate. I believe that was something that we came across at the end of the last meeting that, if the working group could consider that, it would assist us in structuring it and making it as clear as possible for us to prepare.

So let's do that.

I see that staff have joined us. I see Karen. And Amy. Let's just get them seated and then we can begin.

CHAIR – HEATHER DRYDEN: Okay.

Thank you, everyone, for bearing with us for a moment.

As I mentioned earlier, Kurt Pritz who was to come to present today has fallen ill, but we have asked other staff to come and fill in and present the material as best they can. So we have Karen Lentz and Amy Stathos here, and will take us through issues related to new gTLDs.

So with that, I will hand over to Karen, and thank you for filling in.

KAREN LENTZ: Okay. Can everyone hear me?

Okay. Thank you very much, Heather, and thank you, GAC members, for providing this time for discussion on the new gTLD program and topics associated with the program.

I am Karen Lentz, and I have Amy Stathos, my colleague, here as well.

As Heather mentioned, Kurt was to present this, and unfortunately is under the weather and I know would like to be here. And I'm not as much as an expert on all of these topics but will do the best I can to provide a short update on each of those to support your discussions on these topics through the week.

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Agenda, we have about eight topics. And the idea was to give a bit of an overview of where we are on each of these, rather than going into detail. But certainly we can try to manage the time as best we can to cover each of these -- each of these things.

So I will dive in. Next slide.

Okay. The first topic is what's called defensive gTLD applications. If you recall from the discussions in the development of the gTLD program, it has been designed with protections for certain interests and rights, and those include the objection and dispute resolution process that covers formal objections that can be filed on specified grounds. It also includes the existence of an independent objector, who is able to file formal objections to applications that have been received, and also the GAC early warning and GAC advice processes that were developed to be part of the program.

There's been comment in the last months about a need that people felt and were expressing that they needed to apply for gTLDs even if they weren't necessarily interested in operating one, merely to protect some interest or right that they had. And we've titled those defensive applications.

So our response to this has been to open a public comment period that has been open, and we have been receiving comment on the sources of the perception, some of the reasons that groups or entities feel that they do need to submit a gTLD application, and then some steps that could be taken to address that perception.

There's also a session at this meeting on Thursday that is planned for further discussion of those issues.

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Okay. On root zone scaling, this was also something that we had a number of discussions on as we were developing the new gTLD program, including with the GAC. When we last met in Dakar, as I recall, the GAC was expressing a need for some additional informational documentation on the root zone scaling topics specifically, look for



materials that can be taken back and circulated within the various governments. And that would include some of the citations and explanation of the data and studies that have been done in this area.

So that report has been compiled to better address the needs that were raised by the GAC. There is -- I think a preview copy can be made to GAC members. Estimating within a couple of weeks. I'm not sure of exactly the status of the document itself, but I know it's close to being prepared and that that can be available for the GAC.

Next slide. Batching. This has been a topic of discussion throughout. In the event that significantly more than about 500 applications are received, it could be necessary to process them in batches to be able to preserve the quality of the evaluation and the consistency of the evaluation of those groups.

And so there's been a need to come up with a batching selection process that will be objective and efficient and will be able to help us process that number of applications as quickly as possible without sacrificing the quality.

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So some of the criteria that were established for what kind of batching selection process we could create were it should encompass an applicant's batching preference. So there should be an opt in or opt out mechanism. Some applicants might have a great desire to be early or one of the earliest. For others, that might not be as important. So that's one of the expectations that was built in.

Also, that the process should be a nonrandom-based selection process, and that there sudden be geographic diversity accounted for in the results so that there wasn't uneven distribution among the regions.

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This was something that I believe was also discussed in the last meeting. That in the event that there is a large volume of applications, that the GAC had concerns or questions about how they would be able to

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complete the early warning process. The estimated time frames and process that is in the Applicant Guidebook has a 60-day period for the early warnings coinciding with the application comment period. And of course it would be encouraged that that's met, if possible.

But we also recognize that the number of applications is unknown. The time that will be required for the GAC to review that application information and go through the GAC processes is also unknown.

And so if the application volume is such that batching is required, you know, it's expected that we will be flexible to allow sufficient time for the GAC review and processes to take place in that.

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And I realize just on the topic of batching -- oh, no. Sorry. I thought I missed a slide, but I did talk about it.

Applicant Support Program. This is having to do with mechanisms of support from -- for applications from developing countries or other instances where support might be needed of various forms for an application.

There are a few elements to this program, and this has been launched. The Applicant Support Program is available, has been available since January 12th when the application process opened. And the elements of that include a directory for third-party pro bono services. So on ICANN's Web site, there is place for prospective applicants to list themselves as seeking support, and there is also a directory that lists parties who are willing to provide support of various types. That includes translation, technical assistance, various types of support.

There is also the fee reductions for selected applicants. There is a separate application for financial support of that type, and that is part of the program that comes from the Applicant Support Fund, to which the board allocated 2 million. And the processes for working out that mechanism for the selected applicants is being worked out.

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The information on the Applicant Support Program is published. There is a fact sheet that provides the basic information on this program and then also the financial support handbook which details how to go about applying for the financial support and the criteria that are used to select applicants for support.

There has also been an awareness campaign recently to heighten awareness of the opportunity to apply for financial support, and that's included, initiatives in a number of regions in a few different mediums.

Okay. Next slide.

Okay. Thank you.

With regard to the Applicant Support Program, it is one of the things that's happening now is that we're recruiting volunteers to be part of the support applicant review panel, or SARP. That period is open through the end of March. We are seeking individuals from the community and individuals that may have expertise in areas of funding or related areas.

The number of panelists selected will be based on the number of applications received, and it's expected that the panel will be selected in collaboration with the Joint Applicant Support Working Group.

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Okay. Early warning process.

As I understand it, the GAC had developed a set of requirements for what they would like to see in the process and system that would be used for early warnings, and some of those were easy access or ready access to the application data, a process and a system that would facilitate the discussion of issues among the GAC, and also could be used to facilitate the drafting of an early warning. And then once the early warning had been submitted, to be able to track what happened, the events that happened after that was sent.

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So we have developed a system based on the GAC Wiki that can be used for early warnings that is intended to be able to meet these requirements. The application data is included. It's in such a way that it can be filtered or sorted in certain -- by certain ways. By a string, by a type of application, et cetera.

It's a system that would only be accessible to GAC members so that the early warnings or the applications can be discussed and commented upon through the GAC discussion process. And then there is an early warning template that can be tracked all together from the initiation of it to the time that it is completed.

Okay. Cross-ownership was another topic that was raised. This is just to review the status quo.

In November 2010, the board directed that cross-ownership would be permitted for new gTLDs. That was decided at the same time that the registry code of conduct was put in place to guard against certain concerns with the cross-ownership.

This, again, is for the new gTLD space. It provided that existing registries could request a contract amendment that would allow them to vertically integrate. And there's also some restrictions possible, and possibly a referral to competition authorities where the circumstances would dictate that that would be appropriate.

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So the -- Again, current registries may request removal of restrictions in their agreement for new gTLDs or for existing TLDs other than their own, the ones that they operate. The process for this includes a competition review. It does also include the option to refer a particular case to a competition authority if that seems appropriate. And then there's a 90-day time period envisioned where in the absence of a response from the relevant authority, we would either allow a contract revision or continue to wait for a response, depending on the particular case and what the circumstances were.

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So this -- The above process does not provide for existing registries to be able to remove the cross-ownership restrictions for their own TLDs or the TLDs that they operate currently. So that's -- a process for that is under development currently to develop that.

We have engaged competition authorities. It seems the best way to accommodate that would be to amend the approved process for requesting removal of the restrictions in other cases. We are also then seeking the registries' input in the development of that process, and that's something that will be posted for public comment.

Okay. This is looking at the status of the application process. Since the application window did open on January 12th, a couple of highlights as to what's happened since then.

The TLD application system current live has 207 registered users. That's a statistics that we have been tracking and publishing on the Web site. We have had 99.99% uptime of the system since the launch. We've also continued to maintain customer service operations. There have been quite a number of inquiries, 6900, since the launch of the customer service center in November, and they continually field questions from applicants on how to use the system or questions concerning clarification of the application.

Those queries are used as well to enhance the materials that are available on the Web site. So FAQs, frequently asked questions are updated. Knowledge base operations or articles are provided on topics where there seem to be a lot of questions. And the average resolution time for the query through the SCS is about 1.6 days.

We have also recently posted an advisory regarding the March 29th date. That's the last date as provided in the guidebook for new users to register in TAS in the application system. So there was an advisory posted at the end of February concerning that, and there is quite a bit of detail in that about how that data affects applicants in different types of circumstances.

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The second application round was also a topic that was raised. The gTLD program was built on the GNSO policy advice which recommended that applications should initially be processed in rounds until there was a clear sense of demand and a steady state could be considered.

So we followed that advice by implementing the program in rounds. We've also committed to reviewing several elements of the first application round to look at what the results were. And then the -- excuse me -- the board considered, you know, in response to questions and inquiries about the second round, they passed a resolution in February reaffirming the commitment of ICANN to offering a second round as expeditiously as possible given the number of reviews and the consideration and analysis that needs to take place before a second round can begin.

So the board resolution directed that we would develop a work plan to provide some detail to the community about the specific work required and how that would take place so that the community can also be involved in determining the appropriate steps that need to be taken between the close of the first round and the opening of the second.

Okay. Finally, we have the trademark clearinghouse, which we are in the middle of implementing. This was one of the rights protection initiatives that was developed as part of the new gTLD program discussions. The clearinghouse is envisioned as a repository of authenticated rights data that can be used by registries to support the sunrise periods and the trademark claim services that are required for all new gTLDs.

So the clearinghouse data is expected to be used to support those services.

Implementation is in progress for that. We have been working according to a project plan that calls for the launch of operations in around September, October of this year.

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Looking at this project, there are essentially two tracks of work to it. One is the selection of one or more providers to operate the clearinghouse services and perform those functions, and the other is the development of the supporting processes that the clearinghouse would use. So these concern how the clearinghouse interacts with the registries and registrars at the various stages in the process and how the claims service and sunrise periods actually get worked out in terms of the details of communications and interactions between those parties.

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In terms of the provider selection, we published a request for information in October and received several submissions to that, had discussions with a number of the candidates, and we're currently completing the selection process for that.

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In terms of the process development, we handled this by forming the Implementation Assistance Group or IAG? November. That was an announcement. It was an open group to anyone who was interested. We received about 50 or 55 Expressions of Interest or volunteers from people who wanted to be involved in that group, from a number of places around the world. So since November through just this week, we have held 13 conference calls, rotating according to the time zone, that allows us to discuss the implementation details and receive advice from registries, from registrars, from trademark holders and others who are interested in this.

The process also featured written submissions as well on the issues. So not everyone was on every call, but we did receive written submissions as well.

The set of issues considered both business process type things. Looking at, for example, the standards for authentication of a trademark that the clearinghouse would use, and then it also considered the technical implementation issues, such as what types of protocols would be used

to communicate between the clearinghouse and the registries, for example.

So where we are now is in -- now that we've completed the cycle of calls and issues is in compiling the sum of the input, completing the analysis to be able to complete a model for operation of the clearinghouse. And we expect to be able to provide the requirements for that by the end of this month.

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And that's the end.

CHAIR – HEATHER DRYDEN: Thank you very much. Thank you for that, Karen. That was a lot of material, quite a few topics that we have on the table. So I'll ask that we go back to the beginning of the presentation, and we take each of the topics in turn, allowing for questions, so that we have an opportunity to raise specific items under each of these headers.

So I think defensive registrations might be the first topic. There we are.

So with regard to defensive gTLD applications, this is something that emerged as a possibility in the current round where some applicants may actually be applying for defensive purposes only. ICANN has issued a public comment on this to seek comments from the community about how this might be addressed and what views there may be in the community.

So from a GAC perspective, are there questions or things that we would like to raise with staff on this topic?

Germany, please.

GERMANY: Hello, everybody. It's the first time that I take the floor today. Yes, this question of defensive registrations on the top level I think is quite an important issue, because in the past, I think most of the GAC colleagues



did not consider that something like defensive registration on a top-level basis. When we talked on defensive registrations, we thought it might happen on the second level, but we are set -- There are also some applicant that really, at the moment, do not need a new TLD but, say, apply for it because they don't want this gTLD to be misused by others. That's a development we should take very serious and we should consider what kind of solutions are for this specific applications, what kind of solutions we find for this discussion. And I want to know whether that's sufficient, what you mentioned in your points here, and whether there are not further possibilities to get this issue resolved.

CHAIR – HEATHER DRYDEN: Thank you, Germany.

Would anyone else like to comment?

EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair. I am (saying name) from the European Commission. Simply to point out that our internal consultations with a number of parties that are planning to apply for new TLDs highlighted that all of the alternative instruments that are mentioned there -- the objection, the dispute resolution process, the independent objector, and GAC advice -- fell short of what these other parties feel are their need to apply for defensive registration.

I will put it another way. There are organizations out there that will apply for defensive registration because that's the only thing which they can be sure or the thing they can be sure to protect their rights.

So I guess that is something that ICANN staff in addressing the public consultation, the results of the public consultation, should probably consider.

And on the public consultation, I'm sure it's on the Web site somewhere, but I would appreciate if ICANN staff, whom, by the way, I

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thank very much for giving this presentation, could provide us with a date by which the results of that public consultation will be available.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you. Karen, before I move to the next speaker?

KAREN LENTZ: Thank you. The reply period for the comment period is open, I believe, until March 31st. There's a discussion session at this meeting. But I wouldn't want to speculate on when -- what the results will be of those processes. But, you know, certainly, everyone's very aware that the -- you know, the application period is going on now. And so, in terms of how this is resolved, it's certainly a -- you know, time is an important part of that.

CHAIR – HEATHER DRYDEN: Thank you. Denmark, please.

DENMARK: I decline. It was about the date as well.

CHAIR – HEATHER DRYDEN: Okay. Perhaps we can move to the next topic. So on the topic of root zone scaling and the report that was requested before the round was to open. Are there any questions or comments? Netherlands, please.

NETHERLANDS: Yes. Thank you, chair.

We have -- you have put it in this way. I think we had quite -- let's say, quite strong understanding and commitment from the board to have some kind of report before the launch. So I understand these are very hectic times for ICANN staff. But I wonder what is the reason that we

don't have yet this report, which we, I think, already had kind of a commitment well before, I think, in our Brussels meeting already a year ago. So, please, if there are reasons why this is not there. We have signaled this to the chair already we want the launch time, I think, about 20 January. But I think we need it very soon, because things are very much related to this report.

Also the way we're going to deal with the second round, for example. So it's, I think, very important on behalf of many members that we have a qualification or a fixed date where we can get such. Thank you.

CHAIR – HEATHER DRYDEN: EU Commission.

EUROPEAN COMMISSION: Thank you, madam chair. Just to reiterate and reinforce the position made by the Netherlands, we didn't have kind of a commitment. We had a very clear commitment by the board to provide this before the launch. Therefore, I must say it is disappointing to say that we still don't have this report. We will be very happy to receive review copies as long as they're distributed to all the GAC members and not as, I think I understand verbally to all the GAC members. Either all the GAC members receive it or it shouldn't be fair. However, let me point out what we want to receive is something that has the blessing and the form of support of ICANN and the board, the board and the staff. We cannot receive a preview copy then not know what is the status of this report. We would rather wait for a reasonable short, very short, amount of time and then get the report than have a preview the status of which we're not really sure about. Thank you.

CHAIR – HEATHER DRYDEN: Thank you for that. This is also something that I believe we have on the agenda for the meeting with the board. So we'll have an opportunity then to raise it with them.

Okay. I think we can move to the next topic, please.

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With regard to batching, are there any questions or comments from colleagues?

Italy and United States.

ITALY:

Okay. We learned that the number of those representing applications is 207. And, of course, we know that a single organization could present up to 50 proposals.

So I agree on the fact that you don't know yet the preview -- don't have a preview of the number of applicants. But you should at least have a clear idea if there will be a need of the batches or not.

And you provided to us three possible variations for selecting these batches.

So my point is that these variations are proposed to us in order for us to declare what we prefer? Or is it something that the board is evaluating with the idea of proposing one single solution for the problem?

In any case, we are, of course, a little bit preoccupied. If the number of the applications will be very high, then there is also this sequence of the batches and the timing between one and the other that we would like to know. Because there is the risk that the second call for new gTLDs will take several years before being possible.

So we would like to have some more evaluation of this kind of numbers and also considering that in the batches in a previous meeting you said that ICANN should be assigned in addition 250 a year. And, of course, these numbers are on one side worry, on the other side, also for the root stability, then maybe this is a number that is feasible.

But the GAC also recommended, if you remember, that after the closure of one call, there should be an evaluation of how the root server behaved before starting a second. Thank you.

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CHAIR – HEATHER DRYDEN: Thank you for that, Italy. Then I have United States and Australia.

UNITED STATES: Thank you, madam chair. Just had a couple questions as to where things stand on the selection process that will be used. So there's a very helpful reference to the fact that you are considering one. But the fact that we don't know what it would be just yet suggests to me that that is still under debate and deliberation. So, if you could confirm that would be the case.

Then my question would be whatever proposal might be developed, would that be put out for comment such that the community could provide some insight as to whether they think that's a feasible solution or whether there could be some alternatives? Because that might be very helpful since it would include all of the interested parties to weigh in.

With regard to whether there would have to be several sorts of batches, we understand certainly you'd have to be flexible vis-a-vis the GAC. We've identified a potential problem that we wanted to share with you, which is, if the batching actually runs consecutively in a shorter timeline than the current 60 days, most GAC, if not all of us, I think would really struggle. The idea of having 60 days for 500 is already challenging; because we have to, in fact, initiate fairly extensive consultation and coordination processes in national capitals. So, if there is to be any overlap or a start of a second batch before the 60 days are up, I think we would have a problem.

So it would be useful to sort of get an understanding of what the mechanism would be and when it would kick in and how we can manage. Because, quite candidly, even the consecutive 60-day review periods of 500 at a time is going to be very challenging for governments. So we did want to express some hesitation that, ideally, there should not be any overlap.

CHAIR – HEATHER DRYDEN: Thank you, United States. Karen, would you like to respond to some of those questions?

KAREN LENTZ: Sure, thank you. In terms of establishing the actual batching selection process, the -- the board discussion on this provided the directions that were on one of the slides that it should be, you know, that it should allow for an opt in, opt out. It should be not random, and it should take into account geographic diversity.

The resolution asked us to provide some indication of that in the applicant guidebook and then to return to the board with implementation details which they -- which they would look at.

So I believe that is -- that discussion is to take place at this meeting.

But it will depend what the board -- depend on their consideration.

CHAIR – HEATHER DRYDEN: Thank you, Karen.

I have Australia next.

AUSTRALIA: Thank you. And thanks for this presentation.

My question is actually to go back a step before -- prior, I guess, to the U.S. comments, which I think, if I understood, assumed that, if there was batching for ICANN's administrative purposes, that we would be allowed batching for the GAC. So, if ICANN was to look at 500 applications at a time, the GAC early warning process would look at those 500 and no more until the next batch started. And I was just actually seeking some confirmation that that was, actually, the case.

The slide said something about understand that the GAC would need sufficient time. It wasn't clear to me from that whether the GAC would be in the similar batching arrangement or the GAC's 60 days might just be extended but for the whole bunch.

So, if I could get some confirmation that would be excellent. Thank you.

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CHAIR – HEATHER DRYDEN: Karen?

KAREN LENTZ: So, you know, this slide is not really meant to limit or to prescribe a certain process. It's more, you know, to indicate the flexibility that we have in not imposing -- or intend to have in not imposing, you know, timelines on the GAC that are problematic. And so, you know, I've heard the comments that were expressed concerning, you know, any overlap and the question from you as well that I'll take back.

But, you know, I think the details are being worked out. And we need to continue to discuss with you, with the GAC, you know. So I've noted the feedback today. Thanks.

CHAIR – HEATHER DRYDEN: Thank you, Karen.

I have Germany next.

GERMANY: Yes, thank you. My question was going along with the question of the U.S., because I also had question mark with respect to the methods of choosing for batching. I understand these three general principles, which I could go along with. I don't think that they're too controversial. But I wonder when does ICANN consider to have a final decision how this batching will take place? Because I think time is running out. And we are, from the GAC side, involved in this issue. And the question whether we have also -- have to participate, to some extent, in this batching, I think it is very urgent for us to know when this decision may take place. Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Germany. Are there any further questions or comments? Ah, EU Commission, please.

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EUROPEAN COMMISSION: Thank you, madam chair. I will not reiterate and express the points made by my colleagues before. We do need better information and formal information on the timing that we're talking about here.

If you could just move a slide ahead. Another one. Thank you.

Yeah. And, just to be doubtful, I would like clarification on the third bullet there, which was also mentioned by Germany and others. If application requires batching, we will be flexible to allow sufficient time for GAC with U.N. processes. Who is the "we" there? Is this a follow-up position of the ICANN board? Is this a view of ICANN staff? Is this a formal view? Is this -- because this is a slide.

And, as far as I know, what is really to be referred to is the draft -- sorry. It's not a draft any more. The applicant guidebook. And there we have a date of 60 days, which, by the way, I don't know whether it's working days, calendar days, or whatever. But there is a number in there. So I would like a clarification there what is the status of this slide. Who is the "we," and which form would this flexibility actually be embedded into? Would it be a change in the applicant guidebook or what?

CHAIR – HEATHER DRYDEN: Thank you for that comment. It's clear that the GAC is seeking clarification on how that decision will be made and when. And that allows us to plan accordingly.

I have Australia next, and then let's move to the next topic. Okay. So Australia has declined to comment. Let's move to the next, please.

Applicant support program. Brazil, please.

BRAZIL: Thank you, chair. My question is a little bit rhetorical, because I'm quite sure that the staff of ICANN would not have this kind of response. But the fee reductions in the applicant support fund would be considered by whom? Who would be responsible for these kind of definitions? And I think it depends, reiterating the commission and Netherlands demands,



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on a clear and in-advance information to the GAC. Because there are a lot of -- it's just an example. There's a lot of open information that would drive our work here in the GAC. Germany, also, I think has reiterated the need for information. This is just another example.

And I think the next topics will raise more examples on how we need information to -- even to start to discuss internally some questions. Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Brazil. Kenya.

KENYA: Yeah. I'd like to thank ICANN staff for this presentation. One question regarding the SARP. You mentioned somewhere that it's going to depend on the number of applicants that are received. What if there are none? And we have had some concerns regarding the outreach efforts and to what extent it has had an impact in developing countries and in -- you know, areas where, you know, applicant support will be required. So what if there are no applications? Does that mean that the SARP is not going to be formed?

Second question is regarding the foundation. You said -- mentioned something about fundraising. But without a foundation in place, how is that going to work out in terms of I don't think -- does ICANN have that capacity and skill to manage a fund, and how is that going to work out really in time for it to offer the support that is required? Thank you.

CHAIR – HEATHER DRYDEN: Thank you for that, Kenya Were there any other questions or comments? Switzerland, please.

SWITZERLAND: Thank you. First of all, I think it is very good that such an applicant support is available. The GAC has expressed several times that we think it's important that there will be applications from all regions.

We are just slightly confused. There are still a lot of things that are yet set up or not clear. Knowing that applicants from developing countries will have to hand in their applications in one month's time and it's probably quite important for them to know to what extent they will receive support, how much, and where and how -- how do you make sure that this thing actually works, that they get the information and the support they need in time, meaning that allows them that they can actually work out their applications before the 12th of April? This is not really clear to me from the information I got. Thank you.

CHAIR – HEATHER DRYDEN: Please, Karen.

KAREN LENTZ: So thank you for both of those comments. If I can, I'll go back and try to be a little more clear. And I -- you know, unfortunately, I'm not the expert on the applicant support program. So I will tell you as much as I know.

The fee reductions are in place in terms of, you know, there is a financial support handbook. There is an application form that tells applicants how to apply for support. There are criteria published that determine how applicants will be selected for support out of the number that may apply. What's not -- and, again, the 2 million allocated by the board is -- that's been decided. And that's been -- that's occurred.

What hasn't occurred is the mechanism for how funds get transferred in that -- in the transaction.

So, you know, how the -- it's more of the internal processes, I guess, that are not -- that, at least as far as I understand -- are not detailed to that level.

But, in terms of the applicants who are seeking support being able to apply and request it, that information is available now.

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And, just to respond to the question on the SARP, if I understood it, was what the numbers are and how they relate to the number of applications for support, which is really just to say, rather than saying now we're going to have a panel of 10 or 20 or 50 or -- you know, without knowing how -- what the volume, you know, actually is, it's more intended to be driven by the type of process and the type of resources that we determine are needed once we have the applications.

CHAIR – HEATHER DRYDEN: Thank you, Karen. I have Sri Lanka next.

SRI LANKA: Thank you, chair. Firstly, I thank the ICANN statute for that excellent presentation and update, and I would like to echo the sentiments expressed by Kenya in terms of the outreach efforts undertaken in relation to this program. I am aware -- I am not too aware of the outreach efforts that have been undertaken, especially in the south Asian region, which information seems to be lacking in this area.

I am particularly mindful of the fact that many of the south Asian countries chambers are not even aware that new gTLDs are beginning to happen. So I just want to clarify within this next few weeks or the remaining period what outreach plans are being envisaged.

And second, thank you very much for the way you gave the update on the number of new gTLD potential applications that are coming out. You said something in the range of 407 or 207; right? Somewhere around there.

But I just want to know whether you have an estimation of what percentage of those applications are coming from developing countries. Thank you.

CHAIR – HEATHER DRYDEN: Thank you.

Karen, please.

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**KAREN LENTZ:** Thank you. Just to clarify on that question. The statistic that we published is -- which was 207 that I gave, is the number of registered users in the application system, and that's something that we began publishing quite early.

We also indicated at that time we would not be publishing any further statistical or other application data until the period is closed. But it will be published subsequent to that.

**CHAIR – HEATHER DRYDEN:** Thank you, Karen.

So we have a growing list of questions for clarification about how certain aspects are going to be implemented and around the timing. So I hope that these questions will be conveyed and answered as quickly as is possible.

So can we move to the next topic, please. So early warning process. Are there any questions or comments for staff on this topic?

Australia.

**AUSTRALIA:** Thank you, Chair.

Just a couple of -- or two questions, I think. I'll start with a comment. Thanks for the presentation, and, also, thanks to ICANN staff who have been assisting the GAC to implement the early warning portal. I have been helping the GAC get this up and running, and I just wanted to register appreciation for staff's hard work on this.

A couple of questions which came out of a discussion which some of us had this morning in a capacity-building session we held before this relating, I guess, to the -- separate to the sort of information and process management portal which is being put together for the GAC surrounding processes. And they're questions which go to the information which the GAC will have available to it to come to decisions on early warnings.

So the first is, in a discussion with staff which I had earlier last week, I was advised that ICANN is not intending to translate strings into other languages, and I'm just seeking clarification that that is actually the case.

I think if the strings are not translated into is other languages or other scripts, this will have an implication for the GAC's ability to assess the full range of potential applications.

And the second question is I understand that ICANN is doing a number of due diligence and background checks on applicants as required under the applicant Guidebook. The question is will that information be available for the GAC for use in its early warning process?

And if not, will it become public at some later stage so the GAC can take it into account when considering whether to issue advice?

So these are sort of the checks, if there is criminal background checks and the like, which will be very useful information for the GAC to have in this context.

CHAIR – HEATHER DRYDEN: Thank you, Australia.

Are there any other questions or comments on early warning?

Okay. Can we move to the next topic?

Cross-ownership registries and registrars. Would colleagues like to raise an issue? EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair. We are looking forward to seeing the results of the reflection which (indiscernible) ICANN is conducting on the process we will be following will be posted for public comments.

I need to point out that the third bullet there concerning the possible referral to competition authorities, just for everybody to be on the same page, competition authorities will keep the possibility to intervene in

any case, whether a particular case is referred to them or not. So this is something to -- I think especially the community of applicants, et cetera, they must be made absolutely clear on this point so there are no misunderstandings. And not all of them are competition lawyers, so this is something that might escape their attention.

I am also a bit unsure about that line of 90 days that I think is in the following slides, because it seems to me, 90 days, ICANN can do whatever it wants, which therefore doesn't make it very clear to me what the deadline is about, because after 90 days ICANN can either take a decision or can take more time to take a decision or can be in a request to make an integration. So what's the purpose of having those 90 days anyway? This is not clear to me.

And last not least, I need to correct the representative of ICANN staff. ICANN did not engage competition authorities, certainly not the European Commission in its capacity as the competition authority for the European single market. It was, in fact, the Commission that engaged ICANN. We sent two letters, one on the 17th of June 2011, which was replied to not to our satisfaction, and one the 19th of January 2012 to which we are still awaiting a reply.

So the information flow went the opposite direction. This is for the record and for information of GAC members and other persons in the room.

Thank you.

CHAIR – HEATHER DRYDEN: Amy, please. Thank you.

AMY STATHOS: So just to comment in response to the 90-day issue. That is part of the process that's currently in place for the existing registries to request lifting.

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The 90 days is a time point where we will wait for 90 days to see if there is any response from the applicable competition authority. At that time, under the process, ICANN can then proceed to making any contract amendments that are deemed appropriate, or, in fact, wait longer until the competition authority may have additional time to respond if they choose to.

So you're right, it is a choice, but there is an option for us, for the ICANN to wait under the existing process. It may not necessarily be the same process that we come in the new process for folks who may be seeking with -- removal of restrictions on their own TLDs, but the current process allows for that option.

CHAIR – HEATHER DRYDEN: Thank you, Amy.

Can we move to the next topic, then, please.

Amy would like to add further comment.

AMY STATHOS: Sorry. Just one more point I'd like to make, that we, in fact, did send a response today to Mr. De Graaf and Ms. MCCOLLUM.

CHAIR – HEATHER DRYDEN: EU Commission, please.

EUROPEAN COMMISSION: Thank you to Amy, I believe, for the answers, or ICANN staff for the answers. I am still not clear why you have the 90-day process, because, quite frankly, as you very well may imagine, competition authorities may decide to intervene after 90 days.

So if you take a decision before those 90 days, that doesn't mean anything at all for whomever has asked the question. But I get your point, and I will relay that information.

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On response to your letter, we are grateful for that response, but I must point out that this is the second time we receive a response to a letter that we sent months ago exactly on the day of a meeting of ICANN. This does not allow us to have a proper discussion. I must say very clearly, this is very disappointing and very unfortunate. Thank you.

CHAIR – HEATHER DRYDEN: Thank you, EU Commission. (dropped audio).

(audio cutting in and out for scribes).

Presented on this topic.

This is clear. Let's move to the next, please.

Regarding the second application round to follow the current process, are there any requests from GAC members to comment on this?

(garbled audio).

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Thank you. And thank you for the presentation. I would like to know if you can tell us when you expect to come back with a date for the second round and the work plan for the evaluation process. I think that all the questions here today reflects that governments need clear answers to these questions in order to plan our national processes.

So I hope that we can get some specific answers very soon.

Thank you.

SWEDEN: (dropped audio).

(garbled audio)

... and of course a lot of other interventions during this session but I think it's very important we get answers to our questions and certainly before we get into planning and second round. And what I think I said



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in another meeting we had, I said it, we actually are expecting some kind of evaluation through all this about the root scalability. We have pretty much a bunch of other things that came up during this meeting. So that is absolutely a strong expectation from our side.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Sweden. This is clear. Okay.

Next topic, please.

(garbled audio).

SWITZERLAND:

While talking to several people who are involved in working out, thinking whether they should or could or would have to work out applications, there is a growing, let's say, hyper activity and panic that we kind of take note of. And I hear several people in the community who tend to come to the conclusion that it might be a wise decision to maybe not (dropped audio) the application round but to announce maybe a second round of deferred or a second part of deferred round in a reasonable time.

Because the situation as it is now is probably a large number of applications, some of them defensive, are being worked out in a very short time, under big time pressure. All the service providers are working day and night, at least those that we know. And some people think that there would be a relief in this problem if people would know when the second round or when the second part of a first round would take place. That would help people to calculate their risk of being part or not being part in the first round.

Are there some reflections on this problem that much of -- many things are being done in a very late stage with problematic risk, and that people have difficulties in deciding whether they should or have to or

should be part of the first -- of a first round or whether they can quietly work out their applications for a second round.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Switzerland.

Karen, did you want to reply?

KAREN LENTZ: Yes, thank you. And thank you for the points that have been made.

I just wanted to clarify a few things in case they weren't clear.

One is that I believe in the board resolution (dropped audio) discussed the fact that people were anxious and looking for a date, but it was actually very difficult to provide a date in advance or to establish one knowing at this stage that we don't know the numbers involved in the first application round, and that we have, in fact, committed to do reviews and evaluations on a number of things.

So in case it's not clear, we're absolutely committed to doing all of the reviews and evaluations that have been agreed before a second round would commence. And that's the intention of the work plan is to detail those steps so that there can be if not a date at least some clarity on the process and the steps that will be taken to lead to that possibility.

Thank you for the comments.

CHAIR – HEATHER DRYDEN: Karen, with regard to that series of events, is that available now? Is that something that the GAC could receive? Or is it more that's what's anticipated that will be developed?

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KAREN LENTZ: Yes, the work plan I don't believe is available now. It's something that the Board directed staff to create, and that we are in the midst of doing.

CHAIR – HEATHER DRYDEN: Okay. Thank you.

So something is being developed. Rather than focusing on dates, it's focusing on steps to be accomplished.

So I hope that clarifies it a bit.

So trademark clearinghouse, which I think is our last topic for -- my apologies. Yes, EU Commission.

EUROPEAN COMMISSION: Thank you, Madam Chair, but I just need a clarification on this because if there is a first round and a second round and if there is an expectation that there will be an evaluation of the results of the first round before owning the second round then I would imagine there is a need to have a formal definition of when is the closure of the first round. Does that definition exist? When would the first round actually end? When all the applications, when all the strings that have been applied for have been allocated?

Which may take quite an amount of time. Is there some other idea? Because if you don't clarify that, then we will never have clarity on the timing of an evaluation, assuming there will be an evaluation, which the Commission certainly hopes.

I hope my question was clear enough, so I would appreciate a clarification on that.

Thanks.

CHAIR – HEATHER DRYDEN: Thank you for the additional question.

Brazil.

BRAZIL:

My question is related a little bit with trademark, but it's not directly. I have received a request of information, but I couldn't help. A very famous Caprio in Brazil called us asking if they could just reserve their names because they don't want to buy or to launch a domain right now, but they don't want to have the DeCaprio name used in a domain in the next future because maybe in two years, three years, five years, they want to do it.

Sorry for the lack of information. I don't know.

What would be the case -- What would be the solution for this case? And I think the same question would be applied for a company. Let's say a company that don't want to launch a domain name right now but would like to launch it in three years, five years, or ten years. I don't know.

Thank you.

CHAIR – HEATHER DRYDEN:

Thank you, Brazil.

If I understand correctly, this is in relation to defensive registrations, applications that are made, perhaps (dropped audio) because of concerns about the current round being under way.

Okay. So trademark clearinghouse, then.

U.K., please.

UNITED KINGDOM:

Yes, thank you very much, Chair. I'm grateful to Karen for the staff update on progress here. There's a lot of important work in train, clearly.

With regard to the prospective launch of the clearinghouse, we would like very much to receive confirmation of that, as soon as it becomes available, the planning for that. And also the communication program, really, for populating the database. What is the thinking about that.

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Promoting awareness is obviously a key feature to the successful implementation of the clearinghouse.

So the communication program needs to be carefully thought through on a global basis.

The selection of the provider, good to hear that you're near completion of the process. Again, it will be important for us to be informed of the decision. Clearly the neutrality of the provider is a key point that we are all very mindful of.

So an update on that would be appreciated.

You talked about the analysis being undertaken. I think -- I was hoping we might have something to look at at this meeting. So you mentioned, prospectively, the end of the month. My request, I hadn't discussed this with colleagues, of course, my request is perhaps you could formulate a paper for providing to the GAC chair, and then the whole of the committee can have a look at the issues and the solutions, and any emerging problems that might have been identified, and the solutions afforded to them that we are not aware of. Problems that we are not aware of with regard to putting these very important -- very important element in the framework of rights protection into place.

Thanks.

CHAIR – HEATHER DRYDEN: Thank you, U.K.

United States.

UNITED STATES: Thank you, Chair, and thank you, Mark, for covering some of the issues that I was going to flag.

And apologies, Chair, and to our ICANN staff colleagues. Thank you again.

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On our agenda, we identify this as not just the trademark clearinghouse but rights protection and.

So I just wanted to put something out there for you all to know. Staff will probably recall, I hope my colleagues will recall that in January my agency sent a letter to ICANN on a number of issues, and in particular we noted that it was our intention, in collaboration with domestic constituents and GAC colleagues around the table, that we believed once we could see the list of proposed strings that we would then evaluate whether additional protections might be needed at the second level.

So I just wanted to flag that again. That is a firm intention on our part.

And I wanted to socialize and a proposal that I understand is making the rounds. I don't have a hard copy in front of me, but I thought it was worth flagging at this particular moment in time. There are some sectors that consider themselves to be more vulnerable than others to counterfeiting, illegal activities and fraud. And I understand that there are some very concrete proposals that are now being developed and advanced for some enhanced safeguards at the second level.

So I have been made aware of it, and I will do my best to sort of make sure that the drafters can share that with us, because I think we would all find that very interesting. We all have those sectors in our economies, and I think it would be important.

This is our last subject, yes? If I recall, Heather.

And again, apologies to the Chair.

Our list contained a few other issues, and if you had explained why we weren't covering them at the outset, my apologies.

The other issues are IOC Red Cross and the changes to the GAC text on objections by the staff after the Dakar meek.

So I did kind of want to flag those.

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And then, finally, to see whether we did get a commitment to get answers to the questions on the early warning that I believe Peter put out there.

So thank you.

CHAIR – HEATHER DRYDEN: Thank you, United States. I understand that the presentation today does not include those two items. So that's why they haven't been covered. However, if there are questions, we would like to put -- to add to our growing list of questions on those topics, then we can do that. Questions also might be self-evident.

But, Egypt, I see you requesting the floor, please.

EGYPT: Thank you. And, very quickly, I'm sorry to take you back to the point raised by Thomas earlier on a second round.

I mean, having discussed today, during the morning session, the Affirmation of Commitments and the reviews mandated by the Affirmation of Commitments, I mean, it already says that there is a review that should be conducted one year from the operation of the new gTLDs and another one two years after.

So, I mean, those might be somehow milestones for when a second round be. I mean, can a second round be done before the first review has taken place or between the first and the second? Because those probably are to assess the whole process before getting into another one.

CHAIR – HEATHER DRYDEN: Thank you, Egypt. I think it's clear that a work plan would need to include consideration of that. Did you have a comment to that, Karen?

Okay.

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So, with that, I think we can thank staff for stepping in, in this instance, in Kurt's absence. And what I will suggest now is that we move to break. We're a bit late, but that's okay. And let's try to convene again in the GAC at around 4:30. And then we will continue to discuss gTLDs. So thanks again to staff and see you back in the room at 4:30.

(Break).

CHAIR – HEATHER DRYDEN: Hello again, everyone. If we can begin to take our seats again, we'll continue with our work.

Let's restart our meeting. So what I propose to do this afternoon is continue the discussion about new gTLDs. And then, at the very end, we have some GAC business to take care of. And we can go back into a short closed session just to deal with those items. Regarding new gTLDs, let's see whether, at this point, we are able to begin exchanging about some of the topics that we just heard about and had questions about before the break and see whether it's possible for us to formulate thoughts or the beginnings of advice that we might want to give on those topics that would go into our communique this week. We did have a fair number of questions around process and timing for current elements. But I would like to see whether we're in a position to begin formulating on some advice on those same topics at this point. So we can see how that develops.

In this session, if there's time and interest, we can include a discussion about IOC and Red Cross and also the point we wanted to raise about text that we provided for the applicant guidebook being modified and us not being informed about that before it was published in the guidebook and not being given the opportunity to assess the extent to which that changes the meaning or the impact of that text.

So, with the IOC and Red Cross, we going to be discussing this with the GNSO tomorrow. And there is a document that they have provided that's part of your materials that is in preparation for that exchange and



that follows a preparatory phone call that was held a few days ago on that.

And, as I say, with the applicant guidebook, this is something that we have on our agenda with the board as well. So these issues will still be raised. And they will have an opportunity to discuss those as a GAC as well, because we still have those items in the agenda.

So are there any comments on how we proceed? Otherwise, I suggest we run through the topics and I would like to test out the degree of readiness that we have to actually provide or begin to consider providing advice on those topics.

Netherlands, please?

NETHERLANDS:

Thank you, Heather. I wanted to propose something, which is basically idea from Hubert. But he's busy somewhere else. And, given the fact that we had a lot of questions now and we have not got back with, let's say, a kind of timeline and answer.

What Hubert suggested is that we could make this six or seven bullet points and just give them now to staff to give to at least expect an answer from the ICANN board in our Tuesday session. I'm a little bit -- to be honest, a little bit frustrated to be asking, let's say, two or three times -- other members have the same impression -- and not getting back in between why some deadline was not reached, for example. So just, again, completely in the middle of confusion for the next steps.

So one thing would be, if we just proposed these questions to the board and say, okay, give us, please, an answer on Tuesday or else some later. Thanks.

CHAIR – HEATHER DRYDEN:

Thank you. I think that's a good suggestion. In speaking to Karen and Amy, they were going to compile those questions and convey them back to the board. But I also think it's useful for us to formulate some points

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or questions and provide those today at the end of the session today to the board to help get those responses back before we conclude our GAC meeting. So EU Commission, please.

EUROPEAN COMMISSION: Thank you, madam chair.

I think the idea coming from Germany, which has been raised by Netherlands -- it was also your idea on this, too -- is excellent. Perhaps what we could do is understand the member of ICANN staff who were here before the coffee break.

Well, the break, because there was no coffee. But, anyway, the break. Sorry. I'm Italian. So for me lack of coffee is an important matter.

But perhaps what we could ask is if ICANN staff could, as they're doing, they could write down the questions, then show them to us in the course two days, so we can double-check that there was a common understanding of what those questions were. Because this would allow us to -- perhaps now is not a right moment to make a round to ourselves to check to see which were the questions and see if there are other points we may want to discuss. So that might be an approach that would allow us to proceed and send to the board a questions even by the end of the day, if the staff is in a position to write down six or seven questions and provide them to us quickly.

CHAIR – HEATHER DRYDEN: Okay. Thank you. Let's do that. Let's make a request to Karen and Amy to provide us with the list that they're going to prepare and ask whether we can have that in the next few moments or before the end of today.

In the meantime, then, perhaps we can have a discussion about the IOC and Red Cross and the applicant guidebook. And then, if there's opportunity, then we can refer to that list or begin creating our own. Okay?

All right. So I just want to confirm that that request will be made? Yes. Nodding. Okay.

All right. So, on the topic of the IOC and Red Cross, I will look to the leads on this, which I believe are the U.K. and the United States. But, perhaps, if there are introductory points you'd like to make regarding the state of play, and then we can seek comments on that.

UNITED STATES:

Thank you, madam chair. Just to remind colleagues, it came out probably just before we all got on planes. But I did send out an update notice with the report from the GNSO drafting team, so that we all have their report to prepare ourselves for the discussion tomorrow afternoon with the GNSO.

And what they have done, they did identify some loopholes, if you will, in the board's resolution for the protection of the IOC Red Cross, Red Crescent names at the top level, which, as you will recall, we had asked for protection both at the top and the second. And, with the board's resolution in Singapore, we felt we had covered the topic, if you'll recall. And we then transmitted the proposal to the GNSO, as per the resolution, with a set of questions and answers we thought would help guide the GNSO's work.

But what they did identify for us on the call and in their drafting team report was, actually, they felt that there were some inadequacies that were kind of built in to the resolution. It wasn't as complete as it needed to be. So they have focused their initial effort on closing the loopholes, so that, if the goal is to have the GNSO council approve their proposed fixes, so that that can be communicated to the board by the GNSO, we, the GAC, would similarly say we support that. And that, hopefully, would be accepted by the board. And then it would be implemented in the guidebook before the applications get -- you know, posted and start to get processed. So we have the protections at the top level.

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My understanding now -- and we'll learn more from the GNSO tomorrow -- is they are now turning to the second level. Mark, you had something, please.

CHAIR – HEATHER DRYDEN: U.K.

UNITED KINGDOM: Yes, thanks very much. That is, essentially, the situation. There's less urgency with regard to the second level, because -- (dropped audio) -- is going to kick in really from deployment of the round, following the -- (dropped audio) -- so that work will -- and the options available with regard to second level will -- this is starting now, so that's encouraging and we'll continue.

So, yeah. As Suzanne said, with regard to the top level, certain things need to be finalized. But, overall, I think the progress is really -- (dropped audio) -- working with the GNSO through this. Cooperation between the GAC and GNSO has been very -- (dropped audio) -- it's a model of -- (dropped audio) -- under the direction of the board. (Scribe audio cutting in and out.) Thanks.

CHAIR – HEATHER DRYDEN: Thank you. Are there any questions or comments? EU Commission, please.

EUROPEAN COMMISSION: Just clarification, if the U.S. would confirm, Suzanne, the document that you're referring to right now is the IOC RC drafting status report 29 February, 2012? Okay.

Thanks.

Just for confirmation, because I must admit this is not yet completely correct to me. The drafting team that is author of this report is composed of members of the GNSO. So the GAC does not formally

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participate in the drafting team. Is that correct? Just for my information to have a complete picture.

CHAIR – HEATHER DRYDEN: Thank you for that question. United States.

UNITED STATES: Thank you. Technically, yes, it is correct. However, we had the -- the invitation was extended to us to participate. I think, in view of our workloads, all of our respective workloads, we were not able to do so. But I personally felt very confident that the representatives from -- for the IOC and the Red Cross, Red Crescent did participate. They are members of the drafting team. So they have helped answer questions. They've helped respond. And Mark and I have both reached out to both organizations to confirm that they are very comfortable with the proposed language.

So that has sort of generated, at least for me, a certain level of comfort that, had they not been participants, I might not otherwise have.

But -- and I did want to concur with Mark. I do think it's important for us to convey -- this may be the last time we talk about this before we meet with the GNSO and before we meet with the board. But I do hope that GAC colleagues share our view that this has been a very interesting experiment in collaborating with the GNSO. And I think we can applaud their -- and commend them for the time and energy they've actually directed to our requests. And, to me, it sends a very good signal that there are other ways, other than sort of rigid structures, where we can be very flexible with other parts of the community in advancing a goal that we have and that I think we should be quite grateful that they have come to also share that goal and are working out perhaps a different level of detail than we had. So I do think we want to probably signal that both to the GNSO and to the board that this has been a very positive experiment. Thanks.

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CHAIR – HEATHER DRYDEN: Thank you very much, U.S. EU Commission, please.

EUROPEAN COMMISSION: Thank you madam chair. And thanks to the U.S. for the clarification. We were not involved in the drafting, so we trust the colleagues and the GAC that followed for what was the level of positiveness, how positive was the experience. If you believe the experience was positive, we have absolutely nothing in contrary to signal.

I think this kind of experience needs to be multiplied. Quite frankly, we, as a commission and other colleagues, would sometimes like to be more engaged in policy development processes. But, quite frankly, it's difficult to take positions in that context because we need to go back home and check if this particular experience at the cross constituency's work is positive. It would be very good to signal it.

I do, however, have one question again for clarification. I read the report. And this is why I wanted to confirm the report I read was actually the correct one.

I understand that for what concerns protection at the second level, the drafting team is identifying a number of questions for further reflection.

And one of the questions -- the first one is, in fact, should Olympic and Red Cross names be reserved at the second level of new gTLDs? This strikes me as something that goes very much beyond what the drafting team should do. This is a kind of political decision that is normally taken in other -- at other levels. So I was a bit confused to see this kind of question. Because I thought there was already some kind of consensus on this particular point. Whether positive or negative, I don't know, but there was a kind of consensus.

CHAIR – HEATHER DRYDEN: I have Portugal and then United States. I'm sorry. Italy, you were next.

ITALY:

Okay. I have an observation concerning how we spend our energies and time. It is surprising to know this story that was decided in Singapore and then how long it took to arrive to a final decision. And I really hope that this can be solved as soon as possible. But we are almost arriving at the deadline when it will be published the list of the proposals.

And then us, the GAC representatives, have been receiving pressure. But all those organizations within U.N. and within other publicly known like OECD -- OECD are making pressures in every country. They say why Red Cross and Olympic Committee? And why you do not protect us? Apart from arguing about the legal value of the protection that may be different from those and the others. But their point is that we should be prepared to discuss with ICANN cases in which someone once applied for OECD, just to make an example. We have no time now to start discussing and protecting the same level of OECD and of Red Cross and Olympic's Committee. So this is the real problem.

A criteria that the GAC, if consulted by these organizations, have to say something. They want we say something on this cases.

They want we say something on this case. I don't know if many of you received this input from the community. Thank you.

CHAIR – HEATHER DRYDEN:

Thank you, Italy. Portugal, please.

PORTUGAL:

By coincidence, my intervention is a little bit related to the concerns that Italy just expressed. But I want to voice them in a very different way. As a matter of fact, repeating what I have said in the past two GAC meetings.

We, as representative of governments, at least in the case of Portugal, are not supposed to act on these sort of situations on specific ad hoc basis but on abstract conceptual basis, on the terms of what is actually the grounds on which we should act towards one or another organization.

I see many organizations in the world that should deserve same treatment, that we are trying to achieve for the Olympic -- or the International Olympic Committee and for the Red Cross.

So I don't have anything to -- against, in terms of policy setting for a pragmatic point of view of trying to break ground with particular clear cases. But I certainly would not be happy to finish there.

So, if we find the solution to this case, it should, in our opinion, be generalized whether intergovernmental, international organizations that also deserve same treatment. Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Portugal. United States.

UNITED STATES: Thank you, madam chair.

Actually, let me take some colleagues back a little bit in time when we first began to consider the proposal from the IOC and the Red Cross. We did quite a bit of due diligence around the table in determining that these two organizations -- unlike the IGOs, these two organizations appear to be the only two organizations in the world that benefit from two levels of legal protection. The first is international treaty, and the second is protection under national law in multiple jurisdictions, multiple.

That's a two-level test. And we discussed this at some length. We did due diligence. And, in our assessment, we determined that no other entity, including the IGOs, actually could meet that standard of these two levels of protection. So there has been history here. There has been discussion in and among the GAC. And that was the bar we set quite deliberately. Because, if you will all recall, there was a strong concern expressed when we even first started to discuss this that, if we were seeking to open the door to these two, were we not opening the door, the slippery slope, the camel's nose under the tent -- all of those



things -- to anybody seeking special protection at the top and the second levels?

And we all debated this at some length to say, no, we felt fairly confident that this was -- these were two quite unique entities that benefited from these two levels of legal protection. And that makes them unique and distinct from the IGOs.

I hope that answers your question. Because that theory is what guided the development of our position on the IOC and the Red Cross. We're all very mindful. Because, in fact, we're all -- as governments we're members of these IGOs. And so we're mindful of their position.

It's been my understanding, informally, that the letters have, in fact -- from the IGOs have gone to the board directly. I believe we were copied. But many of these IGOs are, in fact, member observers to the GAC. So it's quite interesting that, as observers, they've had full access to the e-mail list and full access to all of our deliberations as we were developing our position on the IOC and Red Cross. So, just speaking personally, I would have expected to hear from them quite a long time ago. But that's their prerogative. Nonetheless, this is why we're here at this particular point in time.

I understand the letter has gone. My informal understanding, Chair, is that ICANN may well come to the GAC and ask us to help them understand how to respond. I think we may well get questions tomorrow afternoon from the GNSO. Because they, apparently, are trying to understand what does this letter from the IGOs mean? Do we need to treat them the same way as the Red Cross and IOC? Both Mark and I answered that question on the call last week, but I anticipate as the council is here face-to-face, there will be more questions. Actually, we did cross that bridge some time ago. And I'm not sure there is sufficient time to revisit it or on what legal basis we would revisit it. Thank you.

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CHAIR – HEATHER DRYDEN: Thank you, United States. Portugal, I can put you in the speaking order, but you're -- I have other requests to speak as well.

So, first of all, regarding the board asking the GAC to provide further advice or clarification on this, I am informed that we will receive that request momentarily. We just have not yet. So that will be coming. And then the issues now that are being put to the GAC are that, when we considered this earlier, we put forward protection for the IOC and Red Cross on an exceptional basis. So, if there are comments to those particular aspects, then we can perhaps move forward in the discussion.

So next I have U.K., then Portugal, Mexico, and Switzerland.

UNITED KINGDOM: Yes. Thank you, chair. We do find ourselves, I readily grant, in a rather awkward situation. The negotiations with regard to -- initially, it was, primarily, the IOC were very detailed, sometimes quite hard-fought negotiations. And there was obvious concern, as the U.S. has explained that there was a risk of the floodgates being opened, if you like. And we did explain that, so I'm not going to repeat what the U.S. has said.

We achieved progress with regard to the IOC and with regard to the Red Cross, Red Crescent as well. So we do risk this perhaps unraveling, if it's -- if we try to develop this as a much broader initiative. My thought was that we do note this concern as the GAC and we communicate this in the communique. But, if we are going to receive this request with the board, that does change the situation.

So I think it's appropriate for the GAC to acknowledge the aims and intentions of the letter from the legal advisors on behalf of the IGOs. And we should give this due consideration in light of what the board is asking us to do. Thanks.

CHAIR – HEATHER DRYDEN: Thank you, U.K.  
Portugal, please?

PORTUGAL:

Well, what I would like to say is that -- of course, I don't want to reopen the discussion as the amplitude of the criteria that was considered for having this treatment. But I think, however, that is natural for an organization representing governments to define criteria to be applied on the basis of the names of persons or organizations, on the basis of their characteristics. Because we may say we worked hard. We didn't find more than two that fulfill the criteria that should be written or open. Any other organization that fulfills that criteria is the criteria that singles out those organizations.

So, again, Portugal is in favor of continuing to pursue the kind of protection we are trying to achieve for IOC and for Red Cross. We were in favor of that movement from the very beginning. But we think the criteria is to be defined abstractly, even if so narrowly that it applies to very few organizations. Thank you.

CHAIR – HEATHER DRYDEN:

Thank you for that clarification, Portugal. Okay. Next we have Mexico. Then Switzerland.

MEXICO:

Thank you, madam chair. If you allow me, I'll speak in Spanish considering that we have translation.

From the Mexican point of view, as Suzanne and Mark mentioned, these two organizations are protected both at an international and a local level and national level. Therefore, we understand that there are few organizations that could enter in this aspect.

In this sense, we deem it important that we continue the work on protection of the second level. Likewise, as the comments from Europe were commenting, even if this is not a criterion that the GAC could take for all the applications that could come with this sense of protecting their name in being considered within an international treaty, it is necessary that the GAC defines the treatment to be given to these applications considering that they will continue receiving these type of applications to the GAC. Thank you.

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CHAIR – HEATHER DRYDEN: Thank you very much, Mexico. Switzerland.

SWITZERLAND: Thank you. I would confer with Portugal that we should have more clear rules or criteria, whatever you call them. Because I guess we are -- we are not the only country. But we are -- also foreign ministries are approached when there are delegations to these organizations by institutions that want -- that ask for a similar protection like what has been granted to the IOC and the Red Cross.

And one point in the principles -- in the GAC principles of 2007 is that intergovernmental organizations should be protected. The question is how, to what extent, with what means should they be protected? Are the things enough -- for whom -- for which organization do the provisions in the guidebook and the independent objector and all this means that there are, are these enough? For which ones are they not enough and their names should be included?

And we are also not fully clear about what we are supposed to answer to these organizations that ask us as member states to defend their interests in the GAC. So we would also be -- have an interest in having more clarified criteria that we could then convey to these organizations, if they ask us.

And, just with regard to what my colleague from the U.S. has said, I mean, the U.N. institutions, they're also all based on an international treaty. So I -- so this is also not -- I don't know. But maybe you could have some more additional information what the difference is between the international treaty on which the Red Cross and the Olympia Committee's founded, then the U.N. institutions and the same -- but the national -- what is so particular about the national status, the national law, because all these treaties of intergovernmental organizations, they are also reflected. They have effects on national laws. The WTO and WIPO treaties are also reflected in national law.

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So we would be interested in (dropped audio) more clear because, to be honest, we are not really able to give a, let's say, sustainable answer to these organizations that confront us.

Thank you very much.

CHAIR – HEATHER DRYDEN: Thank you, Switzerland.

Are there any further comments on this topic?

EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair.

I must say that although I do understand and, up to a large extent, I do share the concerns that have been raised by Portugal and Switzerland. It must also be recognized, as has been said, this topic is not a new topic. And that was discussed before.

I do remember, personally, plenty of e-mails from U.K. from Mark on this topic. The GAC was kept fully informed about the whole process of development of this particular policy.

Now, we may debate, and certainly people out there debating and in the future there will be debates whether this is a good or bad choice. But I think this point needs to be made that there was a debate, there was a long process.

And to be absolutely honest, and I say this in the knowledge that there are many people who are not members of the GAC here, which is absolutely fine, I can say that the Commission did not follow this particularly closely because we all need to prioritize and we entrusted, so to speak, implicitly entrusted other colleagues in the GAC to follow this.

So, again, sympathizing with the points that have been raised by Portugal and by Switzerland, it doesn't seem to be very honest, it doesn't seem to be entirely fair to me now to question a process that's been going on for many, many months.

Now, more on the substance. My understanding for what concerned the question by Switzerland, my understanding, but the U.S.A. can correct me, that one of the criteria was not whether a particular organization was a treaty-based organization, as Thomas correctly points out, there are many. Almost all the IGOs are treaty based. But whether there is a treaty out there that protected the name of the organization.

In the case of the Olympic Committee or the International Olympic Treaty, I am aware of the Nairobi treaty which protects all the symbols related to the Olympics. Actually, a former university colleague of mine did his whole Ph.D. thesis on the Nairobi treaty, but don't ask me how you can do that and remain sane, but he did it. So I do know there is a treaty-based protection for that name and, I understand there is also for the international for the Red Cross and Red Crescent movement.

Having said all of this, yes, we may consider for a subsequent round perhaps whether we should find a more generic criteria, although I understand that the criteria that have been selected are generic, which is protection international law, protection for the name under an international treaty and the protection at the international level.

We may refine those criteria but we also need to be pragmatic. I don't think we will be able to refine them before the close of the application period now. And I'm not sure we want to re-open the Applicant Guidebook, to be very honest. I'm not sure we want to re-open the Applicant Guidebook now.

One point that has been raised to us, to the commission, by a number of stakeholders, which is something where I believe the GAC may now help is the issue of the confusing similarity, whether not only the names Red Cross may be (garbled audio) in the top level or second level but also those that may be confusingly similar should be protected somehow.

And there perhaps there is the possibility for the GAC to avoid to go a bit too far, let's say and make it clear that we want protection for one particular string, that is career associated with the Red Cross, or two or three or how many there are that are subsidiary of the Red Cross in the different languages. The protection of the languages may be there. What we want to avoid is a situation in which we would be protecting, for example, a combination of Olympic with something else, which we may want to allow, because it's not -- clearly it's not confusable with the Olympic games.

So that is a compromise that we might strike. But I don't think -- I understand, this is not the intention of Switzerland and Portugal. Portugal was very clear on this. I don't think that we can re-open that topic right now. That would be difficult in practice. And as I said, quite unfair, a bit unfair towards the colleagues who have devoted a lot of time on this, fully informing the GAC, as well as, the U.S. correctly points out, fully informing all the international organizations which are observers of the GAC of the whole process.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you, EU Commission.

So at this point, at a minimum it looks like we will need to restate or clarify the basis on which the previous advice that the GAC provided was given. And then to the point about considering whether the GAC would advise that protection should be offered to these additional organizations, I do not see agreement, and I do not see that we can come to agreement at this point.

However, when we receive the letter from the board, as I say, we can expect you to restate, at least, or clarify the advice and the rationale for why we have made a prior decision. And if there are further questions there related to this, then we can try to develop a response to that.

I have Australia, then United States.

AUSTRALIA: Thank you, Chair. And thank you for that excellent summary, which makes my contribution much easier.

First, to concur with the views of European Commission colleague that I wouldn't see re-opening the guidebook. It's practical at this time. But that does not mean that there are no protections available for the -- for IGO names, nor that the GAC can't do anything about them.

As we've briefly touched on already, the GAC has the ability to issue early warnings and advice on contentious or sensitive strings. Part of the reason the GAC argued so hard for this ability is the difficulty of figuring out all potentially sensitive or contentious strings in advance. It's simply not practical.

So it would seem that IGO names, for at least some people around the table, and potentially all, would fall into that category. So it is certainly open to the GAC to issue early warnings or advice if IGO names are applied for.

If the GAC -- Just to think through the options. If the GAC did want to do something up front, it is possible it could flag an intention or the possibility of that happening up front.

CHAIR – HEATHER DRYDEN: Thank you, Australia.

I have United States, Norway, and Senegal.

UNITED STATES: Thank you, Madam Chair, and thank you -- both the EU Commission and Australia for your interventions. I think the EU Commission has helpfully pointed out, our criteria had nothing to do with whether the entities were a treaty-based organization or not. And that is a very, very key distinction.



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But the document that fleshed out the rationale in a little bit more length than what we originally proposed to the board is in the September letter, September of 2011 letter that we sent to the GNSO Council. So we can just resurface that.

There is a section that says, "Rationale and Basis for Joint GAC/GNSO Support." Though we clearly explained what the rationale was, it is the protection at these two distinct levels, and that's what makes the difference.

Thank you. And I do concur with Australia, sorry, that there do exist a number of means ask mechanisms that the IGOs can avail themselves of, not the least of which is the GAC, early warning system, and objection process, as well as legal rights objections.

So to the extent any of their names are, in fact, trademarked and enjoy that protection, they have that opportunity to submit a legal rights objection.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you, United States.

Norway, please.

NORWAY: Yes, thank you, Chair.

I just also want to comment on what the European Commission and Switzerland touched upon. I think we just have to admit that the GAC were not able to prioritize everything that was in the GAC principles of 2007. And this was an issue that, of course, (indiscernible) sort of made concrete proposals about that kind of protection.

On the other hand, of course when we did these discussions on protecting IOC and the Red Cross, of course we discussed it could potentially make precedence. And of course we would not like that to

make precedence, but of course from the outside, then, of course they would sort of have the impression that these are making precedence, even if we decide for ourselves that this should not make precedence. So we might have a problem here.

But also, as Australia commented, and also as the colleague from the U.S. just said, the IGOs are not without protection, because they can, of course, claim the protection towards ICANN in that process and are not sort of limited to specific support from the GAC. They could then claim their rights towards the ICANN in these processes.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you for that, Norway.

Senegal, please.

SENEGAL: Thank you, Chair.

I will speak in French.

I would also like to have clear criteria to avoid stating a precedent, and to provide maximum protection to these organizations, because they donated. And now talking about the observers in GAC, I would like to underline the case, the case of Africa. When it was put forward, a letter to GAC, we were answered that anything related to the new gTLDs is on the new application date; that nothing had been considered in these guidelines to protect our continent.

So the presentation is open now.

I believe that we cannot take two actions based on the fact that there is or there is not an international treaty. We have to be egalitarian in relation to that.

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And if the ICANN is applying the guide, we should have a new version of the guide that will support the protection, not only of international organizations but also geographical domain names such as it happens with Africa.

CHAIR – HEATHER DRYDEN: ...this topic for today. What I propose we do next is that we have a brief exchange about the change to the text that was added to the Applicant Guidebook that the GAC developed at the Dakar meeting.

We do not yet have the response or list of questions back from staff. So it looks like we will need to try to obtain that list this evening, send it to the GAC list. And if we can, find time tomorrow, earlier in the day, if possible, to confirm those questions, and then we can relay those back to the GAC.

So we will endeavor to handle that issue that way. And then we will have a short closed session at the end of today to finish up some GAC business that we did not conclude on this morning.

So regarding the changes to the text, to the draft Applicant Guidebook, a few of you did comment to the GAC e-mail list about this, and so have a particular interest in this.

Are there comments that some would like to make? I don't think there's a particular lead on this issue, but I think it's a really fundamental procedural issue, and also relates to communications between this committee and the board.

United States, please.

UNITED STATES: Thank you, Madam Chair. I am trying to catch the attention of my colleague from Germany but he is busy doing something else.

It was Hubert Schöttner who had so astutely pointed out the change to all of us, because I don't think we were mindful of it.

I do think it's within our -- well, let me say the word, rights, if you will. We developed consensus text that outlined what we consider to be the agreed approach toward GAC objections. We submitted it, and it wasn't for several weeks, I guess, that we find out inadvertently, back channel, we certainly didn't get a formal notice that the text was amended.

So I think it is worth our while to find out on what basis. I can only guess that it was amended by staff, since we have seen no instruction from the board to the staff. But it would be useful to surface that. And I think to put a marker down that when and if, and especially on a subject as important as that subject was, that the staff assesses a need to amend it, then they have an obligation, I believe, to come back to the source of the text.

And I think we probably need to flag that for the Board and request that the staff amendment be deleted. And if the board would disagree, then it would be very helpful to have an understanding of why.

And I would like it make sort of a related suggestion. It may not be a good one, so feel free to shoot it down.

We also meet with the new GAC board working group on the ATRT recommendations, and I suggest that we add this sort of circumstance to that agenda, because I consider them our partners, and I think we indeed to keep flagging things like this that occur and urge them to work with us to avoid them. And not just minimize them. I mean avoid them.

I don't think it's appropriate for the staff to come back to the GAC and amend our text without alerting us, without explaining why they feel it necessary, so we could actually tell them whether we would agree or not.

It's just a suggestion that we take it up additionally with the ATRT, GAC, Board.

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CHAIR – HEATHER DRYDEN: Thank you, United States. So we have a proposal that we inform the board that they have an obligation to come back to the GAC in such instances, and that the GAC, in fact, requests deletion of that text from the guidebook, and that the Board/GAC working group related to the accountability and transparency recommendations take that up.

So next I have EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair. Allow me, first of all, to thank Germany who spotted this problem, and I think quite frankly it would have gone unnoticed if it hadn't have been for Hubert.

As the Commission said on the GAC mailing list, but allow me to repeat it for the benefit of everyone, on procedure, in terms of procedure, we find -- I will be even stronger than the U.S. has been, I find it quite unacceptable that the GAC is asked to provide text and this text is changed without our knowledge. That certainly doesn't help the good relationship between the GAC, between governments, public authorities, and the ICANN staff and the community.

So I will certainly support, we will certainly support a clear question to the Board and/or to the staff to clarify what has happened.

Now, as I also wrote in my e-mail to the GAC list, I must admit that we still have some problems understanding whether this is also (indiscernible) substance, which means whether the modifications in the guidebook that unacceptably, I repeat, have been put without our knowledge, but whether those modifications actually put us, put the GAC in a worse position than would it have been with our original text. And that is something that I think is worth spending some time reflecting to moderate our reaction, without prejudice to the fact that in terms of process we must make, in our opinion, at least, we must make it very clear that this is not the way to proceed. This is not good cooperation.

But on substance, perhaps somebody could clarify to me. I know Hubert from Germany tried to do it, but I must be a bit thick because I

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still didn't understand what is the real problem in the language that has been added by whomever has added it in the Applicant Guidebook.

Thanks.

CHAIR – HEATHER DRYDEN: Thank you, EU Commission. So a proposal that we first establish what is the impact of the changes and then consider the option of requesting that it be deleted, that seems to be the logical way to approach that.

Germany, you are next, please.

GERMANY: Yes. Thank you for U.S.A. and the Commission raising this question again.

From my point of view , first of all, yes, it's a procedure question. That's clear. We were asked to give advice. We gave advice, and this advice was changed. I think it's more than fair that we are contacted before having a changed text within the guide.

But the second one is a question of substance. And, yes, it's my position that this is also substantial implications.

Since -- If you followed the discussions we had during the last, at least, two years, what forms GAC advice. And we had different parts of the community, different understandings of what is GAC advice and whether we have to (garbled audio) the name GAC advice and what are the consequences of GAC advice. And I think we have to be really clear that we have only one form of advice. The wording we use and the advisory we give is clearly different, but we have only one form of advice, and the consequence, if the Board does not follow that advice, is written in our bylaws. And the bylaws consultations process is a real clear process if the board does not follow GAC advice.

And the amendment now in the text is mixing up these positions. Parts of the community may consider that this bylaws process is not necessary. And I think our common understanding, following the

discussion we had in Dakar, is that this exactly does not I be you want to have (dropped audio) we want to have one legal consequence, let's see legal consequence of form or consequence of advice, and that we consider bylaws kind of situations after that.

And not as a forms of discussion and forms of solutions. And, therefore, I think it's also a substantial issue.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you, Germany.

Norway, please.

NORWAY: Thank you. The clearance of GAC advice has been the main issue...

(dropped audio)

... Twisting, turning, and trying to be clear and precise in our language. And we made this very clear. And we worked so hard on this.

(dropped audio)

... worked so hard to make it clear, give them some clearance. Say we didn't understand your advice. It's not clear. (dropped audio) what you mean by your advice.

So we work on this, and we try to make it firm and say that it is clear, if we give an advice to this and that, it is a clear presumption that (dropped audio).

And then to be met -- they meet us with these small changes. It looks small. In reality it goes to the substance. It says only what ICANN will say is -- is the whole process that if they don't want to follow the GAC advice, that it should give a rationale for the position. But, still, you see that it weakens, in a way, the presumption for the applicant that if they have strong and clear advice from GAC, the application should not go

through. And then you put the line on in the end saying but if we don't want to follow that one, we should just give a rationale.

It weakens the language that we have been working so hard on.

So that's why we cannot force them to take this out, but at least we should have a discussion on this one, because it is important.

Thank you.

CHAIR – HEATHER DRYDEN: Thank you for that, Norway.

I see clear agreement among colleagues about the fundamental nature of this issue. It goes very much to the point about GAC advice.

I have Australia, then EU Commission.

AUSTRALIA: Thank you, Chair, and thanks to colleagues who have gone before me. Building on the comments from Germany and Norway, I also believe that this is a substantive issue, in addition to being a procedural issue.

As Norway said, there is a very strong language followed by (garbled audio).

In addition, something more troubling, it is a selective quotation of the bylaws in here. So I recall in regards to the second (garbled audio), a considerable amount of time trying to decide what the essence of the bylaws were to summarize for this. And we came down to two parts.

That is, if the Board does not agree with GAC advice, there are two things, really, it needs to do. It needs to enter into a dialogue with the GAC and put some effort into resolving it, and second is if it still doesn't agree after that, it will provide a rationale.

What they have -- staff, I assume, or what has been provided in the first and third example here is just the rationale. So what they have



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removed from here is the presumption that the Board will enter into a dialogue with the GAC if it does not want to follow its advice.

So I find this, as Hubert said, very troubling in that it appears on the face of it that there appears to be different categories of advice with different responses. Sometimes they'll enter into a dialogue with us to understand the scope of our concerns; other times, they wouldn't and they will just give us a rationale.

So it's quite troubling to me from a substantive point of view as well.

CHAIR – HEATHER DRYDEN: Thank you for that, Australia.

EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair.

Thanks, Norway, and to Australia, for taking the time to explain their concerns.

I must say that I will not repeat the point on principle and proceed why are. I think we all agree fully on that.

On the substance, and noting we agree with Australia that it's bizarre and troubling that ICANN mentions, quote, "selectively" the bylaws, having said that, the addition that we can see are, first of all, what they say is that the ICANN board is also expected to provide the rationale. I don't quite see the weakening that Norway sees in here. And on top of that, and this may be due to my national provenance. I have a big ground in continental law, so I tend to think about norms in terms of hierarchy. And in the ICANN system, there is, in my view, clear hierarchy. There are the bylaws that take precedence over what the Applicant Guidebook can say.

Just for the record, the Commission does not see particular problem in the substance. However, it seems to may since there are colleagues

who do find problems in the substance, we will be absolutely in favor of asking the Board, or whomever has to (dropped audio) I believe, to remove the sentences that have been added on substantive and on (indiscernible) grounds, just to be clear.

Frankly, we don't agree that there is such a big problem, but if there are problems with other members of the GAC, and I understand there are, we support removal of these additional sentences.

Thanks.

CHAIR – HEATHER DRYDEN: Thank you, EU Commission.

Australia, please.

AUSTRALIA:

Just very quickly. Look, to agree with the Commission, it would be my clear understanding as well that this would not in any way change the bylaws or trump the bylaws, so to speak. But what is concerning is that it is potentially confusing and misleading for applicants and people within the community. Applicants, that the guidebook is so specific because it is to lay out very clear procedures and so on.

So I agree that we should have confidence that the bylaws haven't been changed, but I think this is potentially confusing and misleading for the community.

CHAIR – HEATHER DRYDEN: Thank you, Australia.

So what I would invite colleagues to do is to consider, at some point, for the communique, recognizing that we are going to be talking to the board about this, something like the GAC advices that the text be removed. So I just want you to reflect on that.

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And (dropped audio) that some GAC members are asking for deletion while others may not be as concerned and making that same recommendation...

(dropped audio)

... on that topic.

Portugal, please.

PORTUGAL:

Just a possible alternative to stating that in the communique. So we don't know what was the origin of this change of the GAC wording. Couldn't we consider this topic in the meeting we are going to have with the Board and to ask them to tell us what they think about it before we write in the communique what we should do about it?

CHAIR – HEATHER DRYDEN:

Thank you, Portugal. Yes. And as we wouldn't conclude the communique until Wednesday and we meet with the board before that, we do have that opportunity.

I just want to plant the seed among colleagues that I think that is the issue before us. I think regarding the procedural issue, we're in strong agreement, this is a fundamental point about communicating our advice and the fact that it is bylaws advice and so on.

The other piece of it, I'd just like us to be reflecting on before we come to draft the communique.

All right. So at this point, let's move to the closed session.

So I will ask all those in the room that are not GAC members or GAC member observers to leave the room, and we'll just take care of a few business items before we end for today.

>>> END OF SESSION <<<