

## #8 - gac-new-gtld-program-update-07mar10-en

Bertran: Of replacing Yanez for most of this afternoon due to other commitment that he has with the board. We have a pretty heavy agenda, as you know. There will be this afternoon two big sessions, one is the GAC session devoted to new gTLDs in general. And then afterwards we'll have the GAC GNSO session which will also deal with some of those issues.

The first part that is going to last between basically now and 5:00 o'clock is going to be divided into the following sequence, if you agree. We'll have a first presentation by Yack and staff regarding the state of the new gTLD program. Then afterwards, I will give the floor to Mark Carvel of the UK to drive a revision and review of the current draft comments of the GAC on the diversion 3.

As you know, there have been a changes online regarding this document. The purpose of this session and Mark will explain it in more detail is to gather all the different remarks and the comments, and to see how far we can go in the finalizing the document.

Then afterwards we will have a short sequence where there will be pre-presentations. The first one will be on the registrar agreement amendments that will be presented by Paul Orr. Another presentation by Wipo, and a third very brief presentation on the notion linguistic and cultural TLDs and the model of .ca.

After this brief segment, we will have a session on the EOI that will basically last probably between 4:00 and 5:00 in order to be able to exchange on the visions of the GAC members regarding the EOI.

Is that all right with you in terms of agenda? I see nothing so if this is the case, without further ado, I may give the floor to whomever wants to make their presentation now.

Just one thing, do we have any remote participants, for the moment?

Male: They're dial-in.

Bertran: Okay. If there are any, can you privately let me know? Thank you.

Karen Lens: Okay. Thank you, Bertran. Good afternoon, everyone, and thank you for having us at this session. For those of you that I have not met, my name is Karen Lens. I have been at ICANN for close to seven years. For the last few years I've been the main person managing the development and completion of the applicant guidebook for the new gTLD program.

And to my right here is my colleague Carla Valenté who has also been quite heavily involved in the new gTLD program for the last couple of years. you might also notice that I'm not Curt Pritz who usually makes this presentation. He ended up having some other obligations so apologies from him. I will do my best to stand in for him today.

So, what we wanted to do in this afternoon's session is go through a high-level overview of the status of the program. There are three general areas to cover here.

The first is the EOI proposal, The Expressions of Interest Proposal that's on the table for discussion at this meeting.

The second of the status of the broad issues related to the program and where we are in terms of resolving those. Then the third area will be the completion of the Applicant Guidebook and the few changes and updates that are being made in that regard.

So, the first topic here is the Expressions of Interest Proposal. you may remember if you were at the ICANN meeting in Seoul that this idea came about kind of gradually through certain stakeholders and certain groups within the community. It came to be seen as an idea that should be investigated or what it could provide to the process and how it could potentially assess in the launch of the new gTLD program.

This goes to why we have arrived at what we have today and why we think the EOI process proposal that's on the table would be a helpful thing to serve the public interest and facilitating the launch of the program in a way that is secure and stable, well-organized and efficient.

The model that we have on the table has a number of benefits we think including giving some certainty in the number of applications, applicants being aware at an earlier stage of possible contentious situations, possible objections. Also having some data to inform the economic analysis that's ongoing. Being able to – having the opportunity to see if there are some issues that are not listed above that we haven't considered. And finally, being able to hasten the launch of the program by resolving those issues before we go through the formal launch.

The model that sort of brief history of the model that we have, there in November we posted a set of preliminary questions for feedback about how whether an EOI could be beneficial and what considerations should be for creating a model for it.

Then we used that comment to create a model that was posted in December for also for public comment. Before this meeting, in February, we posted a full analysis for both all the comment we received in both comment periods. Those were combined into one document.

Finally, we have an explanatory memorandum on the EOI proposal that was posted to and for the discussion at this meeting. That contains a discussion of the objectives and outline of the models and the cost considerations and the discussion of if it's approved, how we would move forward in terms of what would need to be completed before we would execute the EOI and what the timeline for it would be.

This is just to give you a summary look at what is modeled, what is being discussed. The first point to it is that it is submission of an expression of interest would be mandatory for an applicant to be able to apply for a gTLD in the first round. There will be several rounds after that where anybody could apply.

The discussions on this, they were kind of three options: To have a mandatory approach, to have a voluntary EOI approach or have no EOI. The voluntary was kind of the third in terms of preference, because it entailed most of the same costs as performing something mandatory. Would give us a lot less actual data in terms of information that could be used to meet some of the objectives that we had.

There's also proposed that a deposit of \$55,000.00. That is considered a deposit against the eventual evaluation fee that would be due from all applicants when the application was actually submitted.

The number 55,000 was fairly well-supported in the public comment. There was a comment that it should be higher. There was a comment that it should be lower. The reason that this number seemed the most defensible is that it's tied to the existing B structure. So it's the non-refundable portion of the evaluation fee that would be paid by all applicants in any event.

The amount is again, trying to strike a balance between discouraging speculation and behavior that would tend to make the data less reliable and having a fee that's so high that it would be a barrier to entry.

The deposit, we have it as non-refundable unless the application round is canceled and doesn't happen. The intent with this, with the refund is to have it clearly laid out for participants when refunds are available and when they're not. So this is an attempt to do that.

Then because it's certainly recognized that because we are proposing to collect deposits and to refund them under most cases, it's critical that we will to the greatest extent possible settle all of the open issues regarding the application process and the evaluation process before the EOI is conducted. I'll talk about that a little bit more in a minute.

The fourth bullet there indicates that the participant string information would be made public. That is, of course, once the submission period for Expressions of Interest had closed. That's in the interest of transparency for one thing and it should also help us to get the information on potential objections and also be able to ensure that we put in place operationally the right resources that would be needed for the strings that we're getting. For instance, how many IDN strings are there, and that sort of thing.

There's also and this is also a very important bullet. There's also a key part of this is a fully-executed communications campaign to promote global awareness. Because we have structured it as mandatory, it really is critical and us to make sure that everybody who would be interested in participating is aware of it.

That groups that are as close to ICANN or not in regions where we've already done a lot of communications work on this will not be disadvantaged. The goal is to not have people coming back after the fact and saying I never heard or knew anything about this. So, this is really a big, detailed part of the program that Carla is spending a lot of time working on.

The way that we've laid out the EOI proposal, there will be no evaluation steps performed on the EOI submission. The information collected would basically be who you are as the potential applicant and the string that you're interested in applying for. We would not be performing evaluation steps on whether their string was method-technical requirements. Would not be collecting information on whether they were community-based or geographic names. We would not be performing those steps at that stage. We would perform them at the time we actually received the application.

I think in this – if we make the information public there will certainly need to be some sort of venue or channel to collect comments that people might have. But it

would need to be very clearly indicated that that's to be collected and not to be acted on by ICANN at this time.

Carla: I just wanted to add also that the model of the EOI is launched as the model proposed. We don't have an objection period starting at this point. It starts at a later point.

Karen: Finally, the four things that you see on here is what we have noted in our memo and our previous presentations on this subject, or things that we would consider to be prerequisites to the EOI process. We would not contemplate launching the EOI without these things having occurred.

One of them is to publish draft version 4 of the Guidebook. That's a work in progress and we're expecting it to be published in June before the meeting in Brussels. It's also intended to be a very close to final version, very close to final draft. So that's the first thing.

The second is that resolution has been reached on – the three things that are here really are a minimum, not the hitherto certainly more things than we intend to have resolved for that. The three listed here are trademark right protection mechanisms, the IDN three character requirement and vertical integration. Those have a strong bearing on the EOI and how it would play out. Those are listed specifically.

Third, is obviously the communications campaign that I mentioned. Fourth is that we are operationally-ready to conduct the process. That would include things like having an interface where people would go into their information and making sure that we have customer support for this system, people who have questions about how to submit their EOIs and so forth.

That is the EOI section. I don't know if you – if I should proceed or if you want to pause there.

Bertran: I think it's probably better to have the two presentations as the two are somewhat interconnected. Are you going to be able to stay during the period of the session this afternoon? Okay. So, please, go ahead.

Karen: Okay. The next section concerns the major outstanding issues. The four that I'll talk about here are what we had determined the past over-arching issues. Those are Trademark Protection, Malicious Conduct, Route-Zone Scaling and Economic Studies.

Starting with trademark protection, there's been a lot of work that's occurred since the last time – since the last meeting. There are new versions of a couple or all of the trademark protection mechanisms that we have under consideration that are posted now.

We think because of this work that these solutions are very close to complete and that will be – this will determine a lot of testing that position. But there's been a lot of really good progress made on that.

The GNSO was tasked previously with considering the – a couple of the trademark-related proposals. One being the trademark clearinghouse and the other Uniform Rapid Suspension or URS process. The GNSO was asked to look at what was on the table and consider whether it was in line with the policy advice on new gTLDs that they had given.

So, they did complete their deliverable in the time they were given. They were able to reach unanimous consensus on most of the areas in those two proposals and rough consensus in a lot of others. STI, by the way, the abbreviation on the slide stands for Special Trademark Issues, that's the name of the group that the GNSO formed.

New versions of the trademark clearinghouse and the URS are posted based on the STI work. The third or the thing on the bottom there, the trademark postal delegation Dispute Resolution Procedure was not one of the things that was referred to the GNSO. But staff has done more work on it based on the public comment and the discussions that we've had on it previously in the community.

This slide kind of gives you a visual picture of the Rights of Protection Mechanisms that are on the table. Starting with the left in terms of pre-launch there is the IP or Trademark Clearinghouse with either a trademark claims or sunrise process that would be implemented by all of the new gTLD registries.

Then post-delegation, once new gTLDs are operational, the things on the right offer protections at that stage. Those include the URS, the Post-Delegation Process, the [inaudible] model and also the existing UDRP.

If you look at the blue line, pretty much everything below there was something that wasn't there at the – in the first guide that we published. There's been a lot of substance added in that area.

I'll go through these mechanisms in a little bit of detail. The Trademark Clearinghouse, what it is, is a database of trademark information that the clearinghouse we expect would be run by a third party provider and would perform two different functions. One being to validate trademark data that was submitted. And the other to administer and provide data that registries would access for their pre-launch IP claims or forced sunrise services.

What this does is it assists trademark holders in simplifying the process. It avoids having to go register in several different databases or learn the launch process of all the new gTLDs as they occur on an ad hoc basis. But to have one place where the right information can be retained.

Then the registries are benefitted as well by having us sort of standardized template or IP claims or Sunrise Process that can be used based on the trademark data and can be tailored to the needs of that particular registry. Then it's operated by a third party licensee agreement with ICANN, as I said.

The items on this slide are what the STI recommended in terms of the Trademark Clearinghouse. They recommended that all new gTLD registries should have to provide us with either a Sunrise or a trademark claim service and that would be up to the registry to choose among those two options.

The sunrise period I think probably most people are familiar with. The trademark claims is the idea that someone registering a name that was a match to something in the trademark clearinghouse would receive a notice of it at the time they were performing the registration.

The STI recommended that the remarks that should be included in the Clearinghouse would be court-validated and nationally and multi-nationally registered text remarks.

They recommended that registries should honor registered marks with substantive review and court-validate marks. I'll discuss that issue in a little bit, in the next slide.

They also recommended that the Clearinghouse function be performed by a provider contracted with ICANN. They had contemplated that the Clearinghouse could offer ancillary services other than the storage and dissemination of trademark information but they had some caveats on that, such as keeping the data separate.

They also recommended that there be one database, that there not be several that were strung together but they would be a central location that everybody would go to. They did recommend that regional expertise be used in terms of developing the authentication processes that that sort of specialized information should be included.

Finally, they recommended that the cost of the Clearinghouse be borne by the parties who are using the Clearinghouse so that would include the trademark holders who were submitting information in the registries who were pulling information from it.

Here are two differences between what the STI recommended and what we posted. Just recently one has the – the top one has to do with which trademarks are eligible to be in the Clearinghouse or which, I'm sorry. Which trademarks the registry is required to offer protection to.

The STI again recommended that the registry should have discretion in terms of trademarks that were registered in jurisdictions that did not perform a substantive review at the time when a trademark was registered. We got a lot of comment on that to the effect that it's difficult to treat trademarks differently depending on where they're registered.

The proposal that has been posted now says that the registry has to honor trademarks if they're validated by the Clearinghouse or courts. There is another function added to the Clearinghouse where if I have a trademark in a country that doesn't perform substantive review, I can have it validated by the Clearinghouse using a process to be developed. Then it would get the same level of protection that all of the other trademarks have in terms of the registries.

The second issue has to do with the provision of ancillary services. The STI was not all that specific on this. I think you can interpret their report a couple of ways. There did seem to be concern that data submitted by trademark holders could potentially be used by four other services that are offered by the clearinghouse that they may or may not know about or want to participate in. So the proposal that we have posted is basically requires that the trademark holder actually opt-in if they're going to be ancillary services offered that incorporate the trademark data.

Bertran: If I may just ask one question? Is the Clearinghouse used exclusively during the pre-launch? Or has it been agreed now to use it afterwards?

Karen: The proposal is that it is a pre-launch mechanism. It's required that registries use it in their pre-launch services. There's nothing that necessarily prevent a registry to continuing to use it for other things later.

Okay. I'm going to go through the next item here which is the URS. What that is is a mechanism that offers a rapid solution to trademark holders for a very clear cut case of infringement. It's intended to be a compliment to the UDRP. It's also

contemplated to have a lower price, to take place faster and there's also a higher burden of proof for a URS proceeding.

There's an estimate fee of approximately \$300.00 for it. The remedy for a successful URS would be suspension of a name rather than transfer as is possible under the UDRP. It would really be an option for trademark holders to pursue. They would not necessarily have to choose – they're not precluded only doing UDRP or URS. It would depend on what the situation is.

The question was who would perform – who would make the decisions in the URS process? That would be a third party dispute resolution provider, obviously not selected yet. But somebody like that.

The STI recommended that the URS be mandatory, that all new gTLDs should have to implement URS decisions. There are examples – they gave some examples of bad faith, what could and could not be considered bad faith. They proposed that examiners should be trained and certified, rotated within the provider. The real thing to keep in mind here is that there should not be a quote “genuine” contestable issue. So the URS is really intended for very clear cut cases.

If there seems to be an issue of whether a person has the rights in a name or whether there is bad faith, it will be dismissed as not a URS-type of case that would – they would still be able to take it to the URDP if they wanted to.

A couple of differences between the STI model and the recent URS that we posted, one is that the STI referred to as far harbors which would be instances that someone could register and use a name that would not necessarily indicate bad faith. When we looked at the more correct name for it seemed to be defenses. That's just a change in terminology.

The other thing was that the STI recommended that there should be review of a URS decision at any time. We put a limit on of two years from the determination with the idea that the registrant could change at any point. It would necessarily make sense to have a review of a case where the information had changed.

The post delegation dispute resolution procedure I mentioned provides a forum to address allegations of a trademark infringement after the new gTLD is delegating. So the revisions that have been made to this in the document that we have posted are again based on public comment. Some of the provisions that are in there, there's a quick look process to eliminate frivolous filings at the very beginning. The complaint under that procedure can either be based on top level or second level activity. Either one requires affirmative conduct by the registry operator. So the registry would actually actively have to be participating in the activity.

All cases proceed to the determination on the merits. Previously it was – that didn't happen if there was a default. The fees have been adjusted so that the complainant who's filing the complaint pays up front. The registry operator would only pay if they lost and was found that they had engaged in that activity.

And finally, the panel that decides the case recommends from among a number of graduated enforcement measures. It was previously that the panel would decide what should be the penalty to the registry. Here it's given to ICANN.

Okay. Next open issue here is malicious conduct. The work that's been going on to ensure new TLDs are not – don't create more opportunities for proliferating malicious conduct. There were a number of changes that were made in this area prior to draft version 3 of the Guidebook. There are two main areas that are still being worked on to completion by two advisory groups. One has to do with the zone file access and the other creating a high-level, or high-security top-level domain zone program.

The zone file access working group is working on solutions for access to zone file information and environment with many gTLDs. The way this works now is that gTLD registries provides zone file access to those who enter into an agreement with them but it's a one-off basis. Many of the people who are working in the malicious conduct area express an interest in having a more centralized and efficient way to do that.

The script is really just the paper that includes a discussion of the issues relating to zone file access and a consideration of four possible models for creating that, and also some cost information.

The four models that I've laid out here, I won't spend time going through them but I encourage you to look at the paper on that. The high security zone TLD initiative is a follow-up to a concept paper that was published before Version 3 of the Guidebook that laid out the and the outline of a voluntary program for TLDs to be certified as complying with the higher level of security and control requirements.

The advisory group that's been formed is continuing to develop that concept. The paper that they have posted produces a self-certification report card concept as a kind of a Next Step in developing that. That paper is out for comment as well.

Economic study, there have been two new economists retained that are at work as we speak. There are three phases in what they were engaged to do. The first is to look studies and resources that are already existing that look at the costs and benefits of new gTLDs. And to look at and propose other studies that would address areas that are not covered in things that are existing already out there.

The second phase after Nairobi is expected for them to actually carry out some of those studies that have been proposed. Performing analysis to estimate the cost of defensive registrations, developing a metric to assess overall expected benefits and costs and developing a process to assess whether or not consumer harm might result from an individual gTLD application.

Then the third phase is contemplated to develop mechanisms based on those studies that would enhance the benefits of new gTLDs.

Bertran: Just one question. Can you elaborate just on the last line. Mechanisms and benefits to the new gTLDs. Its benefits of the program of introducing [inaudible].

Karen: What I believe that means is that the study is for example, if they look at the estimated cost of defensive registrations, there could be a proposal to create controls around pricing or procedures that registries would be a mechanism of that.

Finally, fourth issue here is roots down scaling. The route zone scaling study has been completed. There are reports on that anticipated from both SSAC and RSAC. The work that we have done on route scaling since the last meeting has been to create models for different delegation rates in areas for application volume.



It looks at expected rates below and above and significantly above what's expected. Those models are also pushed in.

The chart that's in front of you looks at the rate of change in terms of delegation of new gTLDs. So a lot of what's considered here in terms of root zone scaling is not hard numbers but the rate of change. When you look at how applications are processed, they go through various phases and they will come out of the process at various times. They won't all occur in a block, but in phases. That's what this chart is showing that the delegation rate is affected by the processing steps.

Then even in the event that the number of applications is in order of magnitude higher than anything that was ever expected, what we've got now says that if more applications are received in the application process then we are able to process at a time that a batching mechanism would be developed.

What this chart is showing is that the delegation rate also even in the event of some extremely large numbers be admitted by the batching process itself. So that paper is also out there.

For the few minutes here I'm going to get in and talk about a few of the other papers that we have posted that give some update to a few of the areas that are still under consideration in terms of the applicant Guidebook.

One is the registry restrictions dispute resolution procedure. There's a new version posted that has to do with community-based applications and concerns that they're needed to be a forum to address cases where the registry was not fulfilling the community-based policies that they propose – have proposed in their application. This is a dispute resolution mechanism to address that.

The IDN three character requirement, there is a new paper up on that. Previously the Guidebook has always said that gTLDs should be at least three characters and whatever the relevant script is. There has been a lot of comment that that is problematic for a lot of languages and scripts.

The idea to implementation working group that was formed created some recommendations on this to relax the three character rule for gTLDs in some cases. What that proposal says now is that the minimum string for some IDN gTLDs is two characters but there would be restrictions on two character strings that would likely to cause visual confusion with ASCE to two character combinations or with a single character.

They also recommended there shouldn't one character gTLD strings in any script. This should be considered by the GNSO and ccNSO in terms of the policy implications for it.

There's a new excerpt out on IDN variance also based on the same working group's recommendations that allows for the future delegation of variant TLDs once a mechanism is developed to allow that to be done safely and without causing consumer harm or technical harm.

There are a couple of mechanisms that are on the table that have been proposed as a way to enable variant TLDs. What they recommend is that ICANN should perform testing on those and others so that variant TLDs can be delegated.

They did suggest that prior to delegation of variant TLDs there would be certain conditions and that in the case of the gTLD process that would likely be some additional evaluation steps on how they would propose to implement their variant mechanism. Possibly some additional fees and some contract terms to be determined.

The approach that's proposed in the paper that is published is that they would collect IDN tables from applicants. We would also collect the list of variance from applicants and that variant TLDs would not actually be delegated as TLDs until there was a mechanism that's tested and adopted. That's also consistent with the approach that's been used in the Fast Track.

An additional paper that was posted has to do with the benchmarking of registry operations. This is something that's been done in terms of looking at the financial and technical evaluation criteria for new gTLDs. The intent has always been to make the criteria and the evaluation process as objective and as consistent as possible.

The use of industry – the collection of industry data is really to – so that evaluators, those that are performing the evaluation have a common set of data that they are from that are benchmarks that can be used in the evaluation process. That's not to suggest that the benchmarks become requirements. But they're looking for something that exactly matches registries that are in existence today.

But just that they're aware of what the general technical practice is and financial statuses for those things so that that report is also there for comment. That was done by a third party on ICANN's behalf so it has a lot of charts and graphs in there.

Yeah, there's just two more sets.

Okay. The last two things here. Registry agreement, the topic of integration continues to be discussed. There is expected that a new model will be proposed based on the debates in Seoul. There was a special consultation held in January and ongoing study of the issue. The Board and community will be discussing here and there's also a note here that the GNSO has undertaken some policy work on vertical integration. That's proceeding in parallel.

Last slide here is the registry agreement amendment process. That's an area where there's been a lot of discussion, a lot of feedback by particularly the gTLD registries stakeholder group. It concerns how the registry agreement can be amended or changed or updated in the event that market conditions change or other conditions change that would indicate a need for a new contractual provision.

There's been several models proposed in the previous draft versions of the agreement. Their registry stakeholder group has recently proposed a new model. There is a paper out that has discussion of everything that's been proposed up until now plus the currently proposed model from the registry. That is available for comment.

Bertran: Thank you very much, Karen, for a very exhaustive presentation. In terms of the working methods today we have up here a time challenge because we need to be addressing the GAC comments on the DAG B3. Therefore, it is difficult to lounge comprehensive range of questions on the whole presentation.

Unless there is a particularly pointed question – one, two, three ... I see where it's going. Okay. Five max. I've already four, the last being...you. I think you raised your hand first. Hubert, Murray, mark, Maria and I had you and yes. It was the first

one. Excuse me. I was missing the [inaudible]. On the first in Germany and Norway please.

Hubert: Thank you, sir. Just a quick question regarding the where the registry restrictions or dispute resolution procedures, you don't have to go into more details that you did. But where is that sort of specifically detailed in the documentation? We can sort of go there and read it more thoroughly. Thank you.

Murray: Yes, thank you. My question would be more – take me to question concerning the EOI. I don't understand completely that this is the role of the governments for so-called trio gTLDs in this new system. In the old traditional system we have this cast every applicant would have the need to provide, yes, no objection of the local community or local government.

Now we have a situation where this is not requested. We don't know the exact conditions. We don't know the terms which still are discussed. This may cause problems if an applicant would come to us as a government and ask, "May I receive your non-objection?" I would have to say, "Okay, but as a conditions and what are the - what are you going to do?"

I wouldn't be able to give this okay in advance. But if I cannot give this okay then we may come to a situation where he is applying in this EOI and afterwards, the government will say, "Okay. Sorry. I cannot give my okay to this." I think a risk for the applicant and maybe it should shift also the role of the government.

Bertran: Thank you. Maybe we'll address the question in the part regarding the EOI. But it's,, yeah. Mark...please, and then....

Mark Thank you, Bertran, and thanks to Karen for running through all the recent documents and the state of play on the DAG and misuse and so on. My specific question just goes back to part of your presentation regarding the Trademark Clearinghouse.

I've been consulting UK business interests in particular on this. One point that's been made to me is the proposal as it stands for the Clearinghouse will exclude trademarks registered in Jewish dictions which do not perform a substantial review. In particular, this would exclude all European community trademarks because the EOI agency that handles registration trademarks, the OHIM office of harmonization for the internal market does not conduct "relative grounds examination" – that's a term we'll go into but it's one I'm sure you recognize.

It would also exclude all UK trademarks registered after October 2007 because the IPO in the UK – that's the UK agency in this area – abolished relative grounds examination in October 2007. I just provide that point for your information. I don't know if you want to respond to it now. But it seemed to be a significant point of concern about the Trademark Clearinghouse. Thanks.

Bertran: Thank you, Mark. Mary Ann.

Mary Ann: I just got a quick one because what you said Germany, you are from Germany. I pretty much agree on it because the process for the EOI seems to be have similarities to the normal process. But there's still some differences and I can't actually see the – I can't see the differences so I can't see the similarities. That makes the whole system a little bit uncertain and not sustainable, from my point of view anyway.

And thank you so much to start with. I should have said it to start with. Thank you so much for the presentation. It was a lot of information. My God. I certainly hope you have chance to discuss a little bit more control and more focus because I also have issue with the trademark system that I got from my concentration from the Swedish government and colleagues at home. Well, I hope for some more discussed about this. Thank you.

Bertran: Thank you. Last question.

Male: I'm also - I'm actually - my comment is also about trademark protection of the – will that consider different languages for the same name? especially particularly I mean if we're talking about trademarks for companies or for things like that, they might be registered in different languages. But if we're talking about geographic names of community –based strings, then how can we consider interpretation in different languages? This would also be considered and if this has to be considered for the process of – sorry.

I think that the strings should be announced on the regardless of the language they're going to be registered in. They should all be announced on the ICANN site like in English, for example, because we need to know what the meaning of the word actually describes. Thank you.

Bertran: Thank you. I will then give the floor to Mark but I will abuse it for the Chair to add one question to the line, which is a black hole for the moment around the question of morality and public order. Which is a topic where probably is not a very big visibility on how the process should work. So if we can spend a little bit of time later on for you to explain more precisely how it works.

Mark, can you take the lead now on reviewing the current stage of the document that GAC is preparing in terms of comments for the – on the draft Applicant Guidebook 3? The floor is yours.

Mark: Okay, thank you Bertran. Our colleagues got a hard copy of a current draft of what we propose will be a letter for our Chair to send to the Chair of ICANN as an annex to the communiqué we will draw up later this week. Just to – I won't go through this in detail, you'll be glad to hear.

But to just sort of be current, the process that we of the GAC have followed since the Seoul meeting. If you'll remember the communiqué from Seoul outlined a number of issues and concerns that got considered to be remaining as outstanding. This takes us forward.

What I – as you'll recall I undertook non-lined consultation in the intervening period. The results of that consultation I drew up what I believed were a list of consensus points of concern to governments. That will find actually, it's all struck out but it's actually on the last page. That was my first attempt to put down in writing where I thought the consensus of government was in relations to the range of issues we've all been looking at.

I then circulated that and subsequent to that, friends submitted some very helpful edits and restructuring of that list to make it – to take it forward in terms of forming it into the kind of letter which is our standard practice for submitting specific advice to ICANN.

Subsequent to that, the US then tabled a number of further edits. I did not actually even read – I got at the top US proposed amendments and read ration in blue somehow from my laptop to the GAC secretary. The colors have changed. But if you look through there a number of edits in blue which are substantive edits from the US which we as a group have not yet any real time to assess in terms of whether we accept those.

So, I don't know if Suzanne is following us at the moment. Suzanne? No? maybe...she did have a clash with one of the other groups. But you'll find her explanatory notes in the boxes on the right-hand side. I don't know if my US colors will want to comment in a bit relating to those two sorts of build on those comments that Suzanne may hopefully set out there.

We also – I also received a one-edit from Denmark in the opening statement where I tried to articulate the basic stance of the GAC which is not – which is wanted to be constructive – which does want to be constructive and to basically endorse the concept of the gTLD space being opened up. But there is the Danish edit as you'll see as alternative text in the first sentence.

The European Commission also has come through with some small edits but I'm sure they will argue – if Bill is still on sparring us. I don't know if Bill is listening in or...Bill Eden? Okay. Well, his edits I've indicated as EC, European Commission and his notes in his email to me to explain the reasons for his edits are on the fourth page, so you can see actually what he put down in writing as explanations for his edits.

Just turning briefly to the structures document, as I said, there is this opening statement. Much of that has survived the online consultations, subject to that Danish edit, which I think is a significant one. We may want to touch on that now.

Then the document goes into listing the Over-arching Issues which still give us concern. Much of this has been touched on by Karen in her updating, and we may want to tweak some of this or delete some of it or add to it in view of what Karen has said to us. Also taking account of the new documents that appeared relatively recently.

So, before Over-Archiving Issues, the Roots Scaling Implications, secondly Malicious Conduct and Abuse. Karen spoke specifically to that. That's an area that's still being work on. Trademark Protection, we've already touched on. Economic Studies, the conduct of that which there's a strong consensus view that governments feel that the exposition of the economic justification of the gTLD around has not been fully developed and certainly not communicated to us yet. But of course, we know what Karen said to us in her presentation about the three-phase work that's going on and the second phase about to begin and the third one.

I guess the message from us is that we want to keep engaged with the formulation of that – those economic studies because there's a sense that we want to know exactly how those studies have been conducted with more particular issues they are going to examine as we weight up the benefits and dis-benefits of the gTLD round.

So, those are the four main over-arching areas of concern, if you like. Then, the document goes into detail on eight specific points which I won't go into now. Again, one or two of them may have been overtaken by the recent release of documents number 7 there and the three character string. Maybe a character string and maybe a

try a Japan – I don't know if Japan is still with us, listening in but number 7 regarding the three character string maybe China and Japan and other delegates here with concern about non-Latin scripts might want to comment on that.

I won't go through the rest of those now. Finally, the letter will articulate the next Steps and where the GAC in particular will want to keep a close – I've already mentioned views on the conduct of the economic studies because of the root scaling studies as well and the communications strategies is something we really want to understand better, with particular regard to developing country markets.

I think that's all I wanted to say at this stage. I don't know what to see us now. We haven't got time as Bertran has very clearly indicated to go into editing mode in this session. I don't think we want to impose that on everybody who's here. Some of us have been more actively involved in drawing up and drafting and editing as I've just described to maybe one option is to look at some of the edits.

After hearing some general comments now about the content broadly and whether there's any gaps or significant changes to be made in terms of basic position. We could do that now but in terms of finalizing this text in time for the close of the GAC meeting here in Nairobi, maybe we could do that in a separate activity with just a small group. That's one suggestion. Maybe, Bertran may want to choose that or consider another way.

But I'm certainly conscious of what Bertran is saying about the limited time available to us and in the agenda for us. Thank you.

Bertran: Thank you, Mark. I think the, unless there is particular objection to the methodology. Given the time constraint, it is hard to go into word by word editing of the current document. It has been circulated on the GAC list. There has been already two rounds of comments and the rounds of comments are not closed.

As Mark was explaining the objective is to have the document attached to the communiqué, so to be ready by Thursday at the latest. Another thing that I think we must keep in mind is that this is not a unique final document and its ongoing process. So, even if there are questions that we cannot solve completely in terms of wording of that stage, we also can keep them and continuing contribute additional comments provided that they are in time for the DAG 4 confirmation.

In terms of process now, I would suggest that we devote about half an hour maximum, maybe a little bit less to general comments on the document that you have on your table, either things that you would like to see highlighted, things that may have been omitted or general comments on the various points that have been raised.

Peter, Australia...

Peter: Thanks, Mark for your work leading us. Much appreciated. Just wanted to point out that we submitted some comments to the latest draft on the 26th of February that I don't think have been picked up. I'm not aware of any objection to them so I'm not sure whether go through them or whether they can just be looked at or discussed. We put in some minutes on the 26th. It was for sort of keeping key things we raised. They just haven't been picked up in the latest draft. I'm not sure whether there was an objection to them I'm not aware of or perhaps just missed.

Bertran: Thank you. Hubert.

Hubert: I trust also remark on geographic names. I know here in this room we have several discussion whether the definition of geographic names is sufficient. I make the proposal that also abbreviations, certain abbreviations should be included in the definition of geographic name. What I mean is, if like PCM for Barcelona. PCM is not a – it's an abbreviation and it's not a city name. NYC is an abbreviation that's not a city name. It's not a geographic term unless the conditions in an applicant type

We have one of our [inaudible] our federal states is called not Rhine [Inaudible]. That's very difficult [inaudible] to express. But the common use MRW and MRW wouldn't be on the list. Therefore I would request that there is some swift solution of this issue. Thank you.

Bertran: Thank you. Arnouf, Norway.

Arnouf: Thank you, Chair. Just a quick comment. Thank you, Mark, for putting this together. Just a quick comment and of course, it's a pity that we don't have much more time to discuss thoroughly through some of these issues. But on the number 5 I think the source is sound is made sort of comment for clarification and I think that specific point refer to the use of the country and territory names.

So, I might just suggest that I send a proposal for clarification on the GAC list, at least. And also, I just wanted to note regarding the use of geographical and well, the country and territory names which we've said in our letter of 18 of August, 2009, regarding at least at that present time the GAC felt that those strings should not be allowed in the gTLD space.

So I might just want to propose a highlighting that into that paragraph.

The other one quick comment on the number 8 in the letter there's also of course mechanisms of post-delegation dispute, specifically in the cases where the government has given no objection or a letter of support. But of course we are going into details about proposals but of course as we stated on previous meetings regarding something in the registry agreement a clause in that contract between the ICANN and a registry operator, there should be some means to refer to a court decision in the country relevant where that registry operator is operating.

When there is a dispute regarding the original objection on –well, letter of support or non-objection between that government and the registry operator. So that's possibly regarding that point. I don't think that's sort of being taken up in the proposals now. we were sort of giving you the overview of. Thank you.

Bertran: Thank you. Are there other comments at that stage? Okay. If you would allow me, I would like to bring a few comments, not as Chair, but on behalf of France.

One question we have not particularly addressed and I do not know if it has been addressed in the general discussion is when we talk about relaxing the three character requirement for IDNs. Is there any distinction between scripts that use alphabets and scripts that use ideograms?

For example, the relaxation of the three character applicable to Greek, Hebrew, Cyrillic and so on, likewise. Or is it only for things using, for instance, ideograms like Chinese, Japanese, and so on? So that's one question that I think is important to look at.

There is one topic that is not being addressed sufficiently I think, either by the GAC or by the general discussion which is the notion of the regime applicable to single registrant TLDs, if any. As a word of explanation the notion of single registrant TLD is a registry where the manager of the registry handles the whole second level domain without selling particularly domain names. This could be brand TLDs. If there is a brand that wants a registry, imagine a bank, for instance, who would like to use a second level domain to give one code or one number for each one of its clients and that's the use of the TLD. What is the regime that is applicable and particularly, what is the connection with the registry/registrars separation, also called "vertical integration"?

So that's one topic. And finally, another element which Mark didn't detail but which is important is that the GAC has repeatedly mentioned the benefits and the possibilities of exploring how categorization can help in the evolution. I think part of what Hubert was raising is going in that direction.

So, this notion of categorization or try differentiation needs to be taken into account probably with better attention, both in the general program and in the EOI question.

If there are not anymore questions, I give the floor back to Mark to explain what the next process is. But if we could take the opportunity of your presence to have just one indication on the topic I was mentioning regarding more [inaudible] public order process. I think it would be of interest for a lot of actors.

Maybe Mark first...

Mark: Thanks, Bertran. Yeah, just very briefly, I did get the Australian comments and I guess in the process of summarizing I thought I might have capped the elements but I'm obviously very willing to go back to the very helpful Australia – very detailed Australian contribution. During the course of this week, as I think we're agreeing we could form a group with others who are – of Germany and others, US, and so on to – and we'll be joined I think by the European Commission later tonight.

So, we could bring together whoever's interest in actually working on the text to bring out points that we might not have covered as fully as Peter was saying for Australia. And resolve some of the points that the comparative edits which might need resolution. For example, perhaps the Danish one I think is key one for us to consider.

So that's my intention as we go throughout the process. I mean, we have a session on TLDs on Wednesday when I think we can hopefully quickly sign off the final draft and then it'll be ready to attach them to the communiqué. But that's not the end of the story. We will continue to work on this fast-moving, very complex area on all the issues that Karen highlighted as issues where there are changes taking place. In addition to stakeholders responding to the GAC or responding in detail as well in anticipation of DAG 4 and before that released in Brussels.

So, that's the way forward as I see it. Thanks.

Bertran: Thank you, Mark. I understand that the next steps, for those who are interested, it's open under participation rule. Those from the GAC who are interested in joining the drafting exercise please, Mark, communicate on the GAC where and how you intend to do that.



I see that Switzerland, Thomas, has one question and then maybe Karen, you can make a few questions. Thomas, Switzerland.

Thomas: Thank you. Actually it's not a question. It's an information. I have sent around a personal paper with some proposals for creating regimes of pedigrees for different TLDs because I also one of those two think the challenges are different according to the different types of TLDs. This is an informal thing and maybe if those who are interested to in addition to just read through it and have concerns, that the GAC could try to come up with concrete proposals on how to overcome these challenges. And produce something in cooperation with the other stakeholders. That might help to solve the problems.

I would be very interested in your feedback on this proposal and interest in those who would like to develop it further. Thank you.

Bertran: Thank you, Thomas. Actually, following this remark it might be useful, at least online to have a thread on the GAC list regarding this notion of category, what you mentioned, what you circulated what has been circulated in the [inaudible].

Without further ado, Karen, if you want to take the few points before we go on with the presentations.

Karen: Okay, so, you'd like me to address them or in public order? Point, just –

Bertran: Maybe one or two other points that –

Sorry. Maybe one or two of the questions that have been raised and where you think you can provide a quick answer. Thank you.

Karen: Okay. I can answer the one, the question that you raised about the relaxing the three-character requirements and the scripts. There's no – in the recommendations there was no distinction in terms of what types of scripts that would apply to you. It's meant for IDN strings, meaning strings that have at least one non-ASCII character.

On the topic of morality and public order what I will do is explain what the current objection process is based on that ground. And if that doesn't address what you're looking for then let me know.

But the morality and public order is one round for objection to a new gTLD application. There are four enumerated grounds and that is one of them. The basis for having this as an objection ground is the GNSO's policy recommendation that strings should not...let me read it so I have it right. "Strings must not be contrary to generally accepted legal norms leading to morality and public order that are recognized under international principles of law." Then they go on to list some examples, such as the universal declaration of human rights and some other things.

What this looks like in terms of implementation is that there is an objection process put in place for applications that are ICANN use for new gTLDs. In the event there was an application and all of the applications are posted. It's publicly available information which strings have been applied for and by whom.

Someone that objected to that application on the grounds of believing that it was in violation of these types of international norms relating to morality and public order could file an objection on that ground. That would be considered not by ICANN but

by a third party dispute resolution provider who in the case of this ground, the international chamber of Commerce has a dispute resolution of our arbitration area which has agreed to take this on.

The one thing that is a little bit different about the morality and public order objection as opposed to the [inaudible] of the other types is that there a quick look procedure at the beginning. So I think it's been expressed a lot in public comment that that is an area that could be abused, that objectors can file objections with the intent of slowing down an application or forcing an applicant to spend money and time on resolving the various objections. So there's a quick look to eliminate, to look at and establish a basic grounds for objection to that application.

That is a quick look process is noted in version 3 of the Guidebook. It's one of the things we're working on is developing that process a little more fully and how that would work. So once that objection would be filed the applicant would file a response to the objection and a determination would be made by the dispute resolution provider.

Then for the application to proceed to the next stage, it would need to successfully to prevail in all of the objections that were filed against it on any ground, not just that one.

Bertran: May I ask you, as you indicated this notion of a quickly procedure being developed, is this at the moment developed completely internally within the ICANN staff? Is there any group that is working on this? Do you have any cross-community group on that topic?

Karen: I'm not aware of any groups that are working on it. It's a process that we've suggested based on community comment. So I think there's certainly room for input as it's developed as well.

Bertran: Okay. Thank you. Any other points that was raised in the course of the previous comments that you would like to comment upon?

Hubert: Maybe just the one that Hubert was raising regarding the differences between the EOI and the gTLD particularly for the geographic names that have a requirement of support and an objection.

Karen: Karl just mentioned that I could also bring up the, in terms of the objection process that there is a position called "independent objector". That is a person who's role is to look at the applications that are out there and that person has the ability to file objections on a couple of grounds, if they believe that it's warranted by a public interest type of consideration.

The – okay, going back to the EOI and application process, in terms of geographical names and I apologize if the way I present it was not very clear on this. The, in terms of the EOI, all it is, is an expression of interest. It's a submission of information so ICANN would not be returning the submission to the applicant saying, "You didn't meet this or that requirement."

Once the application is submitted, there's a really a pause in terms of anything that happens to it. So, for example, if someone submitted an Expression of Interest for a country name, ICANN at that stage is not going to say, "No, this is a country name. you need to go get government approval." "Yes, we believe that you have the right

approval because of other information or anything like that.” All that’s being done at that point is the information is being collected. The applicant is saying, “I intend to apply for this string.”

The when the actual application is submitted that process is exactly as it’s been discussed previously. There is a requirement that if the string is a geographic name that it be accompanied by evidence of support or non-objection from all of the relevant governments.

That’s when the actual evaluation and enforcement of those requirements would occur. I do understand the point that that could create some potential difficulties in terms of what stage an applicant would approach a government in that way. At what point they would come to an agreement?

Bertran: Thank you for the comment on the second point. if I may explore one step further, the kind of situation that I think Hubert was eluding to. Imagine the situation whereby an applicant, a potential applicant for a city name, for instance, has begun contacting a city. A city is not opposed to the notion of having a TLD for that city, but it wants to have some kind of public procedure for respecting the rules of delegation of public contracts. And they want to make a call for applications at the local level.

The window for the EOI will mean that the candidate that wants to apply carries the whole burden of taking the financial risk, where’s the potential likelihood that he will not get the letter of Support or Non-Objection. And worse, the city might be fully prepared at the time of the opening round next year to be in but as the other competitors have not applied in the EOI they cannot apply.

So, basically you have the only one who applied cannot apply in the round because he doesn’t have the support and the ones who could apply because they have the supported in applying in the EOI so they cannot get it.

So, this is the type of problem we may be facing, and one of the things that encourages exploration of maybe some differential treatment in different categories because the city for an applicant on the geographic term is not the same as an applicant of a brand journal. It’s not the same as an applicant for a dictionary, for instance.

But it was just an opportunity to share this will obviously will not solve this right at this minute. If you’ll allow me, I will close this segment. We’ll move now to three quick presentations that are not opening basically broad discussion. It’s successive of presentations. And then afterwards we’ll finish with the EOI discussion.

But first presentation is about the RAA amendments. Paul, if you can make the presentation as we have agreed in the 10 minutes that are coming, it would be wonderful. Thank you.

Paul: Okay. I’m Paul Hall from Serious Crime Agency in the UK. I think the GAC finding time again in their busy schedule to allow law enforcement recommended amendments to the RAA to be outlined here. Hopefully you’ve all had time to consider the documents that have been circulated to you by the representative of the US and the UK.

As a result of our interaction with the GAC in Seoul we supplied these hosts within our working group to GAC members. Hopefully some of you had the chance with your INSPO representative as well.

The suggested changes for the RAA arise from the examination of Internet governance and identification of opportunity to make the virtual environment safer and less friendly to criminal groups.

Before commencing I should emphasize in the strongest terms that I'm not here as a representative of [inaudible] of the UK or represent UK interest. I'm here to represent global law enforcement used here.

These recommendations have formally setted and adopted by both Interpol and the G8 working groups. Both parties are comprising letters to ICANN to express formal support for these RAA amendments.

Global law enforcement this concerted representation is vital especially in the light of the affirmation commitments and undertakings of being more globally accountable. It's very important that it's accepted these all, the use of global law enforcement.

The amendments have also been circulated in accounts of Europe where they formally support it and they've also been submitted to the ICANN RAA working groups for consideration.

Perennial challenges of any crime faced by law enforcement globally, while it's sensitive to combat cyber crime, especially draw your attention to Item 6 and there was a lack of accurate rate structure and proxies. These recommendations especially identify this highlighted issues which proves to be severe limits for LA and industry capability to trace and disrupt criminal groups.

Some of the issues raised by the current lack of Manchu Quan of minimum standards, the polarity of practices within registries and registrars. Some companies demonstrate some solid examples of best practice but commercial competitions, many do not. I'm obliged to due diligence and know your customer practice for some should be a minimum mandatory industry standard.

Twenty-seven percent, this figure arises from the draw pole study for the accuracy of who is registering contract information which was commissioned by ICANN as recently published on the ICANN website. This figure scaled represents a staggering 29 million domains wherein the registrant data is always correct and these registrants can't be traced. That's a huge amount as far as we are concerned.

So the RAA amendments, I'm not going to go – in accordance with my promise to Bertran. I won't go through these in absolute detail. Sorry. Apologies. Maybe I could just back to that one. These figures, 27 percent I should say, only related to the top five gTLDs who claim to demonstrate best practice as well.

The actual figures for the rest of industry could potentially be a lot worse. Law enforcement has worked hard for the last 18 months to understand industry concerns and views. These proposals are a bit structured with due consideration to those concerns. Every attempt has been made to make them readily achievable whilst still being impacted on criminal conduct.

Law enforcement recognizes and welcomes the GNSO registration abuse policies working group initial report. Although this report advocates the voluntary approach to best practice, it recognizes industry's ability to set the appropriate terms and conditions and individual companies retain the ability to decide whether to act upon them or not. It's here that the major difference is like.

I stress that law enforcement's view is that the mandatory minimum standards not optional best practice which commercial enforces criminal activities will overcome.

This is the suggestions in very summarized form. They're related.

Bertran: May I interpret this to....

Paul: I should have said and I'm sorry before we get into the recommendations what these recommendations are. The current process within the GNSO is on revising those agreements. What is being presented here is proposals to input in this current process of drafting new modalities.

Yes, there are proposals which law enforcement would like to see come out from the recommendations. Whether they will or not is doubted.

Due diligence, global law enforcement believes all registries and registrars should carry out due diligence with respect to who their customers are. There should be a mandatory requirement of ICANN creditization that they collect and store accurate information on their customers, carry out checks to ensure the veracity of this data, and retain and publish it.

ICANN should carry out similar due diligence on registries and registrars. It's recognized that there's no one solution to a crime but these would allow denial to easy access to [inaudible] infrastructure for those unwilling to submit accurate information and allow actions under terms and conditions to freeze and remove those domains, which would be a major step forward.

Product registration WHOIS, law enforcement recognize the fundamental need and rights of privacy for individuals, but they should not be confused with the absolute anonymous and unaccountable criminal activity that government structures currently support. Those with valid reasons to protect their privacy should have access to proxy registration. But those proxy registrars cannot themselves be untraceable and anonymous.

Law enforcement suggests a balanced approach would be to allow proxy registrations through proxies which are a courtesy for ICANN so that law enforcement will have some way to serve legal process to obtain data in the course of criminal inquires while maintaining the option of remaining private. This is not currently the case.

Many domains transparency and accountability, many domains are issued and controlled through resellers and third parties, and these should have the same requirements in transparency as registries/registrar. Registrars should have it.

Finally, the implications of these recommendations, the recommendations will place some resourcing and fiscal requirements on the Internet industry. The price of a domain name may rise to accommodate this cost. This may mean a small rise from the \$10.00 base cost at the moment. Most of the requirements can be easily

automated and is this best practice which should be shared to automated these requirements, not the requirements themselves. They should be an option.

A minimum standard and an anticipate increase in the accuracy of the WHOis data and any other system based upon the industry collected data.

Criminal purchase of domain names will become more difficult than it currently is. That can only be positive.

A global method of domain take-down removed and based upon terms and conditions will be available to all.

I think that's well within the 10 minutes.

Bertran: Exceptional. I may not have questions. Very, very good. Are there questions or additional comments? Mark..

Mark: Yeah, thank you, Bertran. I just wanted to add the purpose of what we're doing here and that is we've looked at this proposal previously. We had as Paul has indicated he's presented to us before on this. A number of GAC representatives including the UK are fully behind this proposal. the GAC in Seoul did not feel it was in a position then without further consideration to indicate in its communiqué that it endorsed this proposal.

So, what we're doing here is giving the opportunity for us all to invite that endorsement. We've had this on our table for quite some time. The law enforcement agencies have dedicated all of their effort to explain what they want to do with this creditization agreement. A number of us say, agree with them that the agreement does not provide a kind of effective measure to tackle major technical abuse of the domain system

That's what's on the table here. We do have one or two new GAC colleagues here. I hope they do understand what we're doing and that they will share our objective to indicate in the communiqué that the GAC, as a consensus decision, backs this proposal.

If you can't do it now, as we're acting to cause review and reiteration of what we aim to do, you do have three days to consult. Capitalistic consultant law enforcement colleagues before we get round to drafting the communiqués.

So I just want at that point to explain it's not just for information. We and a number of other GACE delegates want the communiqué to say something to the effect that we fully back this. Thanks.

Bertran: Thank you. Peter, and then Hubert.

Peter: Look, I must confess that Mark's basically said what I was going to say. Yeah, we also fully back it noting that it was distributed for comment in Seoul. We think it's a really important an issue and we'd like to see something reflected in the communiqué as well, an endorsement.

Hubert: Yes, I'm going in the same direction as my colleagues already did. We support this approach and I would –

*[Announcement: Due to your inactivity in this conference, this call will be terminated unless you press the digit 1 on your telephone.]*

[Talking in background too low to hear]

Peter: If I could just add if somebody has any contact data for their Interpol representatives that they want to consult with over the next couple of days, we're here for the week so we can supply those details. If anybody wants to discuss it privately we will be happy to do so.

Bertran: Thank you. Any other comment on that? Well, I think as Mark indicated, this has been presented – sorry, Thomas, the Netherlands.

Thomas: Thank you Bertran. What I'm wondering what is the process of the work? I think we can endorse in principal this latest – basically it's kind of a tougher requirements for domain name registration. Point is what is the following step because basically if we have some requirements you would expect the constituency which is doing this job. I mean, running, who is running registry to react on this proposals and see if things are physical. Thank you.

Bertran: Thank you, Thomas. Actually, this goes into what I think is the state of the situation. This document, as I interested on before is a contribution to a process that will take this as input. Second point is, from what we understand, it has been thoroughly circulated in broad spheres and not only among a few law enforcement agencies but including international law enforcement agencies' cooperation spaces.

I think what Mark is and the third point sorry is that this document information has been presented before has been circulated already for a while. The understanding is that at that stage there is no major objection to the recommendation that is being proposed.

The key question is, how strong is the endorsement and does that mean that it is a requirement that is an equivalent of a GAC advice that says if this is not followed it triggers the whole process. I don't think it is. What it is at the moment is that the GAC is in position to save the communiqué and will do the wording correctly when we drop the communiqué. That fundamentally, this is a proposal that is being elaborated under those conditions. The GAC favors or is fully in support of this being transmitted to the process to be taken into account for the discussion on, whatever the formulation is.

If this is an approach that is provided that we find the proper wording on Wednesday I think when we draft the communiqué. Do I get agreement on the GAC to move forward on that basis?

Okay. Thank you. Thank you very much for the presentation. We're now getting into another interesting presentation by Wipo. Wu is going to be doing the WIPO one. Oh, sorry. I didn't see you. Okay, are you connected, or do you need –

Wu: I don't have a presentation.

Bertran: You don't have slides? Perfect. You have 10 minutes, too.

Wu: Perfect. I'll do my best. First of all, thank you, Bertran, and thanks to the GAC for extending the invitation for WIPO to share some thoughts on what we think is very

important issue that remains unresolved, namely trademark protection in the new gTLD program.

Earlier this morning, we heard Ramo and the ICANN board in the context of the SSAC noting that input should be encouraged from relevant experts and just now we heard from law enforcement along those same lines.

In the new gTLD context we've seen such expert bodies with substantive expertise and public responsibility such as the GAC, INTA and WIPO along with numerous trademark owners express concerns that demonstrate that it appears that in the context of trademark protections that are on the table that special interests have unfortunately translated it into unworkable compromise detracting from the fundamental goal of minimizing rights abuse and attendant costs to brand owners in the new gTLD context.

What we fear is that this is the result of losing sight of the goal of minimizing rights abuse. In a very real way that impacts on the DNS integrity and credibility, just one example would be consumer confusion, if my memory serves, last year at WIPO and ERDP cases, I think roughly 14 percent were brought by the pharmaceutical industry. A lot of times you'll see those are domain names which led to web pages purporting to sell unauthorized prescription drugs.

So, it's a very real issue that impacts the public. We hope that it gets the serious consideration that it deserves.

We see that in the – this impacts both the debate and the mechanisms that are put forth. Going back to January of 2008 when WIPO was working with ICANN to provide input on the pre-delegation criteria for legal rights objection disputes, the issue of post-delegation conduct was raised and flagged as one of potential concern.

WIPO has submitted a proposal for a post-delegation mechanism along with a suspension mechanism. The concept of both of those were picked up by the IRT and has evolved in various fashion throughout the ICANN process. However, we are concerned that the present deliberations are losing sight of the intended impact of those mechanisms that cost of quote unquote “progress”, meaning roll out of the gTLD program at any cost.

We heard from ICANN earlier that the proposed trademark solutions are nearing completion. We would call for a refocusing on the proposals that are on the table and ask that in effect the proposals for example that were put forth by WIPO or the IRT with respect to the post-delegation mechanism be reexamined and looked at with an eye towards protecting third party rights and also balancing the registration interests.

The post-delegation procedure that has been put on the table as presently reworked by ICANN staff we think goes in a slightly different direction. We're concerned that in a nutshell, it loses its intended impact of encouraging responsible registry conduct.

We're concerned that when the gTLD program moves ahead and we fast-forward maybe a number of years and some of the gTLD models turn out to be not as sustainable as they thought during the application process that we may face situations where the standards by which those registries are run are taken to a lowest common denominator and that the impact will be beyond brand owners and consumers.



So, we feel like it's – now is the time. We have an important opportunity to steer the post-delegation mechanism and I won't go into the numerous details on both that and some of the RPMs that are currently on the table. To steer those back in the direction of encouraging responsible content not only at the registry level but on the individual registrant level.

Just to hit on one point in concerns of the post-delegation proposal, we are concerned that the second level conduct as currently expressed in the ICANN staff model allows for registries to turn a blind eye to infringement in their TLD space. And we see that as problematic from a trademark point of view.

So what we've expressed is a hope that [inaudible] expertise such as WIPO, INTA and the GAC could actually get together with the impacted parties and flesh out consideration factors that would produce in essence a series of safe harbors whereby the good acting registries would be protected and you could sort of separate the wheat from the chaff if you will.

We've also suggested that that should be applicable to registrars. We have seen a couple of unfortunate instances in the past year or two where ICANN accredited the registrars who were engaged in conduct that was against the spirit of good faith conduct in the DNS for example. Not implementing the ERDP decisions or hiding behind perhaps shields where it was fairly clear that that was done to frustrate ERDP proceeding.

In one instance, it took two law suits and a letter from WIPO to get action. As far as I'm aware, that's still outstanding.

So, if I could just conclude, I think again that the meaningful post-delegation process holds possibly the greatest potential to encourage responsible registry conduct in guiding registries to adopt RPMs that meaningfully address the increased potential for trademark abuse.

And, we look forward to working with the GAC in moving forward. I just wanted to hit on one thing. In the sole communiqué that the GAC mentioned that IP rights was an outstanding issue. Looking at the letter that's being circulated presently, it looks like the ERS and trademark Clearinghouse have been suggested as ways to move forward and I'm not sure if this sentiment is that the IP concerns have been adequately addressed.

I would submit that there are a number of outstanding issues. I'm happy to discuss offline some of the more specific instances that we have concerns with in terms of the URS, namely and its interoperation with the ERDP and its applicability to legacy TLDs and also the trademark Clearinghouse.

Just I should have mentioned that at the outset, apologies for my colleague Eric Woolbers, Director of the Arbitration/Mediation Center at WIPO> he was unfortunately was out ill all last week and in the end was not well enough to travel here this week. But looks forward to meeting with the GAC in Brussels.

Bertran: Thank you very much. We're keeping on the timing which is great. Are there questions? Hubert, Mark...any other? Okay. Hubert.

Hubert: Yes, I would like to start thinking like well, if we've given ourselves another time [inaudible] knowledgeable information and [inaudible] about state of trademark protection and debate about new generic top-level domains.

I think this is most important issue. It's most important to get quick and rapid decision via arbitration. It is not that this work WIPO and other groups have done. This work shows only the trademark holders for some may say it only delays or directs out discussion process for gTLDs. I think it's quite contrary.

Great experts are showing us where they lead the problems and lead in risks. This is a highly valuable input for ICANN. I think it's also very important the new registries to know and being aware of the legal risks that may occur.

However, I would like to point out that the involvement of private arbitration does not exclude in any case decision by the appropriate cause. In many cases arbitration may provide good indications. They may both parties agree deliver quick and cheap decisions.

But nobody is bound to use this interpretation mechanisms and therefore it cannot be excluded by a third party's appeal to the public court that are not bound by decisions of this [inaudible] parties. The courts normally use the national interpretation of [inaudible] laws.

In the light of this, I can only appear to our side to check very carefully whether the application for a TLD or for second level domain infringes trademarks. The fact that ICANN has proved introduction of gTLD may not in every case imply that the gTLD complies with all trademark laws. Thank you.

Bertran: Thank you. Mark.

Mark: Thanks. I also appreciate very much WIPO's contribution to our discussions here. [Inaudible] to look over actually the presentation and there's a lot of stuff in there that I might want to look at.

For the UK, this is a major, I don't know, stumbling block or whatever. It's a major problem area for the new gTLDs round. We're going through a number of phases and there's a lot of hard work being done on the staff side, certainly. We acknowledge that. There are some lost causes.

I'm still hearing calls for the GTML, protective mark's listing. It's a lost cause now. there's a strong feeling I'm getting from some quarters that that would have provided a very valuable instrument for the major brands, the global brands. But that we lost that after the IRT report was considered.

I think in our GAC contribution that I think we're still highlighting that there's a lot of work that needs to be done. It's one of the over-arching issues still pending. We're saying it needs to be worked out in the best way possible, including the trademark clearinghouse and URS but not exclusive – not just those two things. I mean there are other that matches to be considered, too.

I just wanted to say in regard to the WIPO comment about the GAC sort of, the suggestion that we might be caving in a bit. I would argue that we're not. This is such a big issue that – only for the UK and I'm sure for many others. It's one of the top four over-arching issues that still requires further work.

I guess there will never be a perfect world but we should try and get there. We certainly appreciate what staff is trying to do. Thanks.

Bertran: Thank you, Mark. Before we move to the next topic.

Brian: May I just respond to that?

Bertran: Sure, Brian. Go ahead.

Brian: I just apologize, Mark. I in no way meant to insinuate that the GAC was caving in. It was more a question really whether my interpretation of the new draft comments was to sort of move forward by standing behind the URS and clearinghouse. Apologies for that.

And I also think one thing that's relevant with what you hit on is that these are not the only solutions. The IRT was given a directive from the board to look at the public comments that had come in up until that point. So I think it's important to keep in mind that these are some potential solutions that were proposed within a somewhat limited framework.

Bertran: Before we move to the next topic, may I take advantage of your presence just to clarify just a few of the things that you mentioned?

The first thing is you mentioned the behavior of some actors who didn't implement in good faith URS resolutions. This is obviously something that is not for new gTLDs but it is about enforceability of existing roots. This goes also to the commitment of the registrar constituency, for instance, to collect to the and endorse and maybe police a little bit their own constituency.

Is there anything going in that direction at the moment? And is there any way to promote a better enforceability of those mechanisms?

Wu: As far as I'm aware, and this is one reason that WIPO did suggest that a similar mechanism that was suggested for post-delegation registry conduct can be equally applicable to registrar conduct. As far as I'm aware and maybe someone from ICANN can speak better to this. There's envisioned another round of RAA amendments so that could be one avenue to flesh out some direction in that regard.

Bertran: The reason why I raise this is because the requirements and requests from people who are worried about trademark protection in the new TLD round is in inverse proportion to the feeling that the existing rules are being correctly implemented. The more there is a feeling that they are not enforced or that something is not functioning correctly, the more requirement of burdening the new round.

So, my question is and I take the committee of the actors from the community including the registrar and registry sequency to see whether there's any move that can be spontaneous move apart from the new gTLD process to discuss with WIPO what kind of things could help streamline and enforce the decisions that are being made? Because this could have a very positive in fact on the reliability of the processes that could be proposed for the next rounds.

The second question was you mentioned the fact that this was going in the direction of the unworkable compromises. Could I ask you to make a distinction between

things that are unworkable because they are not implementable, or because they are not efficient? What do you mean in that case?

Do you think that it will not be put in place? Or that even if it is, it will not be a solution?

Wu: Yes, thank you for that. I think that's a useful clarification. Certainly all of the mechanisms that are proposed are implantable as such.

Bertran: That's good.

Wu: I think really what you're getting at is right which is the course which is whether they will meaningfully address a brand of use of the new gTLD context.

Bertran: Which is to the next question – I'm glad that you said that because it's a very important distinction. The second question that follows directly is if it is about efficiency, there is a distinction between top-level and second-level, in-between pre on the second level between pre-operation and post-operation.

Is my understanding correct that you are nearing collectively towards solutions for the top-level domain more or less, and that the main concern at the second level domain and more precisely, about the post-delegation whether the pre-delegation?

Wu: I think that's right and I think the reality is that when you look at the actual top levels themselves, the application process is going to be quite expensive and detailed. We think it's not a very realistic scenario that a potential registrant would fail at the application phase. But rather that the potential impact is at the post-delegation phase.

Bertran: Okay. I think it's a very – if we have the possibility to formulize these distinction into further discussions and spread them it will help. I would say establish the most of because sometimes there's [inaudible].

Thank you very much. We can now give the floor to Medio [Inaudible] for similarly brief presentation. We thought it was useful for the GAC and for other actors as well to have just an illustration of the concept or the sub-category of the track or whatever of linguistic and cultural TLDS. Because it is an illustration of a situation that was not expected. In the case of [inaudible] which is a template for a whole series of potential cultural and linguistic TLDs is highlighting things that are hardly taken into account in the current gTLD process.

Whereas at the same time, the example of that cat as will be presented show that there are benefits to the community. There are operational safety aspects, and some governance elements that may be used as a template for a more general category.

Male: Without wires...apparently it works. Do you see anything? That's good. You don't? I don't but that's not the problem is the screen. It's my eyes. Anyway, I'm just here to explain problems but more to bring some solution, a success story. Not because it's a success, in the sense we can learn some lessons and probably draw some conclusions on things we could improve in the future of things that we don't like.

The case is that we have a group of community ranted TLDs and linguistic and cultural TLDs that I tried to work together to propose no TLDs for their communities. The advantage here is that we have a real life test, which is what it's been like for exactly four years now. We can draw some lessons there.

The thing I said is success, why? Because it's doing what it was intended to do and because it has no corrected of any of the ambient things that people. It's handled quite well, trademark or malicious conduct area. You haven't hurt any political problem as many people [inaudible] etc.

So the level of confidence is very low and also some lessons there. Also, in the sense that as I said, we can learn from not only consultative TLDs but in other areas. Let's say, what's success? Well, the first one – I was asked to change the order. When I say “we”, [inaudible] we never like started with a numbers of the registration. Why? Not cat is about quantity; it's about quality. It's about promoting the language. It's not about making money on the registrations.

The only thing – from nation is to pay the bills. It's that from day one. One of the field of the new gTLD has been paying the bills without any recourse to credit from the one. Okay. But the numbers, 40,000 domain names was off two weeks ago. That's a lot. That's a little low. Why that low? Simply because the cat is very difficult to manage the registers especially in the first three years.

Because it wanted to set the rules. It was driving the community nuts so where were the limits? The kinds of things that could not be accepted there because it was upset about setting some high quality for gTLDs. Fees should be representative of the public and is probably more interested in the numbers of registrations.

During the first three months after sunrise because we were checking that one by one at the time so we have the exact numbers. It's not just some projection. Thirty-one point thirty-two, that is over 30 percent of the registrations were done by people, entities, companies, whatever. They never have just any other domain or even had any website, any work under somebody else domain like ISP, whatever. Okay?

So there were people who knew the DNS. Why because, let's say, marketing way was gone. It was not used the usual way but it was on through the community, going to libraries, going to school associations, through a lot of professional entities, and telling them to tell their members that the cat was there.

Therefore, these attract a lot of people that never went to a registrar before. They were not the usual domain name people. I think that's good so far this area of the public interest and bringing more people to the DNS is not a TLD that sold to the usual domainers. There's not a TLD that you also need to buy these extension because if not something will happen.

So a TLD is addressed by lots of people. But, even more important than that, as I said, is not about the quantities. It's the quality. What are we doing with that? That cat is the real success in terms of content, of what's that in the maze of having a register.

So, for our over-arching issues, I would say that usual demand is a rain check. Let me say what I mean by huge content. This is the Google comment for how many pages? How many documents they have indexed for each TLD? So you do side semi-colon and the name of the TLD. These are the results of the 3:00 am this morning so this changes all the time. But at the proportion, not that often, right?

So, for the last three months and a half, the [inaudible] over the cat as you see the fields there. But if you put this behind this, it means that cat is highly successful. If you put the number of domains that some of the other TLDs have. Some of them

they have 200,000, 300,000. Up to 40,000. But it's full of content. Five times, six times more – look at that. Proportionally speaking that cat is much closer to the – one of the big ones.

But do any of the others small ones, so to speak? Right? So this is important. Lots of content. It's not the domain register for defensive intent or just for {inaudible} reasons. But it's really to be used. Sorry?

Thanks. The second one, tribal protection. Okay, we have many mechanisms regarding white board. We went well beyond that and even the new limited TLDs were figuring out about proposing the rapid suspension mechanisms, little tasks for free because of the cost problem that was just mentioned.

Anyway, all of this ones squat in case because the claimant didn't want to use the rapid suspension. Preferred to go to [inaudible] free. That's correct. The other one was full of mistakes anyway. But the question here is that those cats are not only obsessive about [inaudible] IP. It's also about the charter complaints.

Let me give you an example. In the first year that cat rejected offers by three different registrars through just more than 5,000 names for cats, you know, the animals. Why? Because with our [inaudible] model and what we wanted to make, just quarter main neuros was not enough to sell the domain. And to sink the domain forever as anything meaningful to our community.

So, we say a polite “no”. not because you were heroes but simply because we have it very clear a framework here. Okay? That's all a check.

About security. Just let me take malicious conduct. This is the Mac report from the other night. You have on the left top ten most risky [inaudible] and then the other ICANN manage gTLDs. You see the cat is the sixth less dangerous, so to speak, among all 104 that he has tied. Some of them that because the others were very good

So, once again, apparently it's being a success. Not in absolute terms in a relative they're much more than any other one that's launch. So the – I really like inviting GAC to started with this group and other groups in Brussels to organize a workshop on this sort of thing, the experiences in the proposals is the key elements are two of them. one, permanence and that cat has a very accomplished system and will be copied somehow by many of this LLM.

When you see who's on the board, you'll understand why you cannot do strange things like doing registration for cats. Even a lowering of parking sides or outwards. All of this is not accept for cat. It is why the numbers of the register are not matched.

This is the charter, but what's important here is that there are policies behind here. One of our complaints is that we're seeing that the policy requirements regarding registration policy and especially for them.

I don't know how

Thanks a lot. [2:10:03.8]

Bertran: Thank you, Madu. It's an honor for me to have been able to maintain you below 15 minutes.

Madu: You will be in the Guinness Book of Records.

Bertran: Thank you very much for the presentation. I hope it was useful for the different GAC members as an illustration of a sub-category. If there are any questions regarding the presentation? Thomas? Any other?

Thomas: Yes, thank you, Chair, and also for the presentation. The 22 million figure of this... This 22 million figure for those cat is all these pages or blogs or how do we – because at about 500 were domain.

Madu: Ask school. This is not our figure. This is Google's figure. In most 22 to 40 to 70 each day. It's just documents they have indexed. We were told, for instance that they are not indexing or least not for some time they were trying not to index pure parking sites. They were just nothing less like Barros and Edwards.

This why you will see some fields are surprisingly low for specialized domains for this. This will all – if you take that you'll take sides semi-colon.com. you will see that in the first 50 results – I checked – there is lots that are in the gray area. They had the numbers from the website being rewarded. It's directing to the Spanish-speaking version of the Laguna Base shop. So it's not exactly somebody who complied whether – the vast majority will see our not only in cat but related to culture.

So, the fact here is that we can raise a lot of libraries. Most of these operations, most of the companies, sport clubs, everybody to use the cats as the primary TLD. We spent two years before the launch doing that all the time.

The documents are also the documents you can find. There is a very strong blogosphere in cat as well as in the Arab. They're not using domains because they're using blog spots. So not everything that's in catalogue is there. But it's anything that's on the Internet that's page indexed by Google. That's what that number was.

Jane: Thank you for your presentation. I just wanted to comment that you have achieved something because you did a lot of communication. You did a lot of enlightenment. You did a lot of education and the enlightened ones were able to catch up.

What are the license that will which will one because the new gTLD, for instance, in my country there is this thing called .zit. the reason it is called that there's another one that's called delta. I go onto delta. The confusion that this ones will bring.

I will not would it not again because of the number, the sheer number of the top level that we have. That's why it was subset where you brought out the community TLD. When everything is now made open, so with that confusion not be to me as an only license person and to me as a consumer, what will I look – how can I differentiate one from the other? How will I know the malicious ones, and the ones that are really for my community and these are for commercial purposes and this one is for profit-making?

Madu: I don't have a single answer but the general framework is a lot of work, yes. A lot of work and the problem is that for this to succeed you really need to have very good connections with the community. That cat spend exactly 2,000 Euros in the first year and a half.

So, the marketing was owned by the community itself. So we were strained the message to them. If you don't have that access and you don't have this strong linkage. It's much more difficult.

Then for also controlling according to register is much more difficult.

Bertran; I think we'll have for the sake of time to close this. What I just anchorage members of the GAC as to continue to explore this question regarding linguistic and cultural TLDs and their specificities. But there's one point in Madu's presentation that I would like to highlight and I encourage you to explore it further, is the fact that they went from pre-validation to post-validation of the respect of their closers in their contract for registrants. They maintained compliance so they were able to do ex-post-validation instead of having to validate everything before people were granted the second level domain.

This is an element that has to be kept into account. It is not working everywhere but that's an element I wanted to highlight. Thank you very much.

Now we're moving in the last element of our discussion. Anchorage, we won't take a full break but if we can just breathe, for one minute because it's already been an intense session. The new part is about the EOI. I'm happy that staff is staying with us.

As you know, the GAC has produced a few months ago a letter to the board requesting that there be no decision by the board on the launch of the EOI on its February meeting. So that the meeting in Nairobi could be – could allow the community to have an interaction.

You know that the discussions on the online forum brought many comments, especially the second one. The staff has done a very intense job of documenting all those comments, more than 80 pages of summarizing the comments and analysis.

As you know there will be a session on Monday, the beginning of the afternoon if I'm not mistaken allowing a certain number of people from the different groups to exchange. I've been asked to participate in this. It will be a short session. It will be only one hour and a half after a presentation by courts.

So it is obvious that this session will not allow finalizing anything or solving all the problems in this short session. The question is, during this meeting in Nairobi, this is the moment where significant interaction between the groups must take place. And on the EOI, the way it's proposed today, there are a certain number of questions that were circulated on the GAC list that I would like to ask you to address now, to get your feedback on how you feel – on what you feel about where this proposal is heading. And particularly, how much impact it has on the general gTLD process.

There's one lingering question that is emerging at the moment which is, is the EOI somehow pre-judging things that are still supposed to be sorted out later on; i.e., if it is launched immediately in the current format? Is it actually establishing rules that we're supposed to be finalized later on?

And on the other hand, if we wait until everything is being finalized, is this still an EOI or is this just a launch of the actual application? The general question and I would like to share with you something that Wendy Selzer said yesterday in one of



the GNSO meetings that devoted to this which was basically the EOI is the actual start of the round, if it launched the way it is planned today.

I would be happy to get your feedback on this expression because if this is the case it has a certain number of consequences that have to be addressed. In order to launch the discussion I would like to share the four points that were circulated on the GAC list.

The first question was has the purpose of the EOI being now sufficiently clarified between just a gathering or a full pre-registration? The second question is, the current EOI has an element of being mandatory for both the string and the applicant. It can have an impact on the whole gTLD program. Do you see unintended consequences, like encouraging for instance land grab race or augmenting artificially the number of strings that are likely to be submitted. For instance, fear about when the second round might happen.

Are there consequences that were not particularly expected when the idea of the EOI was presented. That might emerge. The third question is we have lighted in our communication three risks potentially. That the EOI could favor under certain categories of actors, that there could be a creation of a secondary market for application spots, and three that it could penalize developing country or smaller non-profit applicants.

Do you feel that in the ongoing discussions and in the way it's presented today, those fears have been alleviated? Finally, does the proposal EOI facilitate or prevent a timely and orderly introduction of new gTLDs?

I will open the floor now but I want to mention one last thing as at the beginning of this discussion, it is important to remember that the EOI and the discussion about the EOI is not about whether we should have new gTLDs or not. This has been decided in June 2008 in Paris. The decision to open new gTLDs has been taken.

It is a very important thing for ICANN to know when it has closed an issue and when it has not because otherwise we keep reopening questions all the way down the line. The questions on the EOI is, is this providing a benefit now that will allow to clarify the fast forward, to facilitate the solution of some questions and basically answer to the needs of actors would be preparing for a while and who are wondering where this process is going.

So, now I open the floor to your feedback and to give us a flavor or what your thoughts are on the EOI. Who wants to open the...Stefano.

Stefano: Okay. We can't interpret this move to open the Expression of Interest like analysis of, let's say, market analysis or something like that. Just I know that to verify how really strong is the interest from the community. One of the discussions that there is at the top of the political value is connected to the stability and the root zone dimension and the studies of the security and stability group and the root system.

The point of the discussion is are they able to provide numbers and up till now we didn't get precise numbers. In this meeting, perhaps there would be some more opening but we have to know from them.

This is very important. Also, certainly ICANN the stuff is also studying how many just in case that, let's say, hundreds of applicants. How many may be processed in

the period? With which procedure? So this numbers have very, very important. Also we listened today, the law enforcement group, they group of IPR and all the occupation connected to the numbers of the new gTLDs.

Someone could say that this EOI isn't excuse to delay even more, the start of the process of new gTLDs, the first call, let's say. Utterly, I do not understand like that. But I see that the studies that are going on, market analysis and all what we mentioned before, in a good state and so the hypothesis to me started the first call rather soon, let's say; not so late is very important.

This EOI is really a completion, let's say, the preparation for the real launch. I understand this. This might also lead to the side of something if necessary about the integrity so we've been talking about. Because we will guess how many roughly or reasonably will apply.

So I gave some elements just I started the discussion concerning how I see this accepted into the general process of the new gTLDs. Thank you.

Bertran: Arianne, Sweden.

Arianne: Thank you, Bertran. Whatever was said I was going to say was like you said by Mr. Stefano here because from the Swedish point of view, actually I still – we still don't see the difference between the real launch and the EOI. Because if the EOI is kind of pre-launch system, of course, the rules or the process which is going to take place with the real launch is up and running need to be taken into consideration also for the pre-launch.

I don't see those pyramids and processes. What if the case is a lot of interested players want to have top-level domains and then these process need to be in place also for the EOI. So that is something that is a concern. That has to be divvied also with the stability and accountability and also about the root scalability which is another issue we discussing.

So this things hang together a lot I think. So if it is a case of EOI is an indication how the market is going to respond to this because you really want to know what is going to be a lot big interest or not so big interest. That is fine. But if it is the case like it's a pre-launch when you actually look for new top-level domains or apply top-level domains. It's bit more trick with everything.

So we're kind of a bit concerned about this from the Swedish point of view. Thank you.

Male: Thank you. I actually see an Expression of Interest might be very useful only on one condition that terms and conditions expressed in the applicant Guidebook are not finalized before the results of the Expression of Interest are there at the end of ICANN to- I mean, to size things and in some terms or some conditions might vary according to what the feedback from the Expression of Interest.

But if all terms and conditions are finalized then definitely the face of the Expression of Interest would be useless. We can proceed with the second phase [inaudible]. Thank you.

Bertran: Which begets the question, of the predictability of the rules for people who participate in the EOI because you understand that there is a tension. If we want everything to be

finalized and it's not in the EOI, and if everything is not finalized, it's delicate for applicants to apply in a level of a certainty.

One element I wanted to raise is that there is a clear purpose that I think everybody agrees upon is the benefit of identifying the number of strengths, because it is only the number of strengths that is connected to the root scaling, whatever.

What happens if – sorry. Yes?

Stefano: Maybe the number of objections, or something. That might be very useful.

Bertran: Okay, but that is a different question because as was mentioned there will be no objections during the EOI. There might be indications of whether there could be objections but it is not part of the EOI.

The question regarding the number of strengths is what is the objective in the first round, in particular if the EOI brings a large number of applications because of the fear of the timing of the second opening up? Let me explain. The EOI the way it is is basically giving or opening up the right to participate in the first round.

If there is a round, your uncertainty about the second opening up, the incentive for people even for those who are not completely ready to apply in the EOI is higher. In this case, isn't the EOI risking to augment the number of potential applicants rather than smoothen up the movement forward and the scaling up?

What are your feelings about that because I'm raising the topic but it may be wrong or I may make a wrong assumption? What's your sense? You think it's a real concern, or not?

Stefano: I don't think with the fee you're charging for the EOI, I don't think the number would be much highly augmented. I mean, in the real case.

Bertran: Yeah?

Arianne: Whether it's a fear or not, I don't know. But it is certainly a concern. Even if it is the case that we're going to have a lot of interest in players of the top-level domains, what are the process to smoothen it down or slow the process down? I talked about it last time as well. what is the way to – what are the pyramid or the strategy, the process to actually have control of a situation, have control over the process?

That is of course it's interesting for the real launch but it's also interesting to touch upon of course in the EOI. If it is the case that EOI is really pre launch. Because if the EOI is just a market analyze, then it's a different story. But as I understand, by listening to you, it's like it's more pre-launch which is quite of a difference in the market analyze.

So that is why I'm trying to put for this concern. Thank you.

Bertran: So, what I – yes, Peter...

Peter: I just think from our point of view, we're not – I think that there's a – don't really understand the case for the EOI. In the presentation before we saw that there are a number of preconditions are going to have to be met before the EOI presumably that considered to be the very important policy issues.

But from our point of view if there are – it seems to us if there are outstanding policy issues that haven't yet been decided, it would create a level of uncertainty for applicants in the EOI process. If you've got, on the other hand, if you go to the point where you got all the basically substantive policy issues already are sorted out, why don't we just moving straight into the first round?

Like we sort of don't really – we see that if it's going to be a useful thing and that it's going to happen early, at that point there is still risks for applicants or there are risks that there are policy issues that aren't resolved, that may result in some people being willing to take a risk and apply. And other people hard and that may skew the process as it's basically pre-registration.

I think we think that the risks outweigh the potential benefits.

Bertran: I think at that stage, there is a sense or an understanding that the EOI, the way it is proposed is actually going beyond that gathering. It is actually the beginning of something. I'd like to actually ask Carla maybe give one element regarding how the communication campaign is likely to be connected to the degree of precision of the role the EOI has in the general process, to be more precise. Sorry, I mis-expressed myself.

The question is, the EOI, if it becomes the beginning of the process, is it facilitating or making it harder for you to explain what it is?

Carla: I think it's always hard, in my experience has been challenging to explain the gTLDs. Especially when I go around the world, Asia, Latin America, Africa, Middle East; places that might not be as involved or has not been as – ever had so much access to the information as we have. So I face the challenge to go to those places and start talking about new gTLDs and having to step back and explain what a gTLD is, and why is it important and why does that impact you as a user or as a business or as a government or whatever?

Then step back and explain what ICANN is and why ICANN is doing that. So it is a process. Because it's a process and is a learning curve, the communications have started so we trying the best that we can within the resources that we have to go around and join events and try to pass on information to people about gTLDs.

Now the challenge sometimes happens that when I start talking about gTLDs, people say, "Okay, so when are you doing that?" and they start asking for some levels specific that we don't have right now because it's a program in development.

If on the one hand, it's fascinating that aspect that ICANN actually has this open bottom-up process in which we are developing a program at the same time, sharing with the community, getting the input the community. It's really a call of work of development. The reality is when it's – you have to communicate something is that there's some things that are still not settled, right?

So, it's important for me to make the distinction between what is a communications in general. We have started communications increase awareness, facing the challenges of not having some specifics that people usually want to know. For instance, when does this happen?

But the EOI campaign is something else. So if the EOI model is approved by the board as it is proposed right now, what we need to do is to very proactively and

intensively tell people, “Well, this is what we are doing and this is the opportunity that you have to participate in the first round. It would be at this point for us to be able to communicate if we want to make this as effective as possible to communicate people when this is going to happen, and how this is going to happen. How do you apply? When do you apply?”

We know how much. We know a lot of things –

*[Due to inactivity in your conference –]*

Carla: But this is basically the campaign. What we have proposed right now is that if the board says “yes” to the EOI during this meeting, assuming that this happens. If this happens the communications campaign would start when we start doing the press releases and announcements about what this is. And as I said before, I’d like to have as much specifics as possible for making that effective. And that this is going to continue for a period of time.

Now the GNSO has a guideline saying at the minimal we should do four months, communications period. There’s some discussions about when and what do they mean about this communications? At what point is communications should start, etc.?

But if we only look at the EOI campaign, it would start at this point of the press release and announcements and it would take us long as necessary when we actually open up the EOI applications submission process. That could be beyond four months.

I welcome any kind of advice or any kind of ideas of how to make even more effective for us to communicate with the different regions around the world.

Bertran: Bernau...

Bernau: Thank you for – I apologize for joining in late and if my questions has been answered, I apologize again. But I was wondering, now the Expression of Interest within the ccTLDs was not exclusive and was not binding. But here as I understand it is binding and it is exclusive.

Is there some commitment that all strings within the Expression of Interest are going to be approved of course subject to whatever evaluation process is being in place? I mean, why do we call it “expression of interest” if it does not give us any flexibility afterwards.

Carla: That’s why it’s called “expression of interest” and pre-registration. It’s not only expressions of interest, like we usually do in business purposes once you collect the data from clients for trying to forecast sales or trying to forecast what is going to happen with specific product or service. This is not exactly what we’re doing although there is an element of this.

There’s also the pre-registration if this turns out to be mandatory.

Bernau: So, I mean, what is the value added? What’s the difference between expression of interest and then opening the round of gTLDs then opening the round of gTLDs? I mean, what is the advantage of having an “expression of interest”, if it doesn’t give any flexibility?

Bertran: If I may, in this respect, what you're saying is that basically as we were mentioning before, this is turning into the actual launch. When I say that I don't say it as good but it's bad. But do we collectively consider that the way this put forward it means we actually do launch something which has a diameter of its own. Sorry, Emmanuelle, you wanted to say something else...

Emmanuelle: As you mentioned, I'm not for or against; I'm just seeking clarification.

Bertran: Thomas...

Thomas: Thank you, Bertran. Basically what I have heard and how it has been developed and expressed interest, I see it purely as a pre-registration. If it's pre-registration, we will have to face – if we continue with it, we have to face that we launch basically we open the space on the base of rules. We are not having fixed yet. It's a big problem I think, because the rules are not set.

I think Germany mentioned, for example, the cases in which, for example, there's government approval among objection needed. This cannot be given. So it would be, in this case, if you really talking about pre-registration should be transparent.

I think Expression of Interest is maybe skipped this word then make it just “pre-registration”. That is clear to the whole world. And of course, then, everywhere you have the process of, for example, there's no objection or approval, should not be done before, but afterwards. So that these potential applicants need some approval won't be thrown out of the process because they can't have – they can't yet have this objection or approval.

Thank you.

Bertran: Hubert... Yeah. Hubert from Germany and then you, if you don't mind.

Hubert. Yes, thank you. for the possibility of participating in this discussion. I trust – generally I want to agree with Stefano's position because I also when I heard of this EOI I thought it might be a very fine idea to identify the markets and make some kind of market analysis. Especially for the background that yes, the process that's stuck after the discussion. I think this EOI could facilitate and maybe accelerate the process especially for the background.

There are quite a number of companies that invested money in their gTLD process – projects and did not receive an adequate support from ICANN and from the community because they were also discretion of wait a minute. We have to reconsider various issues. This would give us a chance to have a certain number of applicants that are going to, yes, to fly and we will give us some numbers and figures of the market.

On the other hand, I see now we have applicants that have to apply for a gTLD on conditions, say, really do not know. For this, they have to pay \$50,000 US Dollar. That's as far as I see; non-refundable.

I mentioned before it was also the role of the government in some of the regulations are from my point of view not 100 percent clear. So far, I hesitate whether this is the optimum for a process. Maybe we find some solution in there. I'm very positive on this approach but until now, I'm a bit reluctant. Thank you.

Bertran: Thank you. Julia...

Julia: Thank you very much. He spoke some part of what I want to raise. That is that the setting surrounding your 50,000 or 55,000 and we don't what the signup conditions will be. There are no refundable. That's one.

The second one is that process that the government, some of the governments may not know. I know you're going to do a lot of communications. If this is the pre-launch, why not the communications be done before the pre-launch?

And if...if it's just to test the market, we literally be asking for the cost-benefit analysis for the launch of the new gTLD. So those are issues before now, I was not certain where we want to place – what we want to achieve as together just for statistics.

But now that is comment to a point of pre-launch, what of the over-arching issues that are not yet clear? What happen? So there are a lot of uncertainties that are surrounding this we have thinking that would – I think issue would take into consideration.

And in number and intensive communication be done because some of us in our government...I don't know how many of the developing countries are here to listen to what we are saying. They may not even know that they have to give objection to certain things.

Communications are directed to people that do not act on it. So before we know it, we are taken by events and we all not know [inaudible]. I just want to make this comments as we come near to this course. For me, I think, I don't know, without launch the said goal we're going to – we are looking at if we do this as a pre-launch. Thank you.

Bertran: Carla.

Carla: I would just like to make one clarification. It is refundable only if the new gTLD program does not launch within a specific time period. For example, 18 months from the closing date of the EOI submission. There's some conditions of how to refund them.

The second issue and point is that as part of a communications plan, we have a list of governments around the world. GAC and non-GAC members also some international organizations and things like that. What we have done when we publish the first Applicant Guidebook was to send around notification that came actually from [Inaudible] who was the President during that time. That was sent by email, via fax and via snail mail to governments around the world.

This is what we plan on continue doing as we, as I said, as we have more specifics.

Bertran: I'd like to highlight one element that we have distinguished yet is that the EOI, the way it's currently presented is making it mandatory both on the string and on the applicant; i.e., if the string has not presented in the EOI, it cannot take part of the first round, first window. Of course there can be objections afterwards. But it cannot take part in any case.

The second element in regards to the applicants is if an applicant has not applied in the EOI, it cannot take part in the first round. Those two elements are distinct. The first one is the only one that is related to root scaling. It's only the number of strings. So, if we are focused on exclusively the number of strings that are needed for the root scaling purpose, knowing exactly how many strings will be applied for is sufficient.

That means that we can have an EOI that uses the strings but then when the round opens, people can apply for those strings. For instance, there are certain number of cities or certain numbers of names like Music or Sports that have been made public in the last few months or years.

When the application round opens, anybody will be able to apply for those strings. To make the current mechanism of the EOI as a consequence, whether it was intended or not as a consequence of opening a small window that will determine who has the right to apply for a string in the first round.

The fact that it is a small window, may have consequences regarding the fairness of the capacity to participate. One element was the different situation when you have a third party actor, like a public authority that may say "no" to the kind of application you're doing which is in this case sort of penalizing in the current mechanism. One category of applicant versus another.

Because if you are applying for a complete keyword, you only have to raise the amount of money and raise your own resources. You don't depend on somebody else apart from the objections to give a green light.

Vice versa, on the question of whether it favors or penalizes some actors, there are a certain number of keywords that probably will be considered of high value in the space. Those are short words with significant semantic meaning.

It is clear that a certain number of actors will have been involved in the activities of ICANN and in the activities of the domain name space in general will probably have an amount of data that allows them to identify better than others what all the gTLDs or the strings that are useful.

Finally, there's a question which is, what is a TLD? Is it a product that is being marketed? Or is it a common resource that has to be handled in the best way possible? If you look at a ccTLD, the ccTLD string is being – the management is being delegated to an operator through a process.

In the case of geographic words or communities or brands or even generic keywords, those words are a common resource. There is a concern, I suppose, that the delegation of the management of those strings is being done in the fairest manner and in the best public interest.

So the key question is, is the EOI facilitating this public interest direction? Or is it better to consider that as in any case it is the beginning of the round? Let's build it as the beginning of the round clarified various parts of the DAG that need to be clarified, and move forward.

I raise this because I wanted to share one thing with you that I circulated on the list is that de facto, you know that France has proposed – and here I'm taking the German of a minute to make one comment – France has proposed on the public comment repeatedly the notion of an EOI on the string; i.e., the EOI calls for applications for



strings. Only those strings are taken into account in the next upcoming round. But then, application for delegation can be done.

The reality is this is what has happened in the last two years. In the last two years we have had an EOI on the strings. A large number of applicants have actually made those things public. If this connects here you will hopefully see an interesting data list to illustrate in a very informal way and it has no fixed or definitive capacity.

What has been made public and how it fits or not in the different categories that we've been talking about, it may not be complete and basically, things have been made public and some are more credible than others.

But the reality is that during the last three years, or two years, because of the delays, we have seen the emergence of a certain number of strings. Those strings fit very nicely into those three categories and I indicated there's a fourth one obviously which is granted vanity like IBM or others who are not really their string but who are clearly contemplated.

The thing that is in the current mechanism of the EOI those actors will be potentially confronted with competition because they have been public because they have waited, and they have invested. The actors will not have made their strings public. Actually, we will potentially have an advantage. I don't know if it's true. I'm just raising the question.

And so one of the questions is, given the fact that there's not only – there are two interests. One which is to activate the process; i.e., to stop delaying and two, to move progressively and scale up, is there a possibility to advantage, to launch simultaneously? A list of strings that have been made public that present no major concern? And at the same time, launching the EOI on the string to make sure that there is a second phase.

I just wanted to share this as a suggestion because we are talking in many cases a bit in the abstract. We are sometimes trying to solve all the problems that may come in the future. As France, we have a concern that at the moment, the actors who have invested, who have trusted the process, who have been transparent and apparently do not raise major concern, are actually in a situation where they are not held hostage but they are penalized by a process that tries to solve every single problem for every single string in every single future.

So, I don't know how this can move forward. There will be discussions during this week. But I wanted to share this with the rest of the GAC and I stop this as friends and remove it from this string, so as not to overwhelm. But nah, I get the Chair again.

Thomas, and Thomas...

Thomas: Thank you, Bertran. The issue of categorization is just very interesting. I think this is something for the community to really investigate. GAC could be one of the partners in these kind of gatherings without really, let's say as GAC we can get through the pros and the contrast. But I think as GAC we should not take a stand, to say, "Okay, should we cat or should we not cat?" It's something for the community.

We only need to look at the benefits and the potential downside the teacher. One thing about my remark earlier, I think we are now having a process which is as we say in Dutch, "It's not meat and it's not fish. It's something in-between." So my

advice would be to really go for one of the two options. Either you make - you open up the space with a pre-registration and then you have to comply to all the, let's say, group requirements to open up a space and discriminatory for example for all the Dutch shop which is a commercial business case which could be exploited by many, many different kinds of business, for example.

You should open it up and give in a window of time, an opportunity to apply for a Dutch shop, and not having only let's say the first one first come. So basically my advice would be choose one or both but you cannot have the kind of meat flesh or something off meat fish.

Bertran: Thomas...

Thomas: Thank you. I think the points he raised, Bertran, and also the questions in your – if it's in the one from the first March that you were referring to with some questions. I think they are very valid but it also concerns expressed by others like Hubert are very valuable.

But I think it might be a reason to say that GAC is just for everything progress if it continued to say we have concerns about this and about that. Although I agree, it's not – maybe not the manner of the GAC to tell ICANN or anybody else what to do. I think if we have concerns that we should let in a formal basis or an informal basis that I don't really care. But we should help to find solutions to these concerns.

I'm more and more have the feeling that going and looking at these lists which is not complete but the main things are there, there are some public policy issues to city domain names which are different. So why not try to come up with concrete proposals as possible with regard to what is a legal basis? How should the representivity or how could the community be represented? What is the responsibility of government, of local government and so on and so forth?

If the GAC just continues to say, "We have concerns but hope that the others will find a solution. Maybe this will not happen in the near future. I think those that want to go forward with these whole process, we should try to be concrete and propose things and leave it to the others to take it up or not.

So I think – my question is how – what is expected from the GAC until Wednesday or Thursday with regard to the EOI? What is our answer? Far from expressing concerns so this would be a question. Thank you.

Bertran: Stefan –

Stefano: Let's try to invent a follow-on to this. The EOI will be interpreted as a pre-launch or even a launch of the process. I think that we all agree that the process has to be launched. That in specific time, the community wants to know what is the timing? In the last meeting, if you remember, the timing didn't came up. Now is urgent that the community knows the timing for starting the process. This is the first point.

Then a positive effect I can see in this is that apart from completing the other studies so that we were mentioning before, the EOI will allow to have the DAG 4. Otherwise, it will be more vague because the EOI has to make this market analysis and then we can deal with numbers.

The GAC should tell ICANN independently on how many applications you will receive. You have then to set up a presentation project that that also gives space to the less fortunate, the less countries that are developing countries sent to new actors in the field.

The EOI is discriminatory question mark? My answer is “yes” because it follows the market rules exactly. And then initially, perhaps, it will be more inclined to accept all those that are already there invested the ones to start as soon as possible and so on.

But the recognition on the GAC has been to consider this short shop aspect, to consider other aspects that may be, is not practical that started now, inside the EOI. Because otherwise we confuse the programming, let’s say.

So I wanted to follow with some concrete arguments what you were just saying.

Bertran: Thank you. are there other comments? Karen?

Karen : Yes, thank you very much, Bertran. And thanks to the staff for being here for this very lengthy session, with no coffee breaks to answer all these questions.

I think what I’m sort of struggling with is the scope and purpose of this exercise. If the EOI is really about information gathering, that’s one thing. But if this is actually a pre-launch or in fact a de facto launch of the process, I don’t see how this actually is consistent with what’s been agreed to before. And actually consistent with the affirmation of commitments. Or is ICANN to resolve all these issues prior to launching?

So, I’m – I take Thomas’ point where we want to be constructive and want to be helpful. We don’t want to be slowing down the process or stopping it. But I’m sort of struggling with the question we’re trying to actually answer.

If it’s we want more data and we want more information, I think that’s a great thing. But if what we’re actually saying is we’re agreeing to a launch of this prior to the issues being resolved, I think we would have concerns with that approach.

Bertran: Thank you. Any other comment? I think we are a quarter before 5:00. We will have the interaction with the GNSO. So I would like to take the opportunity to break now to allow for a coffee break.

But before we break, as a preliminary conclusion to this round of discussion on the EOI, I think there is a growing sense and the last comment by {Inaudible} goes in this direction, that the EOI is morphed into something that was different, that it is different from what it was initially.

However, if you think about it, maybe it is closer to the initial intention than we think because the reason why the EOI was proposed as Stefano was saying, initially in Seoul is because applicants, potential applicants lost complete track of a timeline. So fundamentally it was a way to try to reintroduce a sort of timeline.

The thing is the more we all discuss this, the more it becomes the beginning of the launch. And so if the board is taking the decision now to launch the communication campaign, and if the timing of four months is respected that would mean that something that would be sort of a launch would be – the beginning of a launch would take place during the summer somehow, after the four months thing.

Which can be interpreted in two ways: Either that means by the summer we will have completely sorted out all the problems and then we can move into a full first phase of a launch. That's the ideal situation. The way it's going and I'm absolutely sure that will be the case.

However, the discussion on the EOI clearly has had the merit of bringing us back to the need to find solutions to a certain number of things. If we look at the analogy or the president of what happened on the IDN ccTLD Fast Track which has many differences. It's not exactly the same at all. But the thing is it allowed to move forward because there was a cross-community group, unbalanced. I know that the GNSO said that they were a little bit under-represented because it was mostly a GAC ccTLD GNSO discussion.

However, we have asked earlier and France has proposed earlier the idea of a working group, something that would be cross-community to address those issues. It was not put in place. When we witness is that on the trademark two different working groups have been put in place. On the vertical integration there's a whole PDP that is being launched now today.

On many other topics, the GNSO has established working groups. Given the fact that obviously there's something that needs to be done between now and in Brussels, I'll ask the question to both GAC members, the staff and the community of whether we should explore doing this week, the possibility of setting up a cross-community informal group to iron out a certain number of issues related to the EOI.

Because in any case, it will not stop before Brussels. But if it were decided in this meeting, exactly under the lines of today, I think it goes in the direction of what a few others have said. It would be the equivalent of a pre-launch and/or prelaunch and it would not be probably consummate with the affirmation of commitment.

So, let us wrap up here. We will have an opportunity to discuss it again with the GNSO. Thank you for your patience. Coffee break is out. We'll reconvene in ten minutes because we're supposed to start at 5:00.

May I ask if a few GAC members to kindly free some seats around the table so that on a random basis so that the GNSO counselors can also sit around the table? Thank you very much.