

12:00 UTC – 20 May 2011

Joint Board/GAC Conference Call

>>HEATHER DRYDEN: I think we're ready to begin the call. I'm here, of course, with the board and Peter, who will be cochairing this call with me. Just a note about how we'll manage this. For those of you connecting to Adobe Connect, Diane here will be managing that list. So she'll be helping manage requests to speak from the GAC that are logged in. I will also regularly create an opportunity for those of you that are not on Adobe Connect to indicate verbally on the call that you want to be put in the speaking order. As you know, topic leads will be leading on the topics that we discuss on-call today. So, hopefully, that will help us manage the order. And then we'll be managing the speaking order at this end as well. So we'll try to run that as smoothly as we can. I sent around a proposed agenda earlier. And the agenda was based on the proposal from the GAC to focus on three issues. So beginning with objection procedures, sensitive strings and early warning, followed by trademark protection. And the third main issue we identified was applicant support for developing countries. Then, if there's time or interest, then we can look at other outstanding issues. And then we can discuss the meeting -- the face-to-face meeting that the GAC has requested for Singapore.

And then we can conclude the call. I have indicated to the board that we will be working on written comments and that we aim to submit those before the May 30th publication of the guidebook. So they're aware of the GAC plan, how we're organizing ourselves. Peter, did you want to comment?

>>PETER DENGATE THRUSH: Yes, thank you, Heather. I wanted to thank all the GAC members to the call. Thank you for taking the time. We're, obviously, meeting here in Istanbul. Board members are invited to be in the Jabber room that we use. If anybody can't get into that and wants to, please see tech support. We will not be entering, as I understand it, the Adobe room. Heather will be leaving that for GAC members to have private conversations, if they want to. We won't be in that. We'll be using the Jabber.

And thank you for the suggested agenda. And thank you for the suggestion that there will be comments before the 30 May deadline.

I think we go straight into the first of your topics and invite the GAC topic leader to go ahead.

>>HEATHER DRYDEN: Peter, based on the agenda that's proposed, the proposal is for an introduction by the board leads on those topics.

>>PETER DENGATE THRUSH: Fine.

>>HEATHER DRYDEN: And then questions by GAC members. So shall we proceed on that basis?

>>PETER DENGATE THRUSH: Sure.

>>HEATHER DRYDEN: Objection procedures is Bruce Tonkin. Okay.

>>BRUCE TONKIN: Thank you, Heather. It's Bruce Tonkin speaking. I think probably the only thing I have to add to what's already available in the guidebook was really just some of the outcome of the call that we had with some members of the GAC, must have been about a week ago. And I think the clear message -- there was a discussion where we're just providing clarification that the board is not attempting to define what consensus means within the GAC nor define the GAC operating procedures. That's up for the GAC to do. We felt, for the early warning system, it was good for the GAC to be able to identify the source of the complaint as well as the reasons why there is a concern about a particular application. That's to give the applicant the best opportunity to be able to respond and correct the issue and avoid having formal GAC advice later on in the process.

With respect to the GAC advice, request, really, is the advice we received is clear. If the GAC wishes to advise us not to delegate a particular string, that that is clearly articulated in the GAC advice and the reasons are given for why the GAC wants us to proceed in a particular way. So, really, we're just seeking that, whatever advice we receive to the GAC, is clear and that by -- the GAC and the board have a shared understanding of what that GAC advice means.

So I think that was kind of the output of the call that we had last week in terms of clarity.

>>PETER DENGATE THRUSH: Thanks, Bruce. Heather.

>>HEATHER DRYDEN: Thank you, Bruce, for that. So the GAC lead is Suzanne Radell. Suzanne, are you ready to comment from the GAC side?

>>SUZANNE RADELL: Sure. And thank you very much. I think I can speak for all of us when we express our appreciation for the effort to accommodate the GAC's perspectives and the GAC's concern about the previous approach. So we do want to make sure that you do hear from us that we appreciate your efforts to find a mutually acceptable way forward. However, having said that, we do have concerns

that the current text in module 3 seems to be dictating -- and I appreciate, Bruce, that that was not your intent. But this is how it is being read. It does seem to dictate to the GAC how to develop consensus and seems to attach a lot of -- quite a few conditions that we are concerned would be very difficult for us to accommodate. We will -- we do intend to clarify the basis on which consensus advice is developed. And I think what we are looking at is considering amendments to principle 47 in the GAC operating principles to include a few sentences that describes for all of you how we use the U.N. definition of consensus. And we think that is not only helpful in the context of the new gTLD effort, but it's consistent with at least one of the ATRT recommendations. So I think we can pretty much confirm that we will move in that direction.

We do feel, however, that further discussions are really going to be important between us to find a mutually agreed and understandable formulation in communication of GAC consensus advice -- actionable GAC consensus advice, if I may use that word, regarding proposed new gTLD strings. So we think more work on that is necessary. The formulation that you have proposed may be very challenging for us to develop. So, if I could give an example, if I may, to, if we looked at the ICM registry statement that we shared with you in San Francisco -- and we understand that there have been quite a few comments suggesting that that wasn't clear advice. What we would like to offer to you is a different way of looking at that. And that would be to put the voting overlay that you are more familiar with, we understand. You see, governments don't vote. In fact, if governments have to vote, that means we have failed.

So, if you were to put a voting overlay, you would have absolutely no support, means no yays. For all the countries that neither endorse nor object, those neutral positions would translate into abstentions from our perspective. And then the significant number of nos means at the end of the day there are only nos. So that means opposition.

Why don't I stop there and get some reactions to that?

>>HEATHER DRYDEN: Thank you very much, Suzanne. Bruce, did you want to respond, or shall we open up the discussion to others?

>>BRUCE TONKIN: Well, I think I'm not sure it's helpful to debate the particular language that was used on XXX. I think what we need to think about going forward what's the best way of articulating your position. What I will say, though, if I heard you correctly, Suzanne, is suggesting modifying text in module 3 to make it clear -- because I believe in module 3 there's an exact sentence saying, if the GAC says the following -- and it's in inverted commas -- we will do something. So, really, I think you're asking for modification of that. So we're not requesting a specific sentence that we received from the GAC. In other words, you feel the current guidebook is

being overly specific with respect to how the GAC would send its advice to us. Am I hearing that correctly?

>> Suzanne: Yes, indeed. You nailed it.

>>BRUCE TONKIN: Yeah. So, I think, if you can take the principle that I've articulated -- and we've discussed it and reinforced it in the board discussion just shortly before this call is as I've stated it and the staff will make sure looking at that that language in the guidebook is consistent with the way I've articulated what we're seeking in terms of advice.

The other thing I got from your comment, Suzanne, is that you're planning to do some further work wanting to update the section of the GAC operating procedures to use the U.N. definition of consensus. I think that's welcomed. And, further, that you're looking at doing some further advice. And maybe that's part of the GAC/board working group that already exists today to talk about what's the best way of the GAC being able to articulate its position. Would that be a -- I'm just trying to understand what you see as the way forward in terms of getting better shared understanding on the language that you would use.

>>SUZANNE RADELL: I think you have captured that quite well. I think what we're going to work on -- and we're starting it now -- discussions to develop some possible formulations. And I do think you're right. the GAC would absolutely concur that, at the end of the day, there needs to be a shared understanding between the GAC and the board as to what the formulation means. And it may well be -- and, again, these are early days. We're trying to, you know, use examples to think through how we might frame a response. And, to be quite candid, different strings may actually warrant slightly different responses.

>>BRUCE TONKIN: Yes.

>>SUZANNE RADELL: So we would endeavor to come up with something that's uniform. Because, obviously, it's easier for the board and the GAC to then be very clear what does that mean. It could well be that there may be a set of formulations that we would seek.

>>BRUCE TONKIN: Yeah. So having some discussions on some hypothetical examples is, actually, how the GNSO formulate a lot of its policy. So I think that's a useful discussion to have at some point. And the question is just which group does that. Perhaps the GAC/board session does that. Maybe you do it internally and come back to us with what do you think -- what are your plans there?

>>HEATHER DRYDEN: Thank you, Bruce. Are there any comments from the GAC side on this issue? Someone's riding a horse, apparently, on the call.

>>PETER DENGATE THRUSH: High-tech contribution. Peter here. I want to pick up on Suzanne's point. And it's something that Bertrand and others have said several times. Most of this is going to be a learning experience and a developmental sort of a process. I don't get the sense from some of us that we have to have finalized this before we start. We're going to get better at communicating, and there will be many occasions where we will welcome subtle points. So just saying looking forward to developing the communication skills between us. And much of this is going to happen over the years to come.

>>HEATHER DRYDEN: Thank you, Peter.

>> We have an awful lot of background echoing or noise.

>>HEATHER DRYDEN: Yes. A reminder to those on the call that. Unless you're speaking, please put your call, your phone on mute so that we can have a clear communication. Star 6 is the instruction for muting your phone. We'll try to sort out the noise interference on the call.

In the meantime, Suzanne, did you want to comment further? Were there other GAC members that had a comment or a question to the board on this?

>>SUZANNE RADELL: If I could, I did want to respond to Peter and to say thank you. I think you're quite correct, Peter, that I'm gratified that you don't think we need to have -- that it may be the case that we do not have final agreed text.

Moving on, I do think we need to be as close as possible to a shared common understanding. But that sounds to me like you are recognizing that we need some flexibility on both sides.

>>HEATHER DRYDEN: Again, could I ask GAC members to mute their phone unless they're speaking. That means all of you currently should have your phone on mute. And it's star 6 on your phone. We're working on muting that line that's creating the noise. And it does seem to be better now. So let's continue.

Are we ready to move to the next agenda item? Is there anything further to raise regarding sensitive strings, objections, and early warning? Okay. I don't see any hands at the board end, and I don't hear anyone on the GAC side.

Okay. Suzanne?

>>SUZANNE RADELL: My apologies. This is Suzanne. Just a quick comment on early warning, if I may. Is that all right?

>>HEATHER DRYDEN: Yes, absolutely.

>>SUZANNE RADELL: Just to indicate that, again, we appreciate that the board has given quite a bit of thought to what the GAC originally proposed, which was an addition of 60 days. So now we have a total of 60. And I think most of us feel as though we can work with that. But I did just want to flag that we are trying to think through -- never having undertaken such an initiative, we are trying to think through just exactly how much time and how we will structure our own internal procedures for individual governments, you know, all of us individually in capital, review the list and undertake whatever national consultations we need.

And then the next step is, of course, to notify the GAC and then to notify ICANN. So we think we understand what are you proposing and that it seems very logical. I just wanted to flag that we are trying to think through the time frames needed for each of those steps. And that was it. Thank you.

>>HEATHER DRYDEN: Thank you very much Suzanne. I think it is useful to note that to the board so that they are aware and that we understand that we are serious about developing a process that will work for governments, that will allow us to work within the time frame that's being proposed for the board for early warning. So that is something that I've actually asked the secretariat to begin looking at, what kinds of steps would need to be put in place and how the secretariat would assist with notifying members and receiving responses and so on. So I think that is an important piece that we will need to have in place quite soon. Okay.

So I think that is all on the first agenda item for this afternoon.

So can we move to trademark protection? Okay. All right.

>>PETER DENGATE THRUSH: Can I just clarify? We published the guidebook, the last round of the guidebook. And we've had -- the public comment closed. Now, the issues that are raised by the GAC, the only issues then that they have with what was published in the applicant guidebook and having taken into account the public comment -- I'm going to treat silence as approval.

>>SUZANNE RADELL: I'm sorry. I apologize, Peter. This is Suzanne. I'm not sure I understood you.

>>PETER DENGATE THRUSH: We published the guidebook in April and we had a period of public comment. And it's now closed. And we assume that the GAC has looked at the public comment and looked at the guidebook. And that the -- the issues that you've raised are the only issues that you have in relation to objection process and early warning.

>>SUZANNE RADELL: I think so, largely. But I think you will see that our written comments might offer a little more detail.

>>PETER DENGATE THRUSH: Okay. Thank you.

>>HEATHER DRYDEN: Okay. So are we ready then to move to trademark? So the board lead for that item is Rita Rodin. So, Rita, can you please.

>>RITA RODIN JOHNSTON: Thanks, Heather. Like Bruce, I don't have much to add. I think we had a very productive call last week where we described the rationale behind the board's scorecard and talked to some of the additional issues that were raised in the GAC letter of April 19. So I throw it over to Mark and the GAC to ask any other questions or raise any issues they might have.

>>MARK CARVELL: Thanks, yeah. Mark speaking. I'll follow on from that. Thanks so much. Actually, I was slightly off the call then. I just came back in. So I caught you, Rita, pretty much at the end. But yes, I -- first of all, the progress has been very good. And we did have a very useful call on the 12th to discuss the critical remaining issues. To cut to the chase, we have still four issues where we're not in agreement. First of all, the requirement that trademark claims and sunrise services should be exact matches only. We do not share that view. We do value extending beyond exact matches to include related terms. And we feel it's too tight a constraint on the operation of these services. It doesn't match what the trademark owners would expect. So that's the first point.

Secondly, that the requirement that all the rights protection mechanisms, except the URS, require evidence of use. We continue to argue that this is inconsistent with trademark laws in many countries, including all 37 E.U. member states, but also Australia and others. This is a point we've sustained all along.

We note that also that other comments received have supported this position, too, from the business constituency and the IP constituency, for example. So that's the second point of nonagreement.

We've always felt that the value of the clearinghouse should continue to be maintained, so operation after launch, and we still see that as an important thing to aim for. It provides a valuable service to both trademark holders and registrants at any time, not only during the launch period. That is the GAC consensus view on that. So that's the third point.

And fourthly, although we didn't discuss this particular point on the call we had on the 12th, but this issue of the burden of proof that's required, clear and convincing evidence, we continue to feel this is unrealistically high and it is not the standard that applies in many jurisdictions. Although we -- you know, we note the point

that's made there throughout from the board and staff that this was derived from the IRT and STI perhaps nonetheless this needs to be looked at as a potential unintended burden, this very high standard of evidence that's required, which is equivalent certainly in the U.K. and most European jurisdictions to a criminal legal standard.

So that's our fourth sticking point, I'm afraid.

We also talked on the call about loser pays, and we touched on the figure of 26 as being a rather high threshold, and perhaps that could be looked at again, so that's the fifth point.

There are two or three other remaining mainly textual points that are not worth going into on this call, I don't think, but we could submit those points in writing.

But the ones before that I've described, I think those are the critical ones that we need to try and find a way forward with. Thanks.

>>HEATHER DRYDEN: Thank you, Mark. Rita?

>>RITA RODIN JOHNSTON: Thanks, Mark. I think if I -- if I take them in reverse order of those four, as we discussed on the call, that I'll give altogether bit of color for my fellow board members.

>>HUBERT SCHOETTNER: This is Hubert speaking. May I join?

>>MARK CARVELL: Hubert, I'm happy for you to come in. I don't know who -- yeah. Go ahead.

>>HUBERT SCHOETTNER: German government. I only just wanted to second what Mark was saying also from our side, these four issues that Mark has raised are very, very important and we would really seek and ask the ICANN board to develop together some kind of compromise or solution for these issues. Thank you.

>>HEATHER DRYDEN: Thank you, Hubert. Back to Rita.

>>RITA RODIN JOHNSTON: Thanks, Heather. Mark, I'm going to go in those four just briefly, for the benefit of my fellow board members and the GAC members who weren't on the call last week pretty quickly.

As you said, with respect to the burden of proof, I think the board just isn't comfortable changing what we feel was clear consensus reached in the community on that burden of proof, so I guess we would agree to disagree on that one.

With respect to the clearinghouse, as we've said, there -- the board changed, I think, in response to your concerns and has decided to have the trademark claims service which is also going to be required continue 60 days from the launch. We've had a number of correspondence from a variety of groups that talk about the benefits of such a program and the detriment of having the clearinghouse continue in perpetuity. Not only could it potentially knock out businesses that already exist, but from a clearinghouse development perspective, as we talked about on the call last week, could be a different commercial proposition to develop a database that will need to be updated regularly from multiple new gTLDs to be able to figure out whether there are people applying for certain trademarks. So it's a very different technological solution to build a clearinghouse that does that. It's a very different commercial proposition, and there's a number of other issues.

So at this juncture, because we're starting something new here, we thought it was best to follow this community recommendation and we gave the additional 60 days at the request of the GAC to have at least something here, and we think at this point that's as far as we're going to be able to go.

In terms of evidence of previous -- I don't --

>> (Speaker is off microphone).

>>RITA RODIN JOHNSTON: Yeah.

>>MARK CARVELL: Yeah. Sorry. It's Mark. Sorry I didn't mean to interrupt. I didn't mean to appear to be so impolite to do so but perhaps could we take these one by one then and then explore, as Hubert was saying. You know, is there any way forward here, rather than repeating what we -- you know, our positions that were on the scorecard leaders call.

>>RITA RODIN JOHNSTON: Well, I think, Mark, with respect --

[Speakers are overlapping]

>>RITA RODIN JOHNSTON: The burden of proof issue is your position or our position. That's not really, I think, any way to change this. You guys are proposing clear and convincing. The community said preponderance.

So I'm not really sure of a way forward. I think we've tried to work with all of --

>>MARK CARVELL: It was the other way around, wasn't it?

>>RITA RODIN JOHNSTON: Sorry, yes, it was the other way around.

>>MARK CARVELL: Yeah.

>>RITA RODIN JOHNSTON: We've tried to work with the 30 some-odd points that you have in this and come to compromise where we could. I think in this situation, I think it's they or we, and we are saying we are sticking with what the community has said. So if you guys have a way that you think forward, that would be great to hear.

>>MARK CARVELL: Well, on burden of proof, perhaps we could establish some kind of review of how that works out in the first batch, say, in the new round.

Do you think that's something that we could factor in as all these processes bed in, and, you know, many of them are untested and understand we've yet to see how they work out in reality.

Can we suggest that with regard to burden of proof, that we put a marker on it and say, "Look, is this actually serving the interests of complainants to have that high standard of proof?" Can we kind of put a flag in there that this is something to be watched, are there complaints that it's too big a burden to reach that high level of proof.

[Audio interference]

>>MARK CARVELL: I don't know where that music is coming from. It's not coming from me. How about that?

>>RITA RODIN JOHNSTON: I like the mood music, Mark, to accompany your proposal.

[Laughter]

>>RITA RODIN JOHNSTON: Yeah. I mean, I think that's actually the case for all of the things that we're doing. Everything is going to be reviewed. I think 12 months -- someone correct me if I'm wrong -- after the period, as we talked about on the call, the URS is going to be reviewed one year, so I think this is just -- if you want us to flag that specifically, I don't think that's a problem because everything's going to be reviewed anyway.

>>MARK CARVELL: Okay. Well, if you're happy to do that, to flag it up with reference to the concerns of governments that this may be a burden issue for business, I would be pleased with that. And maybe subsequent to this call, we, the GAC, can just pick up on our exchange now and confirm in writing that this is an action point for the way forward on burden of proof.

What was the next one? Should we go to exact matches? Or no, there's the extension of the period beyond launch of the clearinghouse.

I mean, the 60-day thing was very positive, and we appreciate that. We still aren't convinced that the arguments for not extending it beyond that -- we're not convinced that those arguments are really strong enough to rule it out, and I wonder, you know, in the light of what you said about scalability of this, as far as the clearinghouse is concerned, whether some feasibility study could be undertaken on extending the operation of the service beyond launch. What would that mean in terms of resources for the clearinghouse and the technical issues that you've also touched on?

How about, you know, some feasibility study being undertaken with regard to that? Is that an area we could explore?

>>RITA RODIN JOHNSTON: I'm not sure a feasibility study is the way to do it. I think as we said on the call -- and Kurt or Amy can jump in here -- we are still in the process of, as you know, defining what this is, so it's been somewhat of a hindrance to ICANN staff to be able to even start negotiating for a trademark clear house vendor and for the specs of the database.

I think once we launch this program, Mark, as we said, we're going to look to every aspect of the community, including the GAC, to make sure that they are participating in how this develops.

So I think rather than a feasibility study, which will just be generically what could happen, we're going to go to look to specific vendors that will actually be doing this and the GAC is certainly -- would be welcome to participate in questions to that vendor, if we did this, how could this change cost and scope.

So at this point, this is what we're prepared to say in terms of the clearinghouse, but we would welcome you to participate as we move forward with specific vendors that state their interest as to how, perhaps, you'd like to see that develop.

>>SUZANNE RADELL: This is Suzanne here. Could I just chime in briefly on this point?

>>HEATHER DRYDEN: Yes. Please. Go ahead, Suzanne.

>>SUZANNE RADELL: Thank you.

And thank you, Rita. I think you're offering sort of an interesting approach, and maybe what we could do is work in a question.

I mean, quite candidly, if you were a cybersquatter, the fact that you just had to wait 60 days is a useful, you know, tag on your calendar.

So maybe we could work in a review to see whether the 60 days is an enough of a disincentive.

>>RITA RODIN JOHNSTON: I think that everything is going to be reviewed, as I said. We can certainly review to see how that's going after the first round. Remember, Suzanne, there are these watch services, so I don't think that it's wise for anybody, when we're still in a hypothetical stage of a new program, to say to existing businesses, "We're going to basically legislate you out of existence," right? That's one of the things that we're worried about, is that the market right now has adopted and adapted a methodology for some of these watch services.

We're going to put a new structure in place which we're saying is sort of authoritative and we're saying it's going to be authoritative for 60 days. I think we're a little bit worried about how that's actually going to play out. So let's get some experience here and see what happens.

In terms of how we create this trademark database, again, we -- the GAC was concerned about the costs and we've said we're hoping to stick to a certain range, but if we're going to require different things from these database operators, that's going to greatly increase the costs, which will be a burden to trademark owners, especially smaller businesses, right?

So I think just like with the prior item, you guys really can be involved actively with this, and certainly with all of the protections in the program and all of the processes we're going to need to make sure we are keeping a very quick and close eye on how it's actually working in practice.

>>MARK CARVELL: Rita, thank you. It's Mark. If I could just come in with regard to the impact on existing watch services and the market for that, I mean, as you'll recall, we did take note of that concern and we advised that we provided with -- well, and there isn't a market for such a clear registration type of notification service operating at the center, if you like, but nonetheless the existing watch services would still have an important role in this area.

So, you know, we're not really convinced that that is a core concern here, the impact on the existing market of the watch services.

But anyway, I think, you know, we -- we've got some sense that this is an area to watch, and we will certainly work with you and the community on that.

Do any other commenters want to come in on that?

If not, shall we move on to the third point?

And this is the -- this issue of requiring proof of use. This is -- you know, it -- what is proposed just does not fit with so many jurisdictions, including the whole of Europe and others too, like Australia.

So what your intended reply on that, Rita?

>>RITA RODIN JOHNSTON: Mark, I must be doing a bad job explaining this because it's -- we've gone through this a few times, so help me explain it more clearly for you guys.

What we are -- what we're requiring here for both sunrise and trademark claims is we're saying to the overall community and to anybody who is registering is, we are going to give some sort of exterior rights to mark holders. So that in and of itself is a dramatic step, right? And everybody recognizes that that is important to protect business interests and especially intellectual property owners.

So what we're talking about here is what are we going to do to make sure that this very, very high-priority right is not abused.

In sunrise, we're saying that before anything else happens, and regardless of what your trademark is registered to do, you are going to get priority in any TLD.

That is not supported in trademark law in any jurisdiction.

So we are making up something that gives a very, very strong right to marks holders.

And what we're also doing, because we are not requiring any association between what your mark is registered for and what the TLD does, is we are saying you cannot just go and have a registration or apply for a registration if you don't really intend to use the mark.

And the reason we're saying that is we don't want legitimate mark holders who have been using a mark for 50 years to suddenly have to compete with someone else who just tried to register a mark at the last minute in a jurisdiction that doesn't require use and potentially not get the domain name that they want and the TLD, right? So we're saying, again, to get this superior right and preclude anyone else from registering this domain name, even though you have no right to do this, we are allowing you to come in and get first dibs on this.

But for this sunrise registration, you have to prove that you have used the mark. And we are making this a very high-level proof of use. A specimen of use.

Take a photo of a Coca-Cola can.

So it was a -- it was an attempt by us not to have illegitimate cybersquatters game the sunrise system, and this is why I think many of us on this side of the table are confused why you are objecting to this. It has nothing to do with saying one trademark registration or one country's laws are better than another. It's nothing to do with that.

So is this clearer, I hope?

>>MARK CARVELL: Rita, thanks. Yes, it's very clear and you were very clear on previous occasions.

But what we've discussed in -- on the call, and I think previously, too, in Brussels were instances where there may be somebody who has not actually gone to the market with a product or a service, but who has a legitimate claim to intellectual property or a mark or a brand, and so that kind of situation is not accommodated by a requirement to demonstrate proof of use. So there's that situation. You would be knocking out potential innovators and people who are coming to the Internet economy with new or got some new -- you know, really new ideas, new initiatives, new projects, who may, you know, be preempted by not having this opportunity to protect their rights in the domain name system.

So I think that's basically where we're coming from.

You know, the second point is that having to provide evidence is a burden for those who are able to provide evidence.

And thirdly, well, is it going to work, you know. Those who will be determined to gain will probably concoct some kind of photographic or written document or something to get around it.

So if you really want to use this as a device to prevent gaming, you're going to have to deploy considerable resources to examine the evidence that is submitted to you.

So I think those are the three elements of our skepticism that this is the right requirement to make, and it's -- as I say, it's fundamentally out of line with what is the case in so many jurisdictions and you've got the whole of the EU against you on this. And other major markets as well. I mentioned Australia in particular. So I --

>>RITA RODIN JOHNSTON: I appreciate that, Mark. I mean, I'm just thinking I wonder what our friends would say if -- just to pick out of the ether Yahoo! -- that has a registered trademark, and I've really been thinking about using Yahoo! in sex with my modeling business, so I haven't registered it but I'm going to make sure that I prevent Yahoo! from registering in sunrise. I just wonder how they would feel about that.

So anyway, I mean, I think that we -- I think that we hear your point, Mark. We've argued this back and forth a few times. I think we probably agree to disagree on this one and we can move on to the --

[Audio interference]

>>MARK CARVELL: Well, if we -- sorry, just to -- I mean, if we maintain this as a point of disagreement, this is going to be an advice that the board will go against and I'll just say there's a lot of countries here -- [audio interference] -- who are up in arms --

>>RITA RODIN JOHNSTON: We can't hear you. There's some fax in the background. I can't hear you.

>>MARK CARVELL: Okay. Sorry -- [audio interference] -- I don't know if it's clear -
- [audio interference] -- I don't think we can leave it as a -- [audio interference]

>>PETER DENGATE THRUSH: Just give us a minute, please. We're trying to find out --

>>MARK CARVELL: Okay.

>>PETER DENGATE THRUSH: Thanks. That's sounding better. Mark, go ahead.

>>MARK CARVELL: Okay. Well, I don't think really it's comforting for either yourselves or us or the community to leave this as an impasse. I think we've -- you know, we've really got to find a way forward on it. Because it's critical to the successful operation of the rights protection mechanisms.

>>PETER DENGATE THRUSH: Mark, it's Peter here. Just to try and help out a little bit --

>>MARK CARVELL: Yeah.

>>PETER DENGATE THRUSH: -- we see this as creating a really powerful mechanism and something that stops gaming that we've seen from previous experience, and nothing that you say changes our mind about that. This is from the

experience of seeing this kind of gaming going on, so we've said we're going to stop that, we're not going to allow people to have simple registrations, they're going to have to have a registration and something else. And what we don't hear is any argument about why that strengthening of that shouldn't go ahead and why we should weaken it and expose people to the kind of gaming and abuse that Rita has just described.

So we need to be convinced that what we are doing, you know, isn't as we think good for the process and good for rights holders. And suggesting that there may be a small class of entrepreneurs who are somehow prejudiced that we don't understand, that we don't see that, to say that it doesn't comport with what happens in Europe doesn't make any sense because nobody in Europe grants top-level domains which is what we're talking about doing and creating protection mechanisms on a top-level domain granting process.

So we need -- we're not getting anywhere because we don't agree with your arguments. It's not an impasse that we don't understand. We need to be persuaded that what we've set out as protections are not protections, and are, in fact, going to be gamed and are not meeting other needs.

>>MARK CARVELL: So you do not agree that this is also a potential burden for business?

>>PETER DENGATE THRUSH: What we're talking about, as Rita said, is a balancing between gaining an extraordinary amount of protection, which completely steps outside normal trademark rights, which are -- which are limited to a narrow classification system and limited to a narrow jurisdictional base including in states and countries, to suddenly global protection without limit on class, and you don't -- there doesn't seem to be any recognition that we're not talking about trademarks as trademarks. We're talking about trademarks as domain names. And those are -- that means you don't use trademark rules and just bring them into the domain name system. You have to modify them to take account of those differences.

>>MARK CARVELL: Okay. Well, we hear what you and Rita say and we'll have to, you know, reflect on that. It's a difficult situation for us, I think. If there is any way to tackle this issue of gaming without instituting a requirement of proof of use, that might afford us a way forward, but as I say, we just do not see it as a sufficiently important justification for diverging from existing trademark practice.

>>RITA RODIN JOHNSTON: Mark, I just want to note that this is required only in sunrise. It's not required in trademark claims. So again, I don't -- I don't think we can -- we should probably move on. We've stated, I think, that sunrise is beyond trademark law, it's beyond rights, it's beyond in some ways any kind of association

with this. It's an extraordinary right. And so in this one limited instance, we're requiring what we think is some small token to try to avoid gaming that we've seen.

We understand that you guys disagree. We hope that you can take this back and see that what we've really done is try to protect everybody here.

>>MARK CARVELL: No. That's readily appreciated, your intention. It's whether it's having other effects which, you know, are undesired.

Okay. Well, let's reflect on that and move on.

I think what we haven't discussed is the ability of trademark claims and sunrise services to go beyond exact matches.

Now, on the call, you made clear that automation was one of the key issues here, that systems would not be able to operate if we went beyond exact matches.

Is that right? Was -- that was one of the key points, I think, that came up in the discussions.

>>RITA RODIN JOHNSTON: It was, Mark. It was. Again, just for the benefit of people on the board and the rest of the GAC, this question is in terms of these prelaunch rights, both sunrise and claims. There are going to be trademarks that are registered in the clearinghouse and the request is if there's something that is not an identical match to what's in the clearinghouse but incorporates or has some likelihood -- I think we -- I'm not sure of the term exactly that we used. Maybe it's substantially similar. But is there a way to have that come into play here. And what we talked about with the GAC members in the call last week was that this is an automated system, it's a trademark clearinghouse, and once again there's going to be, you know, different pings that come back and forth and the way to do this from this structural -- can you guys -- the way to do this from a structural perspective is to have it automated. It's a very different proposition. And in trademark litigations, for example, you have a judge, people, that are looking to say, "Is this substantially similar to a trademark," and there's a whole series of very complex analysis. Everything from it sounds similar, to it looks similar to people are actually confused. It's quite an intensive analysis.

So again, this is prelaunch. It's a very superior right that's not necessarily based in trademark law. And so what we're willing to say at this juncture, without -- again, we're creating this from whole cloth -- is it's got to be limited to identical matches.

Again, Mark, I'm glad that, you know, we made that point, the automation, that you guys have taken away.

This, again, is going to be subject to, you know, review so we encourage you guys to make -- to see how this works, we encourage all intellectual property owners, registries, everyone, to see if this is working and whether it can be improved. This is where we thought was the best place to start.

>>HEATHER DRYDEN: Thank you very much, Rita.

I don't know whether Mark or others on the GAC side would like to make further comment on this topic before we move to the next agenda item, so could you indicate now whether you wish to make further comment?

>>MARK CARVELL: Well, yes. Mark speaking. Well, I think that this is a very eligible item for review, and at this juncture, okay, the systems are designed that can't accommodate non-exact matches, but let's -- okay. Let's agree to look at how this actually rolls out and then revisit this question in consultation with IP experts and the industry and business and let's -- subject to further discussion in the next few days with GAC colleagues, I'm happy to flag this as a review issue. Thanks.

>>HEATHER DRYDEN: Thank you, Mark. Okay. So shall we move on in the agenda? So the next item we have proposed is support for other stakeholders for developing countries. And I know the lead on the board side is Katim Touray. On the GAC side Alice Munyua is the GAC lead. I don't have an indication Alice is on the call. So, first of all, is Alice on the call? How about Ana Neves from Portugal? Okay.

So, as far as I know, they were doing the lead work from the GAC side.

So let's move to Katim and introduce this topic. And then we'll move back to the GAC for comments from those that are on the call.

>>KATIM TOURAY: Okay. Thanks, Heather. And thanks to the GAC members for taking the time to join us. As you all know, this is a very important topic that's dear to the hearts and minds of many people around the developing world. And thanks for all the support you have rendered.

I would just like to say it's with pleasure that we've received the report, the second milestone report from the joint applicant support group, the JAS working group. We've had discussions both informally on the board as also formally just a couple minutes ago. I think I can say that we note that it's good that at least we're having some, you know, current -- or that we're all thinking in the same direction, I was going to say. I think we're making progress. I mean, we're generally in agreement with the thrust of the suggestions. Of course, the specifics will have to be worked out. And one of the things that was actually suggested in the informal discussion we had was that it might be a good idea to have a meeting between the JAS group and

the board and the GAC. And I think it would be interesting to hear what you think of that. And yeah. Like I said, details will have to work out later on

[audio interference]

We're yet to hear from the GNSO Council what their verdict is on the JAS working group report, although we've received endorsement from the ALAC of their support for the report.

On that note, I think I'll just hand it over to our chair, Peter, for him to add what it is that he wants to add to that. And I think probably maybe Kurt Pritz. Thank you.

>>PETER DENGATE THRUSH: I'm not sure I have anything to add to that, Katim, except to say that, as you say, I think the board has supported this process from the beginning, most formally, I suppose, with the Nairobi resolution, setting that up. For the GAC members who haven't been as closely following this as we have been, we have received from the at-large advisory council the report from the JAS working group. And they make it quite clear they are separating the processes. And they're telling us, effectively, go ahead with the applicant guidebook. The processes for supporting applicants is going to be in a separate process. And I think that's important for us. And I've said they will be taking time to work out how they're going to do that support and we look forward to doing that. So these processes, to a certain extent, are formally diverging. We need to work at how we keep them together. But it means that we can launch the program and allow that working group to keep going in the 7, 8, 9, 10 months before the applications have started for them to complete their work. Heather?

>>HEATHER DRYDEN: Thank you for that, Peter. I don't know whether Kurt wanted to run through some of the options that are under consideration or whether we would want to move to GAC comments on this topic? Did the board have some options to put forward?

>>KURT PRITZ: Well, certainly, at this stage we're waiting. The GNSO, which was half of the JAS working group, has asked the board to not make any final decisions or act pending receipt of some advice from the GNSO who has been part of this group. So, in the meantime, the board's been discussing a variety of options for us for establishing some sort of fund either through encouragement of donations and matching them or creating a seed fund or working with the community to signal to the community that we're serious about supporting applicants and do that work in parallel with the work of the GNSO and finalizing some better criteria for testing how applicants could get support.

>>HEATHER DRYDEN: Thank you for that, Kurt. So do any GAC members on the call have comments on this topic or questions or proposals for a way forward either

in terms of the process -- we've heard that the ALAC has been working on this. The GNSO continues to work on this. And, at the same time, the JAS has made some recommendations in their second milestone report. So there are a few different moving pieces. In addition to that, there is the GAC perspective on these issues, which is also a topic that's ongoing. So I invite, as I say, thoughts from GAC members on this topic.

>>MARK CARVELL: Heather, it's Mark speaking. My question is, as you say, there are a number of pieces contributing very helpfully to this. When is it all going to come together? And we have a clear understanding of what the provisions are for fee waivers, for example. There have been proposals made, which are very welcome in respect to fee waivers. When will we know what the final provisions are for reductions in fees is a key question, I guess, if -- given that direction we're going in.

So that's my question. My fear is that, you know, there may be critical elements here which are pursued in an ongoing sort of way to one side when, really, it all should be coming together for our discussion in Singapore. So the timeline, I guess, is my point. What is it?

>>HEATHER DRYDEN: Thank you for that, Mark. I can hand the microphone to Sebastien Bachollet from the board. He's asked to speak. Also, Tracy Hackshaw from Trinidad and Tobago, who has been working as part of the group within the GAC looking at these issues, has provided some thoughts via Adigo. So I will ask Diane Schroeder to read that when it's appropriate to do so. SÈbastien is indicating we can do that first, and then we'll go to SÈbastien. And then I see Katim is asking to speak as well. Okay. Diane, please.

>>DIANE SCHROEDER: So this is from Tracy. "The GAC working group on submitting recommendations on providing support for developing countries is still reviewing the draft second milestone support and will need more time to form a definitive response. However, we arrived at consensus on initial comments based upon the review conducted thus far. We commend the JAS working group on the second milestone report. We'd like to request more time to review the report, which has not yet been released for public comment.

Initial observations: The report recommendations do not seem to be following the timelines sent for the launch of the new gTLDs. GAC advice has been that this first round should present an opportunity equally available and accessible to all applicants particularly from developing countries. We welcome the concrete proposals for fee waivers which correspond to 25% of the 185,000 application fee requirement but suggest a further reduction of 24% to correspond to GAC request for a 76% waiver. There is also a need of consideration of a sustainable process for implementing the waiver program. The GAC welcomes further discussions on this during the meeting to enable fair access to all applicants who meet the condition set

by the JAS. There will be instances where additional costs will be required, for example, for auction, objections and extended evaluation. In such events, GAC proposes fee reduction and waivers in these processes or instances where additional costs are required. We would further like to propose an additional waiver for the ongoing \$25,000 fee to ICANN for the first three years of operations. On gaming, we welcome the JAS working group recommendations to set up a parallel process to determine eligibility based on the guidelines they have provided. We would like to propose a review team consisting of ICANN stakeholders, experienced and knowledgeable in the gTLD process, developing country needs and gaming patterns. Further consideration should be given to the imposition of penalties to entities found in " -- sorry -- "entity found to be attempting to gain processes put in place to support developing country applicants."

That's it.

>>HEATHER DRYDEN: Okay. Thank you very much, Diane. Those are the comments from Tracy. Very helpful.

SÈbastien, you are next.

>>PETER DENGATE THRUSH: Just before you start, Sebastien, can we make sure we get a copy of that into JAS working group and post it to the board, those comments. Just make sure they don't just stay in the Adobe working room. They've gone in there. Thank you very much. Sebastien?

>>S...BASTIEN BACHOLLET: I think the question asked by U.K., Mark, if -- about where all this will be joining somewhere. I think that the JAS work, the joint application support working group. I would like to ask everyone who have some inputs to give on this subject to help and to participate in the JAS working group. Because it's set up for that. I know it's ALAC GNSO working group, but it's a cross-community working group. And, if we want to have one single report at the end, not to say that because GAC members will be participating or ALAC member will be participating or GNSO member will be participating, that those -- but they will be bound to accept this report. But, if we want to have it more efficiency just participate through that. And I will urge, really, to do that now because they need some help. This group today needs more blood, more persons to participate. And it will be the right way to prepare Singapore. We have not much time to do that. And, if you can do so, it will be great. Thank you very much.

>>PETER DENGATE THRUSH: SÈbastien, I can just respond to that. We have a difficulty with a working group, especially a cross-constituency working group and sort of appearing to or actually compelling them. We've had the ability, to a certain extent, with other groups in the GNSO to go back and ask for responses and give them deadlines and -- but our experience is driving these groups is very difficult.

We can help. But -- and they know what the program is, and they know what the deadlines are. So I certainly hear your request for assistance. But it's very hard for us to go much beyond that. If there's any suggestion that the board in some way should be holding someone's feet to the fire or making this harder, although the -- there might seem on occasions to be a good idea, our experience is that hasn't worked terribly well.

>>S...BASTIEN BACHOLLET: I was not specifically talking to board members. I was talking to the two groups meeting together today. That's the GAC and the board. Welcome to board member, but also -- and, foremost today, my request is that the inputs given by Tracy very, very interesting and very important. If he can give that directly participating or talking with the people of the JAS group, it's fruitful for them to do the work, they know the deadline. They know Singapore when it will be. They know the work to do. How we can help them. I guess, the other -- it's maybe most support from staff. But it's not the right place to discuss that now, I think. Thank you.

>>HEATHER DRYDEN: Thank you, SÈbastien. Just as a reminder, that the -- this is best current thinking on the call today. So I hope that we will have written comments that are from a GAC perspective on this topic as well as on the others that we have outstanding. And that should help clarify things for that.

So I had Katim next in the speaking order. And I see that Mark would like the floor, and I have Bertrand as well.

>>KATIM TOURAY: Very briefly without any prejudice toward what Peter just said, I think I'd like the GAC also to know that we've expressed concern about the prospect of the JAS report, basically, withering on the vine because of maybe some delays in the feedback from the GNSO Council. So we'll do all we can in our means to ensure that we really get feedback from the GNSO Council as soon as possible.

>>HEATHER DRYDEN: Thank you, Katim.

>>MARK CARVELL: Katim, Mark speaking. That was exactly my question. It's going to be very important to have that advice. And this has got to be mapped out very rigorously, I think, in terms of what's expected from whom by when. Because time is running out. And we would not like, from the U.K. and the commonwealth perspective -- I talked to developing countries within the commonwealth about this -- we would not like to see things move ahead at the center, if you like. And, as you say, this either withering report -- final report, final recommendations withering on the vine being passed or sidelined. So some rigorous management of the process here through the JAS working group to a final point of resolution, if you like, is critical. And I'd like to report that back to my commonwealth colleagues. Thank you.

>>HEATHER DRYDEN: Thank you, Mark. If I may say, I agree completely with you that those are the risks that we have a process that's not clear and different parties wanting to comment but not being entirely sure where and how.

So I have Bertrand next, please.

>>BERTRAND DE LA CHAPELLE: Thank you, Heather. I just wanted to chime in on this topic. Because this subject of the applicant support is clearly something where there's a great convergence and desire between the GAC and the board in terms of finding a solution. I mean, this is something that is extremely important. This is something that, basically, is a matter of faithful system and a fair system. The interesting thing is that the ALAC/GNSO group has actually progressed significantly in its thinking. It is a very delicate issue in order to have something that works correctly that is fair and doesn't bias the whole process. One of the main findings and the main elements of the approach, as far as I understand, is, as was said before by SÈbastien and Katim, to have something that at the same time doesn't hold the whole process hostage because it is parallel. So it is not about modifying the applicant guidebook and so on. But at the same time there's sort of a moral imperative for everybody to work together to produce something that can be implemented for the first round. Because it makes no sense just to postpone it forever. So the question of the timeline that Mark is asking is very important. And there is also a question for the board, as Peter said, in terms of how much the board should be involved. Because, if it is not involved at all, there may be no closure on this discussion. And, if, on the other hand, it is too involved, it begins to substitute for the community.

And so the interaction with the JAS working group -- again, the second report is a clear progress on the first element. And what Tracy was contributing is an element in the discussion.

The question we're facing -- and I would almost ask, also, to GAC members what they would think is best way forward. We've been discussing within the board in preparation for this call and also in discussing the topic of support for applicants, the two elements which are what can be done before Singapore but, most precisely, in Singapore? Is there a format for discussion, a format for a meeting in Singapore that could help catalyze some of the innovative approaches? What would be the ideas on your side? Is it part of the board/GAC discussion that we may have an extension of it? And the second element -- Kurt has briefly alluded to that -- the notion that is floating or idea that is floating of some sort of fund with different modalities of financing. It could be seed funding of a certain amount by ICANN or matching funds, if other funds are available. Whatever the modalities, what would the approach or what would the feeling in the GAC be on this notion of a fund? And, more generally speaking, how would you see the way to move forward so that

Singapore is as productive as possible? Because it could be a very great opportunity -- and I say that very sincerely -- to achieve a great progress on this topic when we are together as a whole community. And, second, what do you think the best role for the GAC and the board in that respect could be until then to facilitate innovative solutions such as a fund should there be a call? Should there be a participation more actively in the JAS group? What is the feeling on the GAC side?

>>HEATHER DRYDEN: Thank you, Bertrand. I think the process questions remain. But I imagine the GAC is open to holding calls with the board or the JAS or, you know, whoever's really appropriate. And also, if it's useful and timely to have a meeting in Singapore, certainly, I think the question I have is who's responsible for proposing a timeline or mapping that out? Is that something the board's, you know, planning to do? Or is the board waiting, you know, for some sort of proposals from other parts of the community? So that really should be clarified and the process points dealt with before we can really deal with the substance, I think.

So all right. I see Erika asking for the floor. So, Erika, I have you next.

>>ERIKA MANN: I mean, you asked an interesting question. Because I think that's the way we should look at it. Because we probably are at a stage where we should identify a very small group from, you know, all of the communities engaged in it including the GAC. There's very few people -- maybe just to look at a practical solution and who reaches out, you know -- to evaluate various scenarios and options which are available. Because there's a lot of, you know, engagement needed either to work with fund managers which understand the subject or to work as international organizations like the World Bank who could cofinance, et cetera, et cetera. And I think a small group which have a specific interest in more on the fund side would be, actually, would be helpful. But it should be clearly, you know, cross community. This is not something, you know, either the board or the GAC alone or JAS should manage.

>>HEATHER DRYDEN: Thank you, Erika. Is there anyone from the GAC side who would like to comment before I return to the board speaking order? Okay. SÈbastien.

>>MARK CARVELL: I do. Mark.

>>HEATHER DRYDEN: Mark, go ahead, please.

>>MARK CARVELL: Very briefly, I think we ought to consider that, you know, a small group to take a critical view of the process, the timeline, the objectives, the sticking points with special funding for the IR issue. We GAC should have a think about that.

>>HEATHER DRYDEN: Thank you. Bertrand, did you have a quick comment on that before I move to SÈbastien? Or should we go ahead? SÈbastien, you're next.

>>S...BASTIEN BACHOLLET: Thank you very much. Yeah, it's a proposal of the JAS group. Next phase is to look at that. Then they need help. If you have knowledge in that arena to help them to fulfill their job, come. Participate. Twice a week there's a phone call, and there is work online.

And it's wise to release the second milestone to see what is done in this group. And now next phase is to finalize the report. And fine. What is the process? Where does the money come from? How it's organized, and so on and so forth. So welcome. Thank you.

>>HEATHER DRYDEN: Thank you, SÈbastien. Bertrand.

>>BERTRAND DE LA CHAPELLE: I'd like, actually, to try given the little amount of time that will be available until Singapore and the fact that we want to do something in Singapore. I would piggyback on the suggestion that we explore, as Heather mentioned, at least one call is an interesting concept. Having a call where people who are either the chairs or people in the JAS group plus one or two people from the board, one or two people from the GAC, and people from -- and somebody explicitly from the GNSO and the ALAC, a small conference call with a request from the participants that they have read, actually, the document, the report of the group before, and that each of the groups has discussed the various elements that are proposed in there so that, among other things, the idea that has been floated about a fund could be explored a little bit further. Because we cannot, basically, send to the JAS group the message explore further the thing and come back to Singapore. Because it adds another layer. At the same time we need to have a discussion in Singapore that explores concrete options. And I wonder whether one conference call wouldn't be a way to clarify this so that the JAS group can go further afterwards.

>>HEATHER DRYDEN: Thank you, Bertrand, I have Thomas Schneider from Switzerland asking to comment on this. And then I have Cherine from the board. Thomas, are you on line?

>>SWITZERLAND: Yeah, I'm on line. Can you hear me?

>>HEATHER DRYDEN: Yes, we can. Very well, please.

>>SWITZERLAND: Okay. Thank you. I want to follow on what Mark has said and Bertrand. I think we all have to be aware of whatever we do with this applicant support, this will be a strong signal to the global community on whether or not we do all our best to make this new gTLD program inclusive. And I didn't have the time to go through the massive report in detail. But the question at what stage, whether

or not the support should be offered already in the first round, I think this is -- we should take this question very seriously and give -- whenever the program will be launched, we should give -- or ICANN should give -- and we should help them -- very clear signals on what kind of applicant support people can expect already in the first round. I think this is a very important issue. Thank you.

>>HEATHER DRYDEN: Thank you, Thomas. Cherine, please.

>>CHERINE CHALABY: I've been listening for -- very well for the points that Mark made earlier. And I feel sympathetic to some of the points he made there. Inasmuch as this seems to be falling now between ALAC, GNSO, the board, the GAC, there doesn't seem to be one group or one unit or one person standing there saying I'm taking the leadership here to make this happen. And we're all waiting for someone to do something, but no one is actually stepping up and saying I'm going to do this. I'm going to pull everything together and move this program forward.

I like Bertrand's suggestion of having a meeting. But then it seems to me -- or a call. It seems to me a group of people coming without leadership there. So someone has to make a decision here.

>>HEATHER DRYDEN: Thank you, Cherine. SÈbastien?

>>S...BASTIEN BACHOLLET: It's not because we see that there are GNSO, ALAC and other -- the JAS is working. The JAS group is working. There is leadership in this group. It could be better. It could be other people. But there's two co-chairs -- one from GNSO, one from ALAC. They're working. There are people doing the right thing and so on and participating in the conference call. Yes, there are some other parts and difficult to understand. If we need to do something, I think we can. But what we can do -- if you want one person, we can -- fine. It's not the problem. It's more people with some knowledge with this new step about how to find money and how to gather this money. Thank you.

>>HEATHER DRYDEN: Thank you, SÈbastien. Okay. We seem to have reached a point in the exchange where we agree this is important. And we agree that we have a challenge in terms of process. We have a proposal that the JAS working group continue to lead this effort, while recognizing at the same time that there is an ALAC view. There is a GNSO Council view to come, and a GAC view to come on this. So, as of this moment, it is not clear to me what the process will be or should be. I don't think we can resolve this now. But we do have agreement this is important, and we need to address the process question. So we can't leave here today or leave this call and immediately forget that this is something to be sorted out.

So I hope there are a committed few that will ensure that this doesn't drop, and I think we may have exhausted this discussion topic for this call.

Tell me I'm wrong if I'm wrong, but I see Katim asking for the floor and I see Bertrand and I don't know whether GAC members have further comment.

>>ANTON BATTESTI: Heather?

>>HEATHER DRYDEN: But --

>>ANTON BATTESTI: Anton.

>>HEATHER DRYDEN: Anton.

>>ANTON BATTESTI: Yeah.

>>HEATHER DRYDEN: Can I give the floor to France, because they have not spoken yet?

Okay. Please go ahead, Anton.

>>ANTON BATTESTI: No. Just a quick comment.

Of course we are taking this issue very seriously, raising the fact that this is a very sensitive political question. It's not only about the money. It's not only about technical.

And if we all share and love our multistakeholder governance systems in ICANN, we must send a clear message here in the Singapore meeting. I completely agree with Thomas and Mark on that. We must send a clear message that we can't have the trust of developing countries about that, because the contrary about that is they're going to say, "You're always working and working and working and in fact, you're not serious about that." And I don't think so. I think this group is really working faithfully to find a question.

But considering the urgency of the subject, I -- and I agree with Bertrand and others -- we need to have this meeting, something like that, in Singapore, even if we don't find a solution at the point, it will from a symbolic point of view send a clear message to these countries, because if they feel that this program will start without them, it will be catastrophic on the long term, and maybe whatever (inaudible) they go to (inaudible) the system (inaudible), so I'm just raising the concern here that it is, I think, above all, a political question and I think we have the resources, we have the knowledge, we have the staff, we have everything to do something about that. We have resolved in the past so many huge issues, complex issues, so I don't see any reason that we cannot achieve this for the moment.

So concerning this working group, it's a great idea. The thing is that we all have a lack of time, you know. We -- it is hard to mobilize a person on ICANN issues 100% of the time, so I think other governments will be -- will understand what I'm going to say. So of course it's not a lack of will. Let's be sure about that. But it's sometimes a lack of time.

So that's why -- this is what I was wanting to say to also to SÈbastien, but let's continue to work on that, and all what we can here from the French side and from other colleagues, I'm sure we're going to do that, because we are all concerned about the issues.

Thank you.

>>HEATHER DRYDEN: Thank you very much, Anton.

>>ANTON BATTESTI: Sorry. I took too long, maybe.

>>HEATHER DRYDEN: That's okay. So do we have anything new to contribute from those -- from the floor? Okay. All right. Katim, can you be brief, please, and then I see Bertrand.

>>KATIM TOURAY: Okay. Thanks, Heather, Chair.

I'd just like to suggest two things.

One is that we have the JAS -- not the JAS -- the GAC/board leads that have been working on this together, and I think we've -- you know, we've been putting in some quite good effort of it, that we really follow up after this with SÈbastien's suggestion that we get in touch with the JAS and then have them let us know when they're meeting so we can join them, either telephonically or whatever, however means, to at least provide them the support that we could -- that they would need to ensure they get us the recommendations we need as soon as is possible, number one.

Number two, I think the board needs to come out with a very strong and very clear statement that they want to get something from the community, and that includes also the GNSO, very clearly to enable them to come to a decision on this one way or the other by the Singapore meeting.

And then finally, I think if we plan on announcing the approval of the guidebook in Singapore, it has to be accompanied by a solid statement of something substantive on our support program, because if we just say we approve this applicant guidebook and not say anything about this very important issue of support to developing countries, I think we'll be really shooting ourselves in the foot.

>>HEATHER DRYDEN: Thank you, Katim. Bertrand?

>>BERTRAND DE LA CHAPELLE: Yeah. I just wanted to say that Heather is right in saying we cannot probably go much further today.

I didn't want to close -- to see this session closed without keeping in mind the option of having -- or the option of the idea of having a meeting in Singapore that is a real participatory meeting, so that the options can be really discussed significantly, because there's nothing better than physical face-to-face interaction.

We don't know what the solution is. We don't know what exactly the format will be. I think at least providing an opportunity for the JAS group to ramp up a certain number of options or proposals and open up a broad discussion is the right way to go, but maybe we can refine.

And the second element -- and I wanted to highlight this, again, to check whether it is on the GAC side something that is looking as interesting.

And the second thing is the option of, in parallel to active engagement of people in the work of the JAS group, I still believe that it would be useful to have -- like we had on the objection processes and on trademark protection, have a GAC/board call but that would be opened to the JAS leads, so that they come and there is a direct interaction and exploration of the various options.

So these are the two little things. And it's an answer also to Anton, because it is true that there is a little bit -- a little element of time, and it's probably the best way to explore this.

So I just wanted to close this by reminding those two elements, and check whether on the GAC side it is something that can be used to move forward.

>>HEATHER DRYDEN: Okay. Thank you, Bertrand.

So with that, I will close this topic item in the agenda.

We can look at holding a call before Singapore of the JAS with the GAC and board leads, and think further about whether or not we would invite more to that call or when and so on, but clearly this is important and we need to have a clear way of proceeding.

Okay. So next in the agenda we have other remaining issues related to the gTLD program.

The three topics that we've already dealt with are the ones that, in particular, the GAC wanted to flag at this point.

I do have a request from the United States to raise a topic.

Are there other topics that GAC topic leads believe we need to cover on the call today, or can they be dealt with as part of the written comments that we will be submitting?

>>ÿRNULF STORM: Heather, Norway here. May I speak?

>>HEATHER DRYDEN: Yes. Of course. Please.

>>ÿRNULF STORM: Just we can take it in the written comments, if that is okay with you. We don't need to use time on this topic now. So if that's okay with other GAC colleagues, we can do it in a written response.

>>HEATHER DRYDEN: And that was related to post-delegation disputes, correct?

>>ÿRNULF STORM: Yes. That's correct.

>>HEATHER DRYDEN: Okay. All right. So let's do that unless someone on the call wants to request to cover it now.

Okay. Silence.

All right. So let's go to Suzanne, who would like to raise a topic.

>>SUZANNE RADELL: Thank you, Heather. And actually, if you don't mind, in the intervening period, I now have two, if I could.

One is -- and of course this will be included in our written comments, but I thought it might be worthwhile to flag this for the board today.

The categories of crimes that would be included in the screening process -- so this is a little bit -- the issue I'm raising touches on both consumer protection and the law enforcement sections -- is we have a proposal. It seems to us that many of the crimes are, again, focused on criminal activities and do not specifically embrace consumer protection civil activity or, you know, consumer fraud illegalities and violations of consumer law, so we do have a proposal that you broaden it, and we appreciate that there is no internationally agreed, you know, sort of set of definitions but we have usefully found and will be pointing you in the direction of there are OECD guidelines for protecting consumers from fraudulent and deceptive commercial practices across borders -- this is a very long title -- and we will, of

course, give you a specific citation, but there is an appendix that includes definitions, and I think there you would find some very useful pointers to consumer protection laws that need to also be incorporated.

So that was just one point. I thought it was worth flagging.

Otherwise, we do want to signal a very strong statement of appreciation for the enormous amount of endorsement that we now feel we have from you on the consumer protection and the law enforcement proposal, so thank you very much for that.

The other issue I was going to raise relates to the guidebook in the sense of it's a question. And I appreciate it may be early days, that you may not be in a position to respond, but as you will note, the GAC has sent you a fairly strong statement of support for the requests from the International Olympics Committee and the Red Cross, and my question was whether you felt you would be able to take action so that the next version of the guidebook would reflect the level of protection that they are requesting, the reserved names list. Thank you.

>>HEATHER DRYDEN: Thank you, Suzanne.

So on the first point, which relates to law enforcement and consumer protection and the kinds of incidences that would be covered, or a definition of that, is there any kind of comment or question from the board side on that topic?

And then we can move to the next.

No? Okay.

>>PETER DENGATE THRUSH: Peter here.

Suzanne, obviously references like the one that you've referred to with that long title that I can't remember, if you could let us have that as soon as possible.

And that leads me to the next point. If the GAC wants to file additional written comments, they really have to be with us to by about the 25th. I've just been checking with staff, to give anybody to chance to do anything with them.

So things like that, Suzanne, that you've got in your hand already, you know, if that could be sent -- they can be sent -- materials can be sent serially. Don't think you have to wait till you get one package of material together. If there's stuff as it comes ready, feel free to shoot it through, that perhaps being a good example of it.

The second question, we -- in relation to the globally protected marks, we don't have a position yet. It's on our agenda here to try and consider. I think probably my guess at this stage is there's a reasonable split in the board about doing something along the lines that's sought or changing the nature of the protected -- of the reserved names list to take out ones that appear to be trademark protections and closing that off and restoring it to its original intention of basically technical names that are needed for technical reasons.

But we'll look forward to reporting back on that as soon as we've had that discussion.

>>HEATHER DRYDEN: Thank you, Peter.

So are there any further comments on either of these two topics from the board side or the GAC side?

No? Okay.

Are there any additional --

>>PETER DENGATE THRUSH: It might be helpful to hear from the GAC, while we've got this opportunity, on the Olympic and Red Cross sort of situation.

The -- just to set the discussion up, the difficulty to me is that this seems to be a very special example of what the protected -- the globally protected marks list would have done. The criteria are slightly different from being a large multiple of trademark registrations. These are marks that have got even stronger protections than that. They've got statutes in several countries. So they're an even stronger form of globally protected mark.

The difficulty we had with that was the concept that globally protected marks, you know, wasn't accepted, so we would be carving out a special exemption. The fact that they've got the statutory protection they have is an obvious starting point for making that exemption. On the other hand, this is a completely different use of the reserved names list than was ever intended.

We worry that that would set a very difficult precedent and would become the -- would become a target for all sorts of other activities that weren't intended and would eventually damage, if you like, that reserved names list concept.

So I think that some help from the GAC on those issues today would be very helpful, if there's somebody able to help.

>>SUZANNE RADELL: This is Suzanne. Could I chime in and I'm sure I have colleagues who would also like to chime in.

May I?

>>HEATHER DRYDEN: Yes. Absolutely. Please.

>>SUZANNE RADELL: Thank you so much. And Peter, I think we are very, very mindful of the concerns that you're expressing and that the bar needs to be set fairly high. Quite high, quite candidly.

So I think we're sensitive to the fact that this is -- shouldn't be a cakewalk, if you will, for anybody to petition to be placed on the reserved names list.

I think that seems to be the best mechanism, because there is no other mechanism.

But we do think that between the Red Cross and the IOC, they do meet that very, very high bar. They're not only protected by statute in multiple national jurisdictions, but they're protected by international legal instruments. And I confess, maybe the lawyers can help do a Lexis search. I don't know whether there are any other entities that could meet that standard. So it's a two-part standard, right?

And I'd be interested to know if the lawyers are concerned about that, and if they've done perhaps a check. It would strike me that very, very few entities could, in fact, make that claim.

>>HEATHER DRYDEN: Thank you, Suzanne.

Are there other requests to speak on this topic?

>>MARK CARVELL: Mark speaking. I concur exactly with what Suzanne has said. We recognized from the start, when I first discussed this with the GAC and with the British Olympic Association and so on, that this had to be an exceptional case, as regards the IOC, and it applies equally, I -- to the Red Cross Red Crescent movement. We're talking here of organizations with charters that serve the global community whose objectives are secured in treaties and other wide-ranging international instruments, and at regional and national levels. These two are really, really exceptional. They're -- and this is the quick fix for them, no doubt about it, but we would not want to see a precedent here that will lead to a queue forming at ICANN's door. That's something we would not want to see, and so we're totally with you on that.

We think the case is proven, you know. It's clear what is to be gained by adding to the reserved list, and we don't see any end risk flowing from it, and we can argue why others would not be able to line up behind them, and we would help ICANN with those arguments, deploy those arguments, if necessary.

Thanks.

>>HEATHER DRYDEN: Thank you, Mark.

>>PETER DENGATE THRUSH: Heather, if I could just respond to say thank you to both Suzanne and Mark, both of you, for appreciating the sensitivities and we obviously have a shared appreciation of the risk of misuse of this. Certainly I also take the points about the incredible protection that these -- that they've already got, and thank you, Mark, for the offer, if we do do this, to make sure that you're also standing at that door with us to keep others out. That's a metaphor we may come back to.

Thank you.

>>MARK CARVELL: Okay.

>>HEATHER DRYDEN: Thank you, Peter.

So I think we are getting ready to move to the last agenda item, which was the meeting that the GAC has proposed to the board to meet face-to-face in Singapore on new gTLDs, so there has been a board discussion, so I'll let Peter speak to that point.

Before we move to that last agenda item, I would just note for the new member from Iran that's on the call, welcome, first of all, and the comments that you're making we will consider as a GAC. It's most appropriate that the GAC respond to the comments you're making as a committee, and then we can look at how to integrate those as appropriate into a GAC view on new gTLDs. Okay?

Also, I note that this call is being transcribed for the board, so I would request, if possible, whether we could take the section of the transcription for this call and provide that to the GAC. It would be useful to those particularly not on the call.

So with that, can we move to the request from the GAC for Singapore.

>>PETER DENGATE THRUSH: Yes, Heather. I think the general feeling around the board was that a meeting with the GAC in Singapore would be a useful thing.

I think what we did cover, and your input on this was helpful, Heather, making the point that we need to be very clear what the expectation is, and we're reassured, I

think, by the understanding that we reached that this isn't in any way intended to delay the possibility of a vote the following day, and I think your here attribution here (inaudible) what an appropriate means of closure on this new gTLD topic.

I'd ask Bertrand, actually, to comment. Bertrand also had some useful comments, I think, about how this would be a very good way of making sure that we're -- we do agree on the things that we have agreed, and then get very clear about the remaining things, if we haven't agreed.

So on the basis that this isn't changing the timetable but is an additional opportunity, I think most of the -- I think the board supported the idea of a meeting.

>>HEATHER DRYDEN: Thank you, Peter. So we can work together to work out the specifics of that meeting, but I believe we are looking at Sunday, to set up a meeting in the afternoon.

>>PETER DENGATE THRUSH: Yes. I'm looking at that -- at the staff in charge of timetabling and they're not tearing their hair out, so I think we're going to be able to work the usual magic with rooms and facilities.

>>HEATHER DRYDEN: Thank you. I know the GAC appreciates your receptiveness to this proposal.

So we thank you for that.

Are there any final comments from the GAC before we close this call?

No? Okay. All right. So let's take silence as agreement, and thank everyone on the GAC side and the board side, as well as staff, for organizing the call today. It's been very useful, and we will ensure that the transcription from today is circulated to the GAC for reference later on.

So thank you.

>>PETER DENGATE THRUSH: Can I join you, Heather, and say thank you very much to all the GAC members who have joined and thank you, Heather, for running - - effectively running the list for most of that in the room and in this room. Well done. Thank you.

>>HEATHER DRYDEN: All right.

>> Maria (saying name) here. I just want to say thank you very much for all the contributions. I've been listening and thank you very much.

>>HEATHER DRYDEN: Thank you, Maria.

>>PETER DENGATE THRUSH: Thank you, Maria.

>> Same goes for George in Athens.

>>PETER DENGATE THRUSH: Thank you, George.

>>HEATHER DRYDEN: Thanks, George.

>>PETER DENGATE THRUSH: Thanks all. Bye.

>> Bye.

>>MARK CARVELL: Goodbye from London.

>>PETER DENGATE THRUSH: Thank you, Mark.

>>MARK CARVELL: Okay. Cheers.

>>PETER DENGATE THRUSH: Thank you, Heather. I suggest that we take a five-minute break and come back and begin our own debrief on what that means. I don't think that's going to take terribly long because I think it was reasonably clear.

We've actually got a couple of other agenda items that people have asked to be added, and so if we get through our debrief and our way forward discussion, which we've already started, we may be able to deal with some of these other items before we go to dinner.

So let's take -- can we make it 15 minutes? That's 10 past 5:00 by my watch. And we'll be ready to begin again. Thank you.

[Break]