

**ICANN Cartagena Meeting
Discussion on Motion on Rec 6
TRANSCRIPTION
Saturday 04 December 2010 at 1300 local**

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Margie Milam: So I don't know if we don't start whether we'll have enough time to get through everything. Go? Okay. You can listen in.

Coordinator: Excuse me.

Margie Milam: The reason we scheduled this...

Coordinator: Excuse me. Today's call is now being recorded. If you object you may disconnect at this time. Thank you.

Margie Milam: Thank you very much. The reason for the session is that there's a motion pending on Wednesday's GNSO council meeting to endorse the recommendations in the Recommendation 6 report. And so I thought it would be useful for the council to get an overview of the report so you know which report you're voting on on Wednesday.

And as many of you may recall the GNSO council authorized the creation of this cross-community working group that included members of the GAC, the GNSO and At-Large to look at the implementation of Recommendation 6. Recommendation 6 is the GNSO council recommendation -- and I've got it posted right here -- that essentially says that strings may not be contrary to generally-accepted (unintelligible) relating to morality and public order that are recognized under international principles of law.

So what the group did is they spent a fair amount of time analyzing the implementation in an attempt not to revisit the policy but to develop implementation guidelines to address some of the concerns that had arisen in the community.

So I'm going to provide you with an overview of the recommendations. The important thing to note is that the report includes recommendations that had various levels of consensus. So some recommendations had the full consensus of the group. Some recommendations had lesser degrees of consensus including some that had divergence.

And I'd like you to keep that in mind as you think about the motion when we go - at the end of the session when you take a look at the motion and you - and the GNSO council to ask to endorse the report is it endorsing the full-consensus recommendations or the lesser-consensus recommendations. But I think that's something that you all might want to think about as you hear the recommendations that I'll go through right now.

And because they are so extensive I'm only going to focus on the ones that say full consensus although they're all on the documents on the screen because it would take probably hours to get through all of the recommendations.

So essentially the - there was consensus in the working group that the implementation model that was proposed by staff was flawed. And so that's why they took the time to look at various ways of improving the implementation of Recommendation 6.

And the first topic they looked at was the definition of the morality and public order objection in the applicant guidebook. And there was full consensus to change the name of the objection. And so as you see in the latest version of

the applicant guidebook the name has been changed to Limited Public Interest Objection. And that was certainly taken into account.

The next recommendation that had full consensus related to the topic of international principles of law. And what the group did was take a look at other treaties that might be included into the applicant guidebook as examples. And there was full consensus for including these additional treaties into the draft applicant guidebook.

There was also a recommendation that the applicant guidebook refer to principles of international law instead of international principles of law. And there was a lot of debate over whether - which term was more appropriate. And the working group felt that the phrase principles of international law was more appropriate. And that received full consensus.

As you can see 2.3 and 2.4, these are recommendations that did not have a consensus. They had strong support. And then 2.5 did have full consensus in the group. And this was related to the topic of government objection for national law.

And essentially what the recommendation said was that if individual governments have objections that are based on contradiction of their specific laws that those objections should be submitted through the community objection procedure rather than standards outlined in Applicant Guidebook 4. In other words if it's a specific - if it's not an international standard but only applies to a specific country that they should use that approach as opposed to trying to use this exemption.

The next series of recommendations related to the quick-look procedure in the applicant guidebook. And there was consensus in the group that there should be standards for abuse of objections.

The theory was that we want to discourage abuse of objections. And there was a recommendation that the - that standards be developed to determine what would be an abuse of objection and to include additional safeguards for discouraging abuse.

There was also consensus on the - that national law is not a valid ground for an objection. And essentially what the recommendations says, that in determining whether an objection passes the quick-look test there needs to be an evaluation of the grounds for the objection to see if it's valid. And again a same principle from before that national law that's not based on international principles should not be a valid ground for an objection.

So there's a fair amount of recommendations related to the expert consultation. And this is probably one area where there's a difference in what's in the applicant guidebook or the proposed final guidebook now versus what the recommendations were from the working group.

And essentially there was full consensus regarding the board responsibility. And the statement that received consensus was that the ultimate resolution of the applicability of a TLD subject to a Recommendation 6 objection rests with the board alone and may not be delegated to a third party.

There was also consensus related to the board consultation with experts. And this received consensus of the group that under its authority to obtain independent expertise under the bylaws the board should contract appropriate experts capable of providing objective advice with regard to objections received through this process.

The rest of the recommendations related to expert consultation did not receive the full consensus. But this was a topic that the group evaluated quite heavily and spent a fair amount of time analyzing the expert consultation issue.

There was also a fair amount of discussion regarding the threshold for board decisions to reject an application based on objections. And there was consensus that there should be a higher standard if the board is going to reject a new TLD string based upon an objection for this limited public interest reason.

And essentially the working group felt that the board should have a voting threshold of at least 2/3 in order to deny a new string that has - had objection for these grounds. There was also consensus that the string - that approval of a string generally should only require a simple majority of the board regardless of the insights and the experts.

So there was a fair amount of discussion regarding the board decisions. And this is one area where there's a - perhaps a disagreement or a different approach with respect to what's in the version of the applicant guidebook that was just posted because as many of you may know there were board resolutions over the last two months that focused specifically on the board role and in approving new gTLD strings.

And the resolution essentially states that the board is not going to be in a position of approving new gTLD strings, that it's going to set up a process for doing so. And so this is a little bit different from what this report was addressing.

There was also a fair amount of analysis on the incitement to discrimination criterion. And the original proposal in the applicant guidebook had a criterion that didn't include all of the factors that you see here on 6.1.

This recommendation achieved the consensus of the working group. And it included additional standards including related to I think it's disability, gender, sexual orientation, political or other opinion. Essentially what the working group did was expand the standard to include these additional factors.

There was also a bit of discussion on the standard specifically and whether you needed to have incitement and instigation or incitement or instigation. So the question whether the standard that was looked at in determining whether there's an objection for discrimination.

And the working group felt that the standard should be recited to reflect that it's incitement and instigation of discrimination based on these factors. And that received consensus in the working group.

Another topic that was looked at was if there is an objection what should be looked at. And there was no consensus on this particular topic although there was strong support for the notion that the experts should only look at the - look at their analysis based on the string itself. And it could if it needed to use additional context related to the intended purpose of the TLD as stated into the application.

But the concern was that they didn't want the experts looking into the content. That was a big issue for the working group.

Another issue was universal accessibility objectives. They wanted to point out that the working group wants the - hopes that this mechanism would help limit blocking of the whole TLDs at the national level. The feeling was that blocking of TLDs is something that should be exceptional and established by - through legal process and hopefully that with these recommendations there would be far less blocking of TLDs.

The working group also made some - a series of recommendations related to the role of the independent objector. And some of them received various levels of consensus.

The one that did receive consensus was 10.2. That essentially said that if requested in writing by the GAC or the At-Large, ALAC, that the independent assessor would prepare and submit a relevant objection.

The recommendation was that the independent objector would be a liaison with the GAC and ALAC in drafting an objection and any objection that came through this process would go through the same process of objection as from any other source and would have to meet the same standards for success as an objection from any other source. So this is an area where the working group really focused a lot of attention on whether the GAC or ALAC could actually submit objections through the independent objector.

The next one is the use of community objections. And again this is something that the working group took a look at. And the working group noted that the GAC and ALAC or their (unintelligible) governments did also have the possibility of using the community objection procedure.

And the report clarified that a community objection procedure can be filed if there's significant opposition to the gTLD application from a significant portion of the community to which the string is targeted. So that was one area that the group had looked at was whether At-Large or GAC could use the community objection procedure.

There was also full consensus for the recommendation that if there's an objection filed by the GAC or the At-Large Advisory Committees that there would be no fee or a lower fee. And so that was something that received full consensus in the group. But the group did not reach consensus on whether there should be a lesser standard if an objection is filed by ALAC or the GAC.

With regard to the Criterion 4, there was full consensus in the working group to revise the language for Criterion 4 to the language that I set - posted up here. And this is essentially that a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

So the participants in the working group really took a look at the actual language and wanted to make sure it was consistent with principles of international law. And this is why they came up with this recommendation.

And then finally, next steps. The working group -- all of this did not receive consensus -- the working group recommended that there would be an implementation team formed by members of the Rec 6 working group to provide additional input to implementation staff as they further refine the implementation details.

So that's essentially the report. I know it's a lot of information. I encourage each of you to read the report. It explains the rationale for some of these recommendations.

The things that I'd like to point out is that there was a public comment on the report. And it closed in October of this year.

Now the report actually indicates that each supporting organization and advisory committee that participated in the working group needs to review and comment the recommendations as appropriate. And this is an area that's become discussed a fair amount recently because up until the motion to be heard on Wednesday there was no endorsement or comments or statement from the GNSO council with respect to the recommendations in this report. And so the report had called out that that would be the next step.

The other thing I wanted to point out -- and I mentioned this earlier -- was that the board in Trondheim resolved - had a series of resolutions related to this topic. And essentially it clarified that although it agrees that ultimate responsibility for the new gTLD program rests with the board the board does want to rely on determinations of experts with regard to these issues. So that was something that the board resolved to address.

The other thing that the board resolution covered was that it indicated that it will accept the working group recommendations that are not inconsistent with the existing process as this can be achieved before the opening of the next - the first round of new gTLD applications and will work to resolve any inconsistencies. And so that's one of the reasons for the consultation that's currently underway with staff and the working group.

I've posted here on this slide a little bit of information on the draft, the proposed final applicant guidebook. I don't have a lot of time to go into the details but it did include some but not all of the working group recommendations.

There were some recommendations that were viewed as inconsistent with prior processes and prior policies. Specifically the explanatory memorandum published by staff for - with the applicant guidebook notes that the GNSO council had previously adopted Guideline H with respect to the new gTLD program that noted that external dispute resolution providers are to give decisions on objections. And so there's a sense that some of the working group recommendations might have been contrary to Guideline H.

There's also, as I mentioned before, the resolution with respect to the role of the board. There's a kind - a view that the board would not be involved in the day-to-day approval of these new gTLD strings so it was unclear how the recommendations from the working group would be consistent with the board resolution that addressed what the role would be with respect to approving new strings.

And as a result of the differences between the working group's approach and the board approach there's a consultation underway. We'll have a session on Monday in the Barahona Room 4 at - from 5:30 to 7:00 to kind of explore whether there's additional recommendations from this report that could be included in the new gTLD program.

(Mike), you have a question? Okay. I think I'm (unintelligible).

Man: (Unintelligible).

Woman: Sure.

Man: Yeah. Italy, I've got Tim, (Mike). Any others on the list right now?

((Crosstalk))

Woman: Okay.

Man: Alan, okay. To - (Christina), right. Perhaps we could start though by having Mary read her motion so everyone can read or is it up there? Okay.

Mary Wong: Yeah. It's up there. I'm essentially done with my presentation. The rest of it's to discuss the motion.

Man: That's fine. Okay. Tim, please go ahead.

Woman: Yes. (Unintelligible).

Tim Ruiz: The question I had in - for the - for those who are in the working group is if - when the motion was drafted or the decision to draft the motion was made had the working group as a whole reviewed the response from the board that was posted with the proposed final applicant guidebook, the explanatory memorandum that took in - kind of laid out, you know, recommendation by recommendation from the working group and what the board's response to each one was because one - and one of the things I'm concerned about for example in regards to, you know, who - whether the decision to - the decision on the objection rests with the board or not.

You know, they clearly state that the decision, to have it be with an outside party besides the fact that it's part of the policy that we approved that it's actually a major or integral part of their risk mitigation strategy and that if that's going to change then they need to go back and re-look at the costs and certain other implementation aspects. So to me that sounds like if we push this issue that we're talking more delay and it could be considerable delay.

Now that may be irrelevant given some recent letters and things that we've seen. Who knows? But I think that we need to take that into consideration when we look at this.

I'm just wondering if the working group has really thought all that through, considered all these comments that the board has made when this resolution was made.

Man: That's something you're looking for Margie to answer?

Margie Milam: We have members on the board. And I don't know, (John), if you want to comment on that. There's members here, Avri. I don't...

(John): Mary will - Mary can take it.

Margie Milam: Okay.

Mary Wong: And I'm not sure I'll provide a full or satisfactory answer. The short answer is that - speaking only for say my stakeholder group and others within the group I've had consultations with prior to proposing the motion the short answer is yes.

The - part of the longer answer is that none of those that I work with or that I talk to wish to delay it unduly. But we simply felt that given there were some issues as to what it was that the GNSO thought about this report and that so far there was thundering silence that it seemed given that the initial objective

was to have this issue discussed as one of the major issues during this meeting that should at least be something open to the GNSO for discussion.

(John): Is that okay, Tim?

Tim Ruiz: Yes.

Man: Then I had (Mike) in the list.

(Mike): Right. I've got a pretty big question. What precise recommendations is it that your motion is asking us to endorse?

That slide had about 30 different ones with varying levels of consensus. So we definitely need to explain in the motion exactly which ones you're proposing that we endorse and that we ultimately vote on to endorse.

Mary Wong: The second - the language of the second result thought - took a little bit of anguish. The hope is that we would endorse all the recommendations including the ones that did not achieve full consensus.

The reality may be that that's not possible. But the process would be that we at least discuss that along the lines that you suggested so that at the very least the endorsement could be of the - at least but hopefully not just the least but at least the full-consensus recommendations.

(Mike): All right. So you are anticipating I guess in addition to this session -- because this seems like it's going to take a long time to list through all those objective - all those resolutions -- and kind of decide which stakeholder groups support which ones. It just seems like a big mess.

I'm concerned. I don't understand how we can vote on this on Wednesday.

Mary Wong: Just to take a step back though, I mean the documents, the recommendations were available to everybody some time ago. There was a public comment period.

I understand that the motion preferably ideally should have come in a little earlier but the reality of all the issues we're dealing with. And so the hope is that during the days whatever discussions occur within each group and committee prior to this meeting can really be consolidated into a GNSO council action.

Man: Can - I have Alan next.

Alan Greenberg: I actually had two questions for Margie. And I'm not sure if you're just talking about the resolution. Then I can defer them.

Man: Alan, go.

Alan Greenberg: Okay. Margie, two things in regard to the Trondheim resolution because I think it comes down to how closely they followed the working group. Two point seven resolution says that the board will approve - will have staff processes to execute contracts and delegate new gTLDs.

What does that imply about the opposite? In other words does that mean they will have - staff will have authority to do that and to reject them or that the approval for staff is going to be only for accepting which means the board still has to reject? And...

Margie Milam: I'm sorry, Alan. I don't have the background to be able to answer that question.

Alan Greenberg: Okay.

Margie Milam: It may be a question...

Alan Greenberg: Right.

Margie Milam: You have for (Curt) tomorrow.

Alan Greenberg: Okay.

Margie Milam: Because yeah, I just don't have that level of understanding of what the implication was.

Alan Greenberg: No. It's not a subtle difference. And it comes down to a critical issue of are they following our advice that they will have to reject this - reject applications or not.

Okay. Thank you. I'll leave the other one off.

Man: (Christina).

(Christina): I have three questions. The first one deals with -- and I'm not really quite sure who to direct this to but whoever can best answer it should feel free -- with regard to the Recommendation 4.1 that had full consensus that ultimate resolution be admissibility of a TLD subject to a Rec 6 objection rests with the board and will not be delegated to a third party.

As a practical matter what does that mean? Does that mean that the board has to sift through all of the arguments and evidence and whatnot? Does it mean that they can consult with an expert but that they themselves have to make the decision?

I'm just trying to get a sense as to what it means and - because of the potential implementations it has frankly for the other objections as well.

Mary Wong: And to the extent that I'm mischaracterizing something that the other members of the working group present feel or that I'm not explaining it fully or adequately I'm happy for others to jump in.

So for some of us at least the starting point is this notion of the board's ultimate responsibility. And there was language in the previous iteration of the draft applicant guidebook that says something - I don't know the exact language. It's something along the lines of the board will accept the decision of this, that and the other.

And that troubled a lot of us. And so this was an attempt to try and expand on that to first of all specify the board's ultimate responsibility but secondly not that the board needs to sift through every argument but that they should and they probably will use the services of experts to - eminent jurors, judges and so forth.

And we had a long discussion in the group as to whether those experts should be providing recommendations, advice or something along the lines of a binding decision. And the thought for many of us was that they would provide some kind of recommendation or advice which the board would then consider.

And I think many of us accept that the reality is that the board will probably follow the recommendations or advice in most cases but that they should acknowledge that they actually have to go through at least what that decision is given the ultimate responsibility.

(Christina): The second point is with regard to 7.1. I'm not at all clear and I haven't really found a dictionary yet that's clarified it. What exactly is the intended difference between incitement and instigation?

Mary Wong: Okay. I guess it's me again. The thought was that instigation which comes more or less from the criminal law sphere implied some kind of more active or higher level or standard. That's not helpful, is it?

(Christina): I guess it would be if there was any kind of, you know, just historic reference documentation because like I said, I'm not really finding the difference and if the two words mean essentially the same thing I don't really see the point because then people are going to assume if you use different words, you meant different things and then you end up in a - anyway.

Mary Wong: I mean there are some (eNotes) that we can probably pull up in the course of this week but the idea or the understanding as that it has to be something more than just, say, a couple of mere words, that the idea was it had to be something pretty serious or substantial.

(Christina): And then the last question goes to recommendation 2.5 which deals with that if government has an objection based on national law then they should avail themselves to the community objection procedure. And I was curious as to what extent the group had consulted with either the GAAC as to GAAC or more broadly because it's my personal sense that there probably aren't a whole lot of governments that are willing to kind of suborn their national sovereignty for purposes of participating in a community objection process.

And if that's the case, then this recommendation is frankly irrelevant in which case there needs to be some other process for dealing with that scenario.

Mary Wong: So let me try and do this in a coherent and logical fashion. I think the initial, possibly the greatest concern on a point like this was that national law not be the basis for a (reg 6) objection. And everything proceeded from this. And it it's not national it had to be in principles of international law which would be reflected in some national laws but not all.

So the feel would be that there would be some national laws which may break down or be somewhat more repressive than most and that governments might try to use that as a basis for a (reg 6) objection. That was the origin that was (the) deciding point.

Beyond that then the question was there were some concerns and sensitivity issues that members of the GAAC had brought up in conversations and discussions. Where would those go? And I think that's kind of the gist of your question.

And the only other existing process at this point was the committee objections process. And in talking about that, I think this COWG has kind of a threshold issue in that we would not have to look at the community objections process so we could only look at what it was as in the applicant guidebook.

We weren't able to make recommendations to improve that, expand that or change that. The final point is that there were some government officials who participated on the CWG but not as official representatives of their government.

My understanding, I think the understanding of many members of the CWG was that they participated to give us some sense of what a government based perspective might be on either some of the proposals or some of the recommendations.

So I guess to formalize it is that this is not something that the GAAC had talked about formerly with the CWG but that to the extent that certain members of the CWG brought a government based perspective. The group felt that this was within the existing frame or limitations about the most realistic proposal that we could give in order to move the process forward.

Man: Okay. I have (Richard), Tim, Edmon, (Jeff) and (Jaime). I'd just like to say that I'm slightly confused about what we're doing here to be honest because

if we're going through discussing this report, which is fine, then it's going to take us a long time and I'm trying to understand if we're trying to, as a council, trying to discuss whether this motion itself is something that we want to go forward with or not.

I mean, the motion's there but do we want to vote on it or not vote on it or vote against it or whatever? But so I'm slightly confused about what we're doing.

Woman: I mean, I was going at it - I mean, in a very micro way. I mean, those are questions that have come to me that I'm trying to get answers from so that on constituency day I can go back and say, "Okay, here are the issues that everybody have with this. Here are the answers I have," setting aside the process issue of how does the GNSO deal with some kind of cross. Yes. So it's both.

Man: Okay. (Richard).

(Richard): Yes, so I just wanted to speak to 4.1 briefly even though we addressed it pretty well I think. But I think a few people asked about it so I just want to reemphasize what Mary said that there's a real (direct of) opinion in the group as to what that 4.1 should mean.

Some people believe that the board should in fact dip in and reevaluate every valuations cell, every objection cells and be the determiners. And others, myself included in the second category, viewed it in a very broad way, that the ultimate responsibility (grows with mostly) with the board and that they can delegate that as they see fit. So really a complete - and jump if you disagree - but a complete (direct) of view on that.

And I think it would not affect consensus had it been written in a way that made the board a very active direct participant.

Man: Thanks (Richard). Tim.

Tim Ruiz: Yes, I think (Mike) expressed a lot of the concerns I wanted to bring up. So I'll just say that what's difficult with this motion is that, you know, the - our constituency may have felt - or our stakeholder group - may have felt one way at one point where those within it.

Then we've seen the board's responses at various points, so that very clearly has changed at least some views. And so now we have this very short timeframe. You know, we got this motion Wednesday night and for most of us in North America leaving the very next morning to come here. So there's been no time for any kind of stakeholder group discussion so we've got a constituency date as well as, you know, whatever time we can pull together in between.

So I think it's going to be very difficult to gather, you know, enough information in our stakeholder group so say, "Yes, this is how we feel as a stakeholder group," and feel comfortable voting on this. So I just want to put that out there. It doesn't mean we won't come - on the constituency day be able to come to some answer on this. I don't know. But I think it does - it is going to make it very difficult.

Man: Go ahead Mary.

Mary Wong: I understand that Tim so I guess what I'll say for now is I will ask the counselors and all the SGs and (unintelligible) to consider the potential effect that either silence on the part of the council or a down vote on the part of the council will do to the standards in what will be the final guidebook.

So other than - and given that we were told that this issue would preferably be resolved and decided by the end of this meeting, I would just ask you all to bear that in mind as you go into your discussions.

Man: I mean that's the other thing is I think, you know, some of us were expecting that it would be resolved at this end of this meeting. And I think other things have happened besides this that may bring that into question.

But if that was the case, you know, us making some sort of vote on Wednesday on something like this, you know, what was - what is the likelihood that the board is going to be able to in, you know, less than 48 hours turn around and make a different decision then they're already clearly spent a lot of time laying out to us at least twice.

Man: Edmon.

Edmon Chung: Yes, wanted to sort of follow in what (Mike) said and (Stefan), you mentioned a - sort of a - what I understand what we're - what the motion really means in terms of are we trying to ask whether we would accept the whole report, you know, including the consensus points and also, you know, the points where it's varying degrees of support and just report that to the board, right?

That's sort of what we're looking at and not trying to go, you know, one item by item which I guess goes back to one of the things that we talked about earlier on which (Jeff) mentioned. So just wanted to get a (unintelligible) of what we want to achieve here.

Man: Well, I think there're two levels to this discussion. There's one about the report itself and the way the working group itself has functioned and then there's Mary's motion which is as you, this was a cross community working group and only one of the group so far has endorsed the final report.

So the question is being asked and Mary, you'll step in if I'm not correct, is does the GNSO want to do that as well?

Woman: And, you know, speaking very frankly to follow up my earlier response, the hope is that the council will vote to endorse the report or maybe there might

be time for discussion of at least the full consensus recommendations that were presented by Margie to the extent that council is, after consulting with their groups, would like to (sitter) and twitter with my language.

I would like to say I am more then happy for that to happen because that is far more preferable then a down vote.

Man: Can you say that last sentence again?

Man: And (Jeff), can I just quickly - sorry. So does that mean that there are really, you know, three choices. One is just (subset), one - the other is do a (set) when Margie says only be consensus part and then the third is do not vote or down vote it. Am I hearing that correctly or?

Man: I - there's a motion in front of us. We can vote for or against it. That's - I men, that's what we had with every motion. We can also amend the motion and that's what Mary's saying, actually saying she put the motion forward to get it in the required deadline and if people want to, you know, add to it, she's more then happy for people to try and twiddle and diddle with it or whatever. (Jeff).

(Jeff): Yes, so I have a couple of questions because I'm really confused and maybe just in general. Maybe it's the tea I had. Let me - I want to ask a question then I have a comment maybe to Margie. Just to clarify. So when you say that there are things that are inconsistent with the board's resolution, that's ICANN's staff interpretation of what they believe is inconsistent with what was - ri- I - because it's not - so the board didn't come out and say we believe it's inconsistent with it right? It's staff

Woman: I believe we have guidance from the board, so yes. I mean...

(Jeff): And everything's kind of...

Woman: Yes, there's - I mean, there're resolutions that you know...

((Crosstalk))

Woman: ...at their end and they can interpret it in the materials that get published. And just to clarify as (Jim) made earlier, we published this explanatory memorandum and explained it. That was a staff document. It wasn't a board document.

(Jeff): But everywhere that it said we didn't do this in agency five because it's inconsistent. That's staff's interpretation of what's inconsistent and therefore it wasn't in the guidebook?

Margie Milam: I don't believe we actually said that. Maybe (Dan) can clarify if he's here. I think we said we adopted some of the recommendations that were, you know, that could be said in it and that we were going to do the consultation to see what additional recommendations could be incorporated. So I think the memorandum was kind of pointing out that it - the work hadn't been completely done on this particular topic. I don't - (Dan), do you want to comment on that?

(Dan): Hey Margie. I think if you go back to the board resolutions, the (comments are clear). I think the board did not see the CWG report. I think, like, on the eve of the - right before the (triman) resolution and they looked at it and said that that was the instruction to staff.

And then the explanatory memo, as (Jim)'s pointed out and as Margie clarified, it's 36 pages of staff's going through and looking through, responding to everyone in the community working group's recommendations and starting where we thought it was consistent and putting rationale why some things were picked up, why some things need further discussion and the first page of the explanatory memo says this is a preliminary response to the community working group and staff has already put some of the recommendations into the absent guidebook, the one - the version that got

posted and we scheduled the consultation here on Wednesday to try and pick up others.

(Jeff): Okay yes. I mean, because - the basis of my question is we can go through and even if we endorse the things that have full consensus, if it was inconsistent then the board's going to ignore it anyway, right? I mean, that's what they're saying.

And I have a whole other issue which is not really - it's kind of tangential which is, you know, did the board make some proclamation in (Tranhan) and we have - fully have to follow it because they came down off the mountain of (debit). I mean, that's the way it (unintelligible). (Tranhan)'s resolution said this so anything that we don't agree with we're not going to adopt. Oh, okay. Isn't that obvious anyway?

But my point is, that's Mary, the whole thing is there's really confusion because there're some that have full consensus, some that have consensus. I don't even necessarily know, like, if some GAAC representatives disagreed with something but it's still at consensus, to me that would weigh heavily since it pretty much involves government.

It's very hard to make - to weigh the balance of which recommendations the council should consider. If we consider any, I would recommend only those with full consensus and only those that ha- that are consistent with the previous versions of the guidebook. That should eliminate a bunch of them and then we have a concrete sect and we could actually consider that at this meeting. Otherwise everything else just seems like a waste of resources and time.

Man: And there's five minutes left of that. Tim, you just wanted to make a clarification and then I'll go to (Jaime), (unintelligible), (Mike) and Avri.

(Jaime): Yes that - there are actually a few choices with this motion and we can vote in favor, we could vote it down or we could decide that we're not ready to vote on it at all. Not making a statement one way or the other but just putting it off, continuing the discussion.

And the only thing I want to quickly point out about what (Jeff) was saying is that, you know, I'm still not convinced that the working group as a whole continues to have full consensus. That concerns me. There's been a lot said, you know, that I would want to know before we went forward.

Man: Thanks. (Jaime).

(Jaime): I have a specific question. I don't know if it's (Maggie) or to Mary. And returning government objections or specific government objections to the community objection process that's already placed in previous versions. Did the staff or the working group have the time to evaluate if there is not a necess- it's not necessary minor or major adjustment to this process? Did - or it fits well to govern- part- individual government objections because I'm not sure of this.

Woman: There was some discussion within the working group and I such as I we were not just time limitations but in some the limitations of the committee objections procedure which we were not asked to looked at.

There was consensus ultimately and there was participation by a wide variety of members from various backgrounds in all the discussions including this one that it would fit sufficiently well as to be something that would be workable.

And that is my interpretation of the (WB) of the group. My own personal view is that that may well be one of the things that under the board resolution might be inconsistent more so then some others. And that was my personal view to follow up on a conversation we had this morning.

Man: (Philip).

(Philip): Thank you. Now I think Mary, who's rather brilliantly presented us just now with an example of what we were struggling with early this morning which what exactly is the role of the council because this particular working group, of course, is a relatively new creature. It's not just a GNSO policy development group. It's a cost constituency - a cost SO group that was absolutely not policy development. It was intended to be focused on implementation.

Now I think going back to Mike's - Mike Rodenbaugh's original question, what exactly would council be voting on is very pertinent because as this is not (policy) and we're not trying to (sort it) through what the community view policy is, to my mind any vote on this would not be saying we approve of all of this or some of this or whatever because that work is being done. I'm just trying to provide some guidance on a very difficult issue, on implementation to the board.

So to my mind this comes back to the role of council as managing the process and with the quality of your vote, if it was to endorse report which is basically saying we endorse the process which led to the report and which has led to inclusions, some of which are supported by full consensus, some of which have less support.

And I think that's the best you can do and I think maybe that should be clear in the report, in the motion.

Man: Thanks (Philip). (Mike).

(Mike): Actually (unintelligible) my comments, just kind of dovetailing in with what (Philip) was saying there. You know, I'm very concerned about this as a

precedent that the council is looking at this community working group for one thing and what that really means for the future.

I was really concerned when another one of these community working groups kind of sprung up a couple meetings ago about the issue of - I forgot the (unintelligible), new TLD issues that (Anthony) on (Curaine) was running down and the same thing happened.

It's sort of like these ad hoc group forums and everyone runs around, discusses this issue and then the board's voting on it. And, you know, it hasn't gone really through the council and it's just troubling to me, the precedent.

And I guess I'm worried. Also this entire discussion has just kind of been moot because when you read the clear language in this resolution it sounds like the board's already decided to accept all of the recommendations that are not inconsistent with the process. So what are we doing?

Man: Can I just get to Avri and Marilyn and perhaps you can get those. Avri.

Avri Doria: Thank you. First of all I actually think that the subject is still more open than some of the discussion is assuming. I mean, we've continued having discussions in the group trying to make sure that all the ideas that were there were understood, were there clearly and those conversations have been going on.

It also, in the board resolution, does sort of indicate that until the first round starts, the issue does not need to be closed. I think what (Steve) said about endorsing the work, I think when you're looking at these cross community things, you're looking at something where each of the groups, and this one was not started ad hoc nor were some of the others started ad hoc. There may be some that were.

But there was council discussion beforehand and then the report did come back to council and council now basically, you've gone and make a choice. Is it something we want to endorse or not? I sort of think what (Philip) is pointing at that you're endorsing the work. You're not necessarily going to go through and pick through each thing.

I'm hoping that you do endorse it. I think also in thinking about the endorsements, a lot of people have been trying to sort of second guess what it is that GAAC might think about this, what it is that GAAC might think about that. And I think that as the third party in this joint thing, it's the GAAC that needs to figure out whether they want to endorse it and in what respect or not.

And so I really - I do hope that you endorse this as something that the board and (the staff) need to continue taking seriously and need to consider fully in putting together the final applicant guidebook and the way in which (reg 6) objections are dealt with. Thanks.

Man: Thanks Avri. I'm going to cut it off after Marilyn. And we'll then move into the GNSO working group guideline session and the - after that the (Jackson) vertical integration which will both be chaired by Olga. So Marilyn.

Marilyn Cade: My comments I think will follow (Philip)'s and Avri's and be generally supportive of the point that (Philip) made but I'm also going to note that I think the practical reality is that we're going to have more topics that do require across SO, across AC interaction.

And I wouldn't like to see the council avoiding the ability to contribute to the process by which topics are considered so I think this is a good - this is - it's important to show support for this group and I think (Philip)'s approach is a good (word that) this needs a little tweaking on language then maybe that could be done ahead of time so constituencies are looking at the same language on Tuesday.

But I do think we don't want the council to be - we don't want GNSO as a participant to be left out of the fact that these groups are going to continue to emerge and continue to work, whatever the topic is. We may feel we need to provide strictly some limitations but I think that's the topic of another document that Liz Gasster had developed and circulated. And that would be future work I think. Right?

Man: Okay thanks. We'll cut it short there. (Unintelligible) can I move on to you and (delete) the working group deadlines? Thanks.

END