ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 06 February 2013 at 19:00 UTC

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http://audio.icann.org/gnso/gnso-igo-ingo-20130206-en.mp3

On page: http://gnso.icann.org/en/calendar/#feb

Attendees:
Donna Austin - AusRegistry
Iliya Bazlyankov – RrSG
Jim Bikoff – IPC/IOC
Avri Doria – NCSG
Chuck Gomes - RySG
Alan Greenberg - ALAC
Catherine Gribbin - Red Cross
Robin Gross - NCSG
Stephane Hankins - NCSG
David Heasley - IPC/IOC
Wolfgang Kleinwaechter - NCSG
Evan Lebovitch - ALAC
David Maher - RySG
Kiran Malancharuvil - IPC/IOC
Osvaldo Novoa - Red Cross
Christopher Rassi - Red Cross
Thomas Rickert – NCA –Working group chair
Greg Shatan - IPC
Claudia MacMaster Tamarit - ISO
Mary Wong - NCUC

Apologies:
Alain Berranger - NPOC
Mason Cole - GNSO Council vice chair - RrSG
Osvaldo Novoa - ISPCP
Cintra Sooknanan - NPOC

ICANN Staff:
Brian Peck
Berry Cobb
Julia Charvolen

Coordinator: Excuse me, I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the IGO/INGO Protections Policy Development Process Working Group call on Wednesday 6th February.

On the call today we have Donna Austin, Iliya Bazlyankov, Jim Bikoff, Avri Doria, Chuck Gomes, Alan Greenberg, Stéphane Hankins, David Heasley, Wolfgang Kleinwachter, David Maher, Kiran Malancharuvil, Christopher Rassi, Thomas Rickert, Greg Shatan, Claudia MacMaster Tamarit. We have apologies from Alain Berranger, Mason Cole, Osvaldo Novoa, Cintra Sooknanan. And from staff we have Berry Cobb, Brian Peck and myself, Julia Charvolen.

May I remind all participants to please state their names before speaking for transcription purposes? Thank you very much and over to you.

Thomas Rickert: Thank you very much, Julia. This is Thomas Rickert speaking and I'm the - I'm chairing this working group. And usual I'd like to ask the group whether there are any statements - updates to the statements of interest, sorry. Hearing and reading none I'd like to move to the next agenda item that is the status of the general counsel request. And as usual I'd like to ask Brian to give us an update. Brian, please.

Brian Peck: Thank you, Thomas. This is Brian Peck from ICANN staff. The pending question I believe we had from last week's call after I gave brief update on the - kind of the initial findings of the general counsel's research was whether indeed those responses - or that the trends that they indicated so far were applicable specifically to the questions asked by the working group.

I was able to confirm with the general counsel's office too because one is is that they provided the specific questions from the working group to the outside counsels that are working in the individual jurisdiction. So - and they specifically requested that the research be key toward answering those two questions.

They've also, you know, wanted to reassure the working group that indeed they're looking specifically at, you know, the registries and registrars as requested and not at domain name registration in general. So, you know, the trends that were indicated last week are applicable specifically to registrars and registries.

They have gotten a couple more jurisdiction reports in. I've asked them to please try to confirm a completion date. They realize our strong interest in doing so and they've, you know, promised to get back to me as soon as they can trying to get it done. But that's where we are right now.

((Crosstalk))

Thomas Rickert: Thank you.

Brian Peck: But they wanted to specifically assure that indeed what they are reporting, what they are researching is geared specifically to - have a direct response to the specific questions asked.

Thomas Rickert: Thank you, Brian. Any questions for Brian? Okay now I'd like to spend a couple of minutes on this point though because as you will remember from last week's call there was quite some debate on the scope of the question that was asked.

And I was, to be quite honest, quite surprised to hear that conversation being so controversial. And certainly the question that I've asked myself as chair of

this group is whether we should suspend our work until we get feedback from general counsel.

You will remember that our discussion surrounded the question of whether general counsel should find out for us whether it was illegal or infringing upon applicable laws for ICANN registries and registrars to allow the registration of certain designations at the second level and allow TLDs at the top level versus the question whether it would infringe upon applicable laws if a registrant chose to register a domain name under any given TLD.

And I was asking myself what the practical consequences of the outcome of the general counsel request would be. Let me share my read of the general counsel request with you before I open the floor for interventions from you.

In my view - and I've gone back to transcripts of earlier calls of this group - the question only makes sense if you ask for the illegality or legality of the role of ICANN registries or registrars. And this was - this read was sort of reflected in the short quote that I'd like to read out for you from one of the transcripts.

And this is something that David Maher said who was, if I remember correctly, actually the person providing the first draft of the general counsel request. And the quote goes like this: "I'd just like to respond to part of what was just said. I strongly believe that this working group is not competent to make legal decisions. If there is a law that can be enforced by some court that has jurisdiction over ICANN that's a legal question that is out of our hands."

"We are a policymaking group under the GNSO and we should restrict our work to the policy area and let the courts and lawyers who are dealing with ICANN decide whether ICANN is subject to any legal obligation with respect to the IOC, the Red Cross or any other intergovernmental organization for that matter." And that's the end of the quote.

Because if we think that through - if actually the question to general counsel were whether it was illegitimate for registrants to register certain designations I think the answer to that would be quite clear that under certain national laws it would constitute an infringement of applicable national laws to register those designations and in terms of our policy work.

But I might be fundamentally wrong with this. The question being asked in the restricted way to ICANN registries or registrars would make sense in a way that if it was illegal in the first place for these three to participate in third parties' infringements then ICANN would need to make sure that such registrations can't take place. And then, in fact, it would be a compliance matter.

But only if you - if you add the registrant part to it then it would be an independent infringement that might use the DNS or registrar services as a vehicle to conduct that infringement. But I think that would be a completely different question.

And I was asking myself whether the different scopes and what effect of the different scopes of such question - of the answer would have on our work because I think we can take it for granted that general counsel, as Brian alluded to, will get back with answers that it may infringe upon certain national laws if certain registrations take place.

What will that change? Isn't the real game changer in this if ICANN general counsel got back to us saying that it was illegal for ICANN registries or registrars and not for the registrant part.

Can I please get some views on that? Because if there were arguments saying that each and every registration would constitute an infringement by, you know, each registration by a registrant would per se mean illegal conduct

of registries, registrars and ICANN then I think we should actually wait for the general counsel response to be ready.

Chuck, please.

Chuck Gomes: Thanks, Thomas. First of all I'm really hoping that the general counsel's office doesn't just look at national laws but looks at international treaties as well because the international treaties I personally think are of more value to us since gTLDs are international in nature.

So, Brian, you might want to clarify that and make sure that they're not restricting themselves to just specific national laws. I think that would be unfortunate if they did that.

I'm fine (unintelligible) focusing on some (unintelligible) but...

Thomas Rickert: Sorry, Chuck. For those who don't speak can you please mute your microphones? Thank you. Chuck, sorry for cutting across you. Please proceed.

Chuck Gomes: That's okay. So, Brian, if you could get clarification on that or if you already know please let us know. Thomas, with regard to your - mentioning the idea that we suspend our work until we get that information I think there's some merit to that because I think the information we get back from them...

Thomas Rickert: Excuse me. Can you - for those who are not speaking can you please mute your microphones? We have some very loud background noise. Thank you.

Chuck Gomes: So now if they're not looking at international law in addition to national laws then maybe that's wrong; maybe their information won't be as helpful. If they are at some point I think we may decide to do that.

I'm not sure we're there yet. I would like us to - and I think you're going to talk about this later so I won't dwell on this - but I would like us to wrap up the subgroup work that we've been doing in a little more concise fashion before we consider suspending until we get direction from the general counsel's office. But I'll talk more about that later if there's opportunity.

Thomas Rickert: Thanks, Chuck. Alan.

Alan Greenberg: Thank you. I'm not really going to address whether we should suspend or not. I think that's probably beyond what we're likely to do in the very near future. If general counsel is to come back and answer the question that you think and I think we explicitly answered, that is is it illegal to register at the second level or allocate at the top level the kind of names we're talking about?

If they come back and say yes it is illegal then David is right; that is not a policy matter, that is something legal counselors should be advising the Board on and it's a fait accompli; we don't need to discuss it.

Even if they come back and say - and answer the question, which is sounded like they were answering, that is it is not illegal for the ICANN contracted parties to allocate those names but it is blatantly illegal to use them in so many jurisdictions that, again, that sounds like advice to the Board from legal counsel.

The Board punted it over to the GNSO which says it is not a legal question, it is a policy question and therefore I think we need to look at whether we should - unless and until we get general counsel answer, which (unintelligible) that it's been taken out of our hands.

I believe we should be looking at the merits of providing additional protections not based on what is their legal given right because I believe if that is the sole rationale for doing it we're not the ones who should be deciding it and

therefore we should be looking at the other rationales for why we might be offering protections to particular organizations.

So I think your analysis has put us in an interesting direction and I support it that we're not the people who should be giving the Board legal advice on what the meanings of laws are. The GAC has already done that. If the Board chooses to accept that point blank then they shouldn't punted it to us as policy.

If it's in our hands we need to look at it from a policy perspective and not from a legal perspective. Thank you.

Thomas Rickert: Thanks, Alan. Just to clarify for those who are reading the mailing list a statement by particularly by David Roach-Turner which was supported by some other participants of the working group indicated that they derived the need for certain names being reserved or protected directly from treaties.

And, you know, if you take that as the basis then actually that would be leading to the consequence of that Alan just described. Greg, please.

Greg Shatan: First I think I, you know, come to terms with the scope of the request at least, you know, to the extent that it is, you know, narrowed to whether the registries and registrars at the second level and ICANN at the first level are the actors that are being looked at and not at the other side of the transaction although information regarding the other side of each transaction is, you know, not without merit for our consideration.

I think that what I'm expecting to get back - and maybe it's, you know, dangerous to expect - is not likely to be so clear cut. And in any case we're dealing with, you know, any number of differently situated groups within these two broad groupings of IGOs and INGOs.

I think it would certainly be premature to suspend our activities given that even if we were to find that a particular organization somehow triggered a kind of per se legal liability for registries and registrars if their names were registered at the second level, just as an example, I'd tend to doubt that that analysis is going to apply to every one of the groups or group types that we're considering. So I think we should steam forward.

And on a related topic I would say that line between policy and legal questions I think is not quite so bright line. In essence, you know, part of what we are doing here and what's done in a number of PDPs really is self regulatory in nature.

And so, you know, self regulatory matters don't have to match up exactly with the law but they are kind of attuned - or should be attuned to what the law is; they could give broader rights or not necessarily self regulate to the fullest extent of what the law is. But, you know, I think we are engaged in a self regulatory exercise. Thank you.

Thomas Rickert: Thanks, Greg. Chuck, please.

Chuck Gomes: Yeah, just a follow up to something that Alan said - and I think it's just a minor qualification. Even if the law is clear about protection of some or all of the names that we're talking about we could still develop policy that would facilitate the fulfillment of the law.

Not saying we would need to. I think Alan's right, we wouldn't necessarily need to. But it might result in a easier fulfillment of the law if we did that. So I just wanted to - that's just a minor qualification of what Alan said.

Thomas Rickert: Thank you, Chuck. Are there any more interventions regarding this point? Okay now the reason why I was asking is, Greg, you mentioned that we should steam forward. At the moment, to be quite honest with you, I think we're not even stumbling forward, to use a famous word.

My fear is even that we're coming to a standstill or even walking backwards because I get the impression that maybe some participants would go to hibernation mode until we get the response from general counsel.

And this is why I was asking whether - what the impact of that answer would be and whether we should actually wait for that. But it's been very encouraging to hear that you would like us to continue with this exercise. If you ask me I think there are enough questions that we should be working on and then react to the response coming from general counsel and build that into what we've already come to in terms of conclusions.

Now we're coming to the next item on the agenda, which is the discussion of options to move forward. And I've kept this quite general to allow for frank discussion. As chair I'm interested in making us work in an effective manner and actually come to workable solutions hopefully and hopefully to come as close as we can to consensus.

And just to remind you our original approach was that we had this Excel sheet that we were using with five different spreadsheets on it the first of which being to discuss the nature of the problem. And this was a request by some parts of the community, in particular NCSG, to discuss whether there is a problem that actually needs to be resolved.

The second area would be the qualification criteria. Then we have the eligibility, which we sort of parked to a later stage. Then we discussed existing protection mechanisms including the existing and upcoming rights protection mechanisms and we discussed how they would work and what their shortcomings would be also we discussed about potential other or additional approaches in terms of protections and finally the admission.

Now this was the idea - and you will remember that I encouraged the group to work in these areas in parallel because the - excuse me - the problem that

we've been tasked with is so broad that if we work on it sequentially we will probably get nowhere in the near future.

If I could ask Berry to get to the next page. So the idea was to actually slice the topic and work on the five segments in parallel. And I'd like to briefly summarize where in my view we are.

Some of the statements might be a little bit challenging but that's partially because I want to stimulate discussion. Looking at the nature of the problem we have actually no agreement in sight on the criteria that are mentioned in the spreadsheet.

Maybe the one point mentioning the global public interest that is infringed upon is the point that is closest to being accepted by some parties. I'm not using the word consensus intentionally at this stage.

After this spreadsheet has been added to the original set of spreadsheets that didn't include this one we reviewed the input coming from the various groups in the GNSO. And ALAC had actually proposed some questions as a follow up of the ALAC statement to ask certain questions to find out whether there is actually a problem that needs to be resolved.

And there has been some further communication on this one on the email list. And Alan has clarified, I think it was yesterday or today, that this should not be mis-constructed or misunderstood as an exercise to deal with the merits of - or the need for protection for individual organizations but that this was a broader approach to find out whether we're conducting this PDP in order to resolve an existing problem. And if there were no problem then actually it would be moot to do a policy working on it.

The last but one call we have discussed these questions. And there was, if I remember correctly no objection to ask those questions. However, between the last but one call and the last call there has been some - there have been

many objections to providing information to actually fill the spreadsheet - yet another spreadsheet - that was produced by Berry with information.

And therefore I wanted to raise this topic again with you to make it clear. My understanding was - my understanding was that we talk about two sets of criteria. So Alan was proposing to get some information on whether there is a problem in the first place. And once that has been established then ALAC might be willing to support protections under certain circumstances.

While these - this information that has been asked for should be information to determine whether individual organizations should be entitled to protections. Maybe there's been some confusion surrounding it. And I think we should discuss this because I got the impression that parts of the - or some members of the working group were not willing to provide any information.

Again outside David Roach-Turner who said that the protections can be derived from the treaties and that these sort of universally exclude any third party from registrations and that therefore certain designations should be protected.

If you take that mechanisms what would the consequences of that be? My fear is that if we are not quote unquote helping those that would like to see some evidence of an existing problem to answer that question in the affirmative then we might lose part of the community for a consensus.

And therefore I'm wondering whether those that objected to filling out the spreadsheet that Berry circulated are not willing to provide any information because I haven't seen any compromise position on that or whether it's just that particular set of information that was asked for that people are not willing to proceed.

So in essence my question to you is can we, as a group, or do - does this group want to work on a compromise regarding the existence of the problem to help NCSG and ALAC answer the question of the nature of the problem? Or is this a moot exercise because no information shall be provided at all? Alan, please.

Alan Greenberg: Yeah, thank you. A couple of things - Alan Greenberg speaking. First of all consensus is not unanimity so if everyone in this group or every organization represented here feels one thing and I or the ALAC disagree we have the right to file minority statements. We're not vetoing anything.

You know, that's not within our ability nor is it within the ability of any of the representatives or groups represented here to veto something. So let's remember consensus - unanimity is nice; consensus does not necessarily imply unanimity. So that's point number one.

If indeed all of the protections that need to be put in place derive from international treaty and law then we revert to our previous discussion; why was it punted to us? And moreover why are there so many examples of these terms being used regularly within the existing world and within the existing top level domains and no one has taken radical action to stop it.

And there are examples in most of the cases where these names have been registered, are in use for one reason or another, whether it's monetization or a completely unrelated organization.

So the evidence that we have to date is that absolute protection - and I'm talking about absolute protection, blocking of names - is not something that is derived from law or I think we wouldn't have gotten the question and we wouldn't - and we would see more evidence of these laws being exercised to stop the registrations that are in place today.

So given that and given that, you know, as I quoted in my message a recent note from Claudia says we are trying to find the organizations which are worthy and try to make sure that their names are not abused.

And I accept the fact that current history is not necessarily a predictor in this Wild West of new domains - new top level domains that we're going to have but it's the only thing we have to base any experience on. So how can we turn our heads away from it and not look at it and not try to find out what the current situation is? Thank you.

Thomas Rickert: Thanks, Alan. Chuck.

Chuck Gomes: Yeah, I respect the view of those who think that the laws already answer the question and so we don't need to do anything else. But the reality of the matter is in the GNSO when it comes to legal issues, like Thomas said very well early on, we rely on the general counsel's office to give us direction in that regard.

That doesn't mean we think others are wrong in their opinions. The reality of the matter is we've seen various opinions that aren't in sync. And so as long as any of our group just make the assumption that the law already covers it emphatically and we don't need to do anything else I think Thomas is right, we're not going to make any progress.

Now just speaking for myself I'm probably willing to accept that there's a problem. Certainly in the case of the IOC and Red Cross I think they've already done a good job of documenting what they see is the problem. Now some may disagree on the seriousness or severity of that problem, that's fine. But I think they've done that.

I have not seen the same documentation from the IGOs. I don't know that I necessarily need to. But I think there are people on our group who need to.

And, Thomas, I agree with your statement that it's worthwhile getting that information to get their buy-in into the process. So I'll leave it at that.

Thomas Rickert: Thanks, Chuck. And I think that puts it quite nicely. Kirin is just mentioning in the chat that you have - that the IOC has posted information on the wiki and that is certainly true. Nonetheless I guess the, you know, summing up the question that I have to the group is Alan and others have asked the question - and there is a certain reluctance to respond to that request.

And I think we as a group need to determine whether there are chances to maybe come up with some middle ground or compromise in terms of information that can be provided to answer the question for Alan even Robin and others.

If - maybe we can even differentiate between IOC, RCRC, IGOs and INGOs to get the question answered. But if there was no willingness to work on a compromise and if we can't expect to make any progress on that you will have seen that I have asked this question on the list at least twice.

Then I would deem this exercise moot. I would bother the group no longer with information on the nature of the problem at the risk of losing the buy-in of certain groups of the community. Now certainly, Alan, you're perfectly right in pointing out that unanimity and consensus are different things.

But maybe it would be easy to convince you that there is a problem. And I'm asking myself the question whether it's worthwhile risking losing parts of the community without having explored opportunities to satisfy the requests for information that has been made by some members of the group.

Alan.

Alan Greenberg: Just to be clear ALAC and I agree there is a problem; we agree there is a need for special protections. We are just trying to find out what the right

criteria is for identifying who should be getting it and what the level of protection is. Thank you.

Thomas Rickert: Thanks, Alan. Greg.

Greg Shatan: Thank you. I can't really speak for any IGOs or INGOs but the sense that I got - and some was the feeling of having a nose out of joint being asked to kind of prove what seemed to be obvious both from point of view of law and from point of view of harm or at least instances that could be thought of to be harm.

I think - and as I can see from some of the chat going on there are those who would interpret the - interpret it 180 degrees opposite which is if people aren't willing to give evidence then maybe there's just nothing at all happening. You know, so on the one hand we have somebody who walked in, you know, trailing their leg behind them claiming their leg is broken and, you know, that's the image that the IGOs and INGOs may have of themselves.

On the other hand you have somebody who's kind of walking in with their hand in their pocket who says their hand is broken but won't take it out of their pocket. So those are both not great analogies and neither of them are the truth in a sense.

I think, you know, part of the problem is having people who come from many different viewpoints and some of whom are, let's say, cynical, some of whom are supportive but want to see, you know, get a sense of what the issues are. I think maybe the thing to do is to kind of get beyond the question of whether, you know, there's a certain indignation at being asked to prove what should be self evident.

I think we have to get beyond that because there are enough people here who say it's not - not only is it not self evident to us it's evident that it's not even happening and it's evident to us that people who get defensive

registrations are getting them unnecessarily and they should just stop and everything will be right in the world if they - and they should just stop, that it's just a waste of effort or some sort of, you know, old wives tale.

So I think, you know, in a group where we have 360 degrees of opinions it sometimes is necessary to prove what is self evident because it's not self evident to somebody who's on the other end of the spectrum.

It's just, you know, part of the exercise, you know, those of us who are lawyers know that you can't just walk into court and tell the judge, you know, it's so clear that we're not even going to present any evidence, just find for my client. Thank you. I'm going to sit down now. You know, and assume that that's going to get anywhere with anybody.

Nothing is self evident until the evidence is in front of those who don't find it to be self evident. You know, just as a quick exercise - not that this necessarily proves harm - but I went and looked at oec.org, which is the OECD that we know is IGO. If you go to DotCom and DotNet those are two kind of monetized parking pages; DotUS is a non-monetized Go Daddy parking page.

I haven't gone further to see, you know, whether there's, you know, something more harmful. Clearly there are people out there - whether this is legal or illegal I don't have a legal opinion on that. Whether it's causing harm or confusion, not, you know, necessarily. Sure it's not good but then again is it bad? You know, I would say it is; some people here might say it isn't.

But there's certainly a lot of stuff going on. Until we kind of put facts in front of each other those who don't find the fact self evident without seeing them are going to, you know, say until I see facts there aren't any. And that's perfectly, you know, valid.

I think, you know, as you say the Red Cross and IOC have assembled a lot of facts because they have been pressing their case for quite a long time and have been doing it in an organized fashion. That's just not true for a lot of other organizations that might be worthy of protections.

You know, so I do think we need to get something together to put information in front of both the true believers, the skeptics, the nonbelievers and the heretics so all across the board so that we can at least kind of play with the same set of facts in hand. Thank you.

Thomas Rickert: Thanks, Greg. Chuck.

Chuck Gomes: Sorry to talk so much today. But I think there's two questions that it might be helpful for us to explicitly answer, Thomas, and that means that we need to get replies from the members of our group.

Number one is are there those in our group who definitely need to see some evidence of harm before moving forward? If there's not then we're probably wasting our time but if there are then I think we need to respect their need.

Number two, are there those who are requesting protection, who believe they deserve protection who are unwilling to provide evidence of harm? If we get the answer from various participants in our group of those two questions I think then we may know how to proceed. So I throw that out as a way maybe to help us move forward.

Thomas Rickert: Thanks, Chuck. And as usual you've put those questions much more elegantly than I ever could but that's in essence what I was trying to squeeze out of the group for the last 20 minutes. Thank you, Chuck. Mary.

Mary Wong: Thanks, Thomas. And I agree, it's kind of hard to go after Chuck because he seemed to point the way forward. I'm like oh I'm not sure what I have to say and that's necessary anymore.

But one thing that I can try to add - I'm very conscious, as Greg says, that we do have a number of very different participants in this group. And by that I don't just mean in terms of viewpoint. But we have folks who aren't normally part of the ICANN process.

So in some ways I agree, it's important because of the nature of ICANN to have participation by all members of the community and to try to achieve consensus, which is why this question of buy-in by the participants who represent all the groups is important.

But at the same time it's not just about I guess - and I guess what I'm trying to say is that for those not familiar with the process it's not really about making people feel happy or comfortable before moving on. There's a part that requires the buy-in but that's not the objective.

So having said that, you know, looking at the questions that we've asked legal counsel it seems to me - and we have a lot of very well qualified lawyers on this group and we also have a bunch of people who aren't legally qualified. I think that the way we do it, should we move forward according to Chuck's question, is to agree on a step that there is a problem of some kind, right?

And that there are international treaties and a certain number of national laws that protect certain aspects of each of these organizations, right, whether they be names, symbols, trademarks or a combination of all of that.

So we have that and we also have some evidence that there is some harm somewhere to some people whether that's enough or not I'm not going to talk about it.

But the question for this group is unless and until legal counsel comes back and says there is a problem or there actually is no problem we just have to try to, you know, bridge those two gaps. There is protection of some sort legally,

right, not of a specific domain name as such but things that translate into domain names.

And on the other hand there is some (unintelligible) in harm. So we have to sort of figure out should we, at ICANN, in this new program develop additional mechanisms. I know I'm going back to the (unintelligible) of where we are but I'm conscious of what Thomas said about not wanting to be stuck at the nature of the problem.

So if we can all agree on that and maybe take on board Chuck's suggestions for moving forward maybe that's what we can do.

Thomas Rickert: Thanks, Mary. Alan.

Alan Greenberg: Thank you. Alan Greenberg speaking. Mary just alluded to one of the things I was going to say. One of the problems is - well let me backtrack for a second. There may be some people in this group who feel there is no evidence of any harms. Certainly I don't represent them.

We believe there are harms; we're just trying to find the right mechanism for making sure those harms don't continue and don't grow without necessarily providing some level of change in the Internet ecosystem that isn't warranted based on any of the needs.

And one of the problems I think is we have - although we've vaguely referred to it we have avoided the subject of what the remedies are. If the remedies are universal blocking, that is once this name is protected it cannot be used perhaps with the exception of the organization that, you know, that we are deeming is the rightful owner of it or maybe we're talking about something as - at the other end of the spectrum equivalent to the trademark claims notice in the new gTLDs.

That is if you're going to try to use one of these names you get a warning saying this name is protected for certain uses. Are you sure you're using a legitimate use?

If that's the level of protection - I think it's going to be an awful lot easier to sell very widespread protection to IGOs and INGOs because we're not blocking the usage we're simply adding a legal mechanism to try to minimize the wrongful use.

So maybe we should be spending a little bit more time on what the acceptable mechanisms are because the reaction and the - and how high or low we set the bar on the criteria may end up being a very different discussion depending on which level of protection we're talking about. Thank you.

Thomas Rickert: Thanks, Alan. Greg.

Greg Shatan: I think Alan makes a very good point there. And I think that we are - at this point I think a whole spectrum of potential protections are on the table. So that I think that to say that IGOs are asking only for a blunt instrument may be to overstate the case while certain groups might want the bluntest or broadest possible instrument that's not necessarily true. Some aren't even here asking particularly for anything whether or not they deserve it less than those who are asking or not.

So I think, you know, we should focus on the spectrum of remedies. And we've spent relatively little time at that end of the work flow of this group. And I think that, you know, it may be true that, you know, something less than an upfront blocking type of mechanism - and I know blocking sets, you know, people's hair on fire - but, you know, if that's something - if we're talking about something different we're going to have different answers, different criteria, different level at which, you know, acceptable remedies might be found.

So I think we have to keep that in mind whenever we're talking about criteria in the sense it's a question of criteria for what. Thank you.

Thomas Rickert: Thanks, Greg. Alan.

Alan Greenberg: Yeah, let me be specific. I am not suggesting that we add a fourth or a fifth dimension to the spreadsheets we're using and sort of replicate them all for multiple different types of protections. I think we may need to have a focused discussion on which types of protections are we talking about today not which ones may we also include because I think we may be able to come to closure on some of these issues an awful lot easier if we narrow the scope.

And I'm not quite sure if that was what Greg was suggesting or if we simply delineate the various options. But I think if we can narrow the scope the answers may become easier and they may different answers for the level of protection that we want to give which, for the criteria for giving someone absolute blocking than the criteria for giving someone a claims notice. Thank you.

Thomas Rickert: Thanks, Alan. Chuck.

Chuck Gomes: Here I am again. But some good thinking is going on and I appreciate that. So maybe we can substitute the two questions I asked and just ask this question. And the question is, is there anybody that would object moving ahead, as Alan suggested, without spending time on the harms issue?

Now we may have to come back to it later, I understand that. But if there's no strong objection to doing that that might be a quicker way forward. Now if there is objection to that - strong objection to that then maybe we have to go back to those other two questions. But I throw that out.

Thomas Rickert: Thanks, Chuck. And it's as if you were reading my mind; that is sort of the question that I was about to ask because I have raised this point to find out

whether overcoming this hurdle of nature of the problem would be a show-stopper for certain parts of the community.

It was my understanding that the presentation or evidencing harm would be a prerequisite for considering potential protections for some participants. And this is why I wanted to learn whether it is worthwhile for us to dwell on this any further because if there wasn't the willingness to provide any further information - excuse me - then we would need to spend more time on this.

I guess that I will now ask the very question that Chuck asked and that is is there any objection for us to move forward without having sorted out the nature of the problem, i.e. harms question?

Evan Leibovitch: Thomas, it's Evan.

Thomas Rickert: Evan, please.

Evan Leibovitch: Hi. As somebody who's on the chat who's probably been using the harm reference as much as any I don't have any strong objection but just the acknowledgement that sooner or later we're going to have to come back and deal with this. It doesn't need to be an impediment now but eventually it's going to come back to bite us.

Thomas Rickert: Thank you. I have Alan.

Alan Greenberg: Yeah, we give trademark claims notice protection to trademarks which have shown no evidence of harm and where nobody is possibly going to want to steal their trademark or try to imitate them. So if that's what we end up with may not have to come back to this. If we end up with something stronger we will definitely have to come back to this. So I have no problem going ahead and pretending it's not an issue and then seeing if it later.

Thomas Rickert: I throw that out. That then maybe we have to go back to those other tow g than the criteira level of proteciton them all oI i9Thanks, Alan. Let me propose the following, hearing no general opposition to moving forward and sort of leaving this issue aside for the moment I will still ask the two questions raised by Chuck on the mailing list because that will then ultimately allow us to determine whether the question of harm or whether there is a problem can - must be answered on the basis of information that's already existent or on file or whether further investigation or surveys need to be carried out to find out.

So I think that we will allow - between now and next week to - for the group to answer that question. And depending on the outcome we will then continue to work on that in parallel or actually shelve it and just take the currently existent evidence that is on file to inform our discussion.

Okay, Berry, can I ask you to go to the next page please?

And that is the qualification criteria. I'd just like to give you a brief status and possibly we're not going to stay with this subject for too long because, as was mentioned earlier, I would very much like to talk about potential protection mechanisms.

But let me, you know, maybe - maybe this is a little bit too harsh of language but the current status on the qualification criteria may be perceived as such, no agreement in sight on a set of criteria on the spreadsheet so we have diverging views on that whether the criteria are the right ones, what the set of criteria needs to be.

We have no agreement on defining sets of criteria for RCRC, IOC IGOs and INGOs. So there was no consensus or no, you know, there was opposition to creating different set of criteria for these organizations.

And I've put it here again, we don't have agreement on the scope of the general counsel request since some in the group claim that if general counsel

- or if there was this protection by treaty that that would be the only needed criterion for providing protections.

So what are the consequences of that? We might get nowhere basically. So I think what is needed is to step back for a second and see what we have and maybe to derive some common ground from that to continue our conversation on.

What I've heard over and over again and what we might agree on is that criteria should be objective. And what I've also heard - and I think there is little opposition to that - is that legal protection must at least be routed in international law.

So on top of that in order to maybe stimulate our discussion help us moving f forward we could take what the Board said as a starting point. And we could also take what the GAC said as a starting point. Again, both of that is not binding for our deliberations but sometimes it's good to see what the, you know, to analyze the thoughts that others had on the specific subject to then move forward.

And I have reviewed the documents that all of you are more probably very familiar with and that - these are resolutions by the Board as well as communications or statements made by the GAC.

And what I read there is - and I'm going to quote a few half sentences for you. The specific IGO names to be protected shall be those names or acronyms that, one, qualify under the current existing criteria to register a domain name in the DotInt gTLD and, two, have a registered DotInt domain or the determination of eligibility under the DotInt criteria and, three, applied to ICANN to be listed on the reserve names list for the second level prior to the delegation of any new gTLD by no later than 28 February 2013.

Now that is from the ICANN Board as you can easily see. But in my view what we can see from that is that the ICANN Board had in mind some international protection. They referred to the DotInt still limiting it to a subset of the eligibility criteria for DotInt. And they have an application element in there.

So the Board does not seem to be of the opinion that international legal protection leads to protections per se but they want to see action from a party that wishes to be protected by applying to ICANN to be listed.

Second quote, "Whereas the GAC letters..." - excuse me "...of 11 June 2011 and April 12, 2012 express the same advice that the IOC and Red Cross and Red Crescent names should be protected at the first and second top levels given that these organizations enjoy protection both the international..." excuse me, "...at both the international level through international treaties, e.g., the Nairobi Treaty and the Geneva Convention and through national laws in multiple jurisdiction the GAC considers the existence of such two-tiered protection as creating criteria relevant to determining whether any other entities should be afforded comparable enhanced protection."

Again there is the notion of international protection by treaty and national law in multiple jurisdiction. Then terms that are protected in international legal instruments and to a large extent in legislation in countries throughout the world. Letter to the GNSO Council by the GAC.

Then in the Toronto communiqué we have the following quote. "The GAC believes that the current criteria for registration under the DotInt top level domain, which are cited in the Applicant Guidebook as a basis for an IGO to file legal rights objection provide a starting basis for protecting IGO names and acronyms in all TLDs."

And then the last quote that I found again from the Toronto communiqué talks about international legal instruments and under national laws in multiple jurisdictions.

So does that help us as a group maybe to reach some sort of agreement and maybe get close to consensus that international legal protection is required or even the combination of international legal protection and protection in multiple national jurisdictions? Does that change our view? Do we want to take it into account?

I think it was Mason Cole who mentioned during the last call that we should not ignore - or he advised us not to ignore what has been said by these bodies. Claudia, please.

Claudia MacMaster Tamarit: Hi, Thomas. I would just like to put forth from our perspective that I do think that legal protection of the name or the acronym or the designation is absolutely a starting point.

I would just like to emphasize that we would posit that it's problematic if we start to, you know, rank or - because only certain treaties have been talked about before this working group really and namely specifically for INGOs like ISO that have, you know, trademark protection in over 100 countries that can look to treaties that give meat to the bones on some of this trademark protection would say that, yes, that is a starting point for us to say there is significant legal protection for our name.

And then we can go on to enumerating the other criteria that we would also add in looking at this. So just to say that on this - that on this first and second point of objective criteria and I read international law to mean sort of legal protection on an international basis of the name, acronym or designation.

And I think that, at least from my perspective, I would agree, Thomas, that this is a starting point; not the end but the starting point.

Thomas Rickert: Thanks, Claudia. Does anybody else want to comment on taking international legal protection as a starting point or the combination of protection by treaty plus protection in multiple national jurisdictions? Do we get some common ground to be working from? Greg, please.

Greg Shatan: Thank you. Sorry, I missed part of this discussion; I had to step off for another call. But I guess what I need to understand is are we talking about discarding or disregarding protection at the national level without a - or even in multiple countries where there's no sort of overarching international treaty.

And I guess there the question is, you know, (unintelligible) then becomes which treaty and what kind of protection? Because, you know, Paris Convention provides an international treaty for really trademarks and also to at least, you know, some organization names that are not marked so perhaps that solves the treaty question as well.

But - and one of the things that we've been discussing off and on in this group is the - whether the - we're looking at and or or when it comes to the question of national protection and international legal protection. So are we discarding the idea that multiple protections at the national level is sufficient?

Thomas Rickert: Great, I'm discarding nothing. I was just stating that there is no agreement on the criteria. And I was asking the group - pointing the group's attention to the views or the ideas established by both the GAC and the Board to see whether some common ground can be derived from their thinking.

And as you rightfully pointed out - and I'd like to state this before I move to Chuck - certainly talking about treaty protection the question that we have already started answering but we haven't yet come to an answer is does the specific designation need to be mentioned in the treaty? Or do we only quote unquote need to derive protection from a treaty?

And if that were the case, as you rightfully said, certain problems could be resolved by citing the Paris Convention. So I'm asking the - I'm just trying to find out whether there's common ground to take, you know, maybe to start working from the basis of what the Board and the GAC said.

Chuck, please.

Chuck Gomes: Thanks, Thomas. I think we have to be very cautious about using the word "or" when it comes to national law and international treaties. Because one of the things that happened in the new gTLD PDP is we looked specifically at that issue.

And we came to the conclusion - and I don't think there was any disagreement on this; somebody can correct me that was involved in that if I'm wrong. But I don't think there was any disagreement in the fact that we need to focus on international law for gTLDs.

As soon as we go to just national law then it comes down to what jurisdictions do we honor, which ones don't we, how many does it take, etcetera. And it was a pretty clear decision in my mind that it's international law.

So to say international law or national law I don't think that works. It would be inconsistent with the work of the new gTLD PDP when it was working on rights protection mechanisms. And so in my opinion I would reject the word "or" in that.

Thomas Rickert: Thanks, Chuck and thanks for clarifying this. I guess my question to the group is whether there is common ground to state that international legal protection by virtue of a treaty that does not necessarily need to spell out the name or the designation itself plus protection in multiple national jurisdictions would be one criteria that we could take as a starting point.

Chuck Gomes: And, Thomas, Chuck again. I am okay with that wording.

Thomas Rickert: Thanks, Chuck. Greg.

Greg Shatan: I guess then we get to the question of what does protection in multiple national jurisdictions mean? We get to the question, for instance, with the Paris Convention, which is a self initiating convention does not require, you know, the passage of a specific statutory law in a member nation for it to be part of the fabric of legal protections in that country.

So I would assume that that would be sufficient for all Paris Convention countries and not be looking for a - kind of a separate level or specific statute that's been enacted either to protect a specific organization or to, you know, to enact a specific treaty because not all treaties, you know, work the same and require enabling laws to make them part of a country's laws.

So, you know, if we're - in a sense international law - an international law that doesn't apply in any country isn't an international law; it's a non-law, it'd have to apply somewhere and by whatever mechanism it applies.

So if we, you know, if we're going to take the definition broadly - and I have no problem with it if we're going to take it narrow then I think we're getting into some very arcane international law questions which, you know, I hate to give the general counsel new work because we'll all be growing beards by the time we get answers back on that. But I would hope if we're taking the broad look at it it's not, you know, terribly troublesome.

Thomas Rickert: Greg, just a quick follow up. And my understanding if we're talking about legal protection in multiple jurisdictions that would not, you know, taken literally would not require national laws. But if you had a treaty that actually would provide protection in multiple jurisdiction without national laws being required that would be sufficient.

So let's keep it that broad. You know, if you feel comfortable with broadening it up let's put it on paper and see whether the group likes it. You know, I think we just need to find the lowest common denominator as possible and to work from there. Is that okay with you, Greg? Would that satisfy your concerns?

Greg Shatan: Talking off the top of my head I think so, yes.

Thomas Rickert: Thank you. Claudia.

Claudia MacMaster Tamarit: Hi, Thomas. I would also like to just agree with Greg and the last few comments that I don't think it is always so easy to sparse out international versus national law especially when it comes to the application thereof.

And also I would like to add that we've been kind of talking about this legal protection only applying for the name and the designation or the acronym. And I agree that that is an important starting point. But there might be other legislation that is also interesting for us to input into possible criteria such as we had discussed, you know, nonprofit status.

But there are other national legislations, for example, in Switzerland, that are granted only to certain organizations that have to demonstrate quite vigorously that they have a quasi-governmental character, that they're dedicated to policymaking on a very, very broad level, that they're nonprofit, that they have - that they have statutes and bylaws that mandate the organization to do this sort of global work.

And the existence of such legislation, which I think actually applies to a few organizations represented in this working group is also interesting for us as criteria.

And it doesn't speak directly to the idea of the legal protection of the name, which as I said before, I think is an important starting point, but just to also

say that there might be also other legislation that talks about the nature of the organization and describes its character, may describe some of the immunities and some of the privileges that the organization has in recognition of its international and nonprofit character that we might - we also might want to consider in criteria and on a case by case analysis. Thank you.

Thomas Rickert: Thank you, Claudia. I guess the points that you mentioned could be added after analyzing whether the set of words that we just sort of put together on the fly would cause over-breadth, right? So I guess if everybody was fine in not adding further criteria that limit the number of eligible parties then we might even be able to use very simple criteria.

And what I have for the moment is that we would require the protection of a name or an organization by virtue of an international treaty and the protection in multiple jurisdictions. Is that a criteria that we could all live with? Mary.

Mary Wong: Thanks, Thomas. Just trying to think through your question that you're asking and what Claudia said. I want to go back to one of Chuck's comments that I also uncomfortable with the protection in multiple national jurisdictions for a number of reasons.

One is because then you get into a numbers game as well as, you know, what exactly that protection consists of. Another reason is (I'm in) an unrelated working group but even on the trademark side when we did the IRT it was really hard for us to come up with this sense or a category of trademark owners who would fit, you know, that kind of international recognition.

So I think going down the national jurisdictions route if we're doing it as an international treaty plus national jurisdictions I think it's problematic. What I think Claudia might also be alluding to is that you're talking about two criteria, right, if criteria number one is protection of the name, acronym and designation of these organizations under international treaty, right, and we'll leave that aside - that's pretty broad, that's number one.

But separately that number two is that the protected organization has some form of international public interest mandate then I think Claudia's suggestion of looking at specific national laws would be a way of evidencing, right, the - not just the status of the organization but really the nature of its mandate.

And on that point I think that's kind of an important distinction because there may well be national laws that protect organizations but it may be for very different purposes. It may include recognizing what their mandate is, to granting them tax exempt status, to requiring certain kinds of filings.

And I just don't think that ICANN has the capability nor should it engage in investigating the type of national jurisdictions. So for what it's worth I think that those are two criteria, that international treaty be number one; number two be some form of nature of the organization for which national protections could be evidence but not as a requirement or criteria.

Thomas Rickert: So that's nature of the organization - just trying to jot it down.

((Crosstalk))

Mary Wong: That's sort of what I'm getting at.

Thomas Rickert: The name, acronym or designation protected by virtue of an international treaty. Second one would be an organization working in the global public interest. And then the nature of the organization - yeah, what would - what would be the requirement for the nature of the organization?

Mary Wong: Well that's the point I was trying to get at that, you know, if there's an agreement that the protected organization has to work in the global public interest - and I hesitate to use that phrase because that's such a difficult phrase. But assume, for the moment, then I think this question of what an

organization is, its status, whether it's recognized in a certain number of jurisdictions.

Those are just evidentiary factors, right, whereas the criteria itself is - that's the organization - if it mandates to act in the global public interest. And there's probably a better way to put that and I'm blanking on that. I just don't want us to put, you know, X number of national laws as a criteria or requirement. I'd rather see that as evidence of something.

Thomas Rickert: Thank you, Mary. Let me put this into the chat so that everybody can read it. Claudia.

Claudia MacMaster Tamarit: Just very quickly I would like to thank Mary I think for putting into words more eloquently a bit than I - than some of the efforts that we've been making over the last weeks.

As I said the mandate - the international global reach and extraordinary public service this is, from our perspective, absolutely essential. I think this is the reason why we give special protections to a particular organization.

And I think that some of the criteria that we've presented were just our attempt - and of course this is our project, all of us, you know, in this working group. And then for the community as well for those who are not represented here and who will be affected by their decisions and our recommendations that we find some sort of benchmark, some criteria where organizations can show.

Because even in this working group the organizations that have raised their hand and have said, you know, perhaps this special protection shall apply to me they have different legal schema, they have legal different evidentiary schema in terms of how they were created, what they do, the scope of their work even the treaties that they might even look to, the national laws, the number of jurisdictions. It's all quite different.

But to be able to have at least some sort of overarching criteria where organizations can in a different way satisfy them; one will say this treaty, another one will say this particular treaty, another one will say look, this is where I have legal protection for my name and acronym and then they go on to say and I have a mandate to serve the global community.

And I can show you this by showing, you know, the national legislation that applies to my organization because I've been able to show at least one country or maybe more this status. I can show you the liaisons that I have on a formal level with countries, with other IGOs, with other INGOs.

All of these sort of - I don't want to rehash the criteria we've presented but this is, I think, what very much the spirit with which we had provided and suggested some criteria was to just give us some flexibility to be able to apply to all organizations and for them to be able to say look this is my particular situation; this is how I satisfy these criteria and deserve special protection thereby. Thank you.

Thomas Rickert: Thank you, Claudia. I have put the two proposals into the chat and I'd like to ask you whether there are any further comments on that? There must be some views on this I'm sure. Maybe the participants are too shy. Okay I'm not going to spend more time on this for the moment.

I guess we should discuss this because, you know, we can add points to the proposal that was made by Mary and supported by Claudia to specify the global public interest and bring the protection in multiple jurisdictions to the table there.

Nonetheless maybe that's a starting point for us to work on a consensus position for the criteria. Are there any other criteria that you think inevitably need to be included in the first round? You know, this is certainly not exhaustive.

Okay I'm just reading that Avri is not shy but that she just thinks that what needs to be said has been said. Thank you, Avri, that's certainly true. And I was not, yeah, certainly you guys are not too shy to speak up just wanted to encourage you to speak.

Okay can we go to the next page please? Just to remind you that eligibility has been parked. Alan and others have been thankfully working on that. And with admission the considerable work on this has been done by Avri, Chuck and Mary. And I hope that I didn't forget anybody.

But there was the notion that the admission topic could be dealt with as part of the qualification criteria so maybe we can also park that for the moment. The only one question particularly in the light of the quotations that I made earlier that we might do a quick check on is whether the group thinks that getting access to protections would require an act of will, if you wish, by the requesting party because that was one of the points in the admission spreadsheet.

So in the light of the quotation that I made from the Board resolution which said that eligible parties need to apply to ICANN to be listed and is that something that maybe we can take as an interim result with us in terms of admission. Alan, please.

Alan Greenberg: Yeah, thank you. It's Alan Greenberg. What the Board did I don't think we have to be guided by although there may well be some wisdom in it. I mean, they try to pick something which is implementable not a huge door opening out of thousands of organizations which are eligible and application is a good way of filtering.

Based on the types of criteria we're talking about if we're talking about real meritorious organizations and flexible criteria I don't see how you could do

that without an application process. Otherwise there are just too many organizations to review. Thanks.

Thomas Rickert: Thank you, Alan. Avri is supporting this. Let me do the - do a test and ask you whether there is any objection to requiring an application for protection by those who are asking for protections.

Wolfgang Kleinwachter: Hello.

Thomas Rickert: Who's that?

Wolfgang Kleinwachter: This is Wolfgang.

Thomas Rickert: Wolfgang, please.

Wolfgang Kleinwachter: You know, when it comes to the IGOs I think we have a criteria already which was in the GAC letter which says that the organizations which fall under the DotInt domain should get this protection automatically. And I think there would be probably no need for an application from these organizations.

So because, you know, I have the feeling that we do a lot of, you know, work which is not our core business which could be done by others better. And we should try to use, you know, other procedures, organizations' lists or whatever which has already, you know, some of the potential candidates on their lists so that we do not go organization by organization which has, you know, this list which fits into the - which fits into the - our policy. And then we could refer to the list.

And, you know, a lot of good things has been said today but, you know, while I have the floor let me add one point. I think we agree - or that it's my understanding that there is a problem and we have to do something. But I think there is also agreement that we have mechanisms in the existing

procedures which give enough protection so that means we have to find out what is wrong with the existing system.

Are there gaps? And if we have identified the gaps then we have to look, you know, how to close that. But here we have to take into consideration that we face the risks to have unintended side effects. And I think the unintended side effects are the real problem that if we want to go to do some good things to help organizations, you know, and to protect them against misuse that we (unintelligible) which is then used by a lot of others and we have consequences in the whole system.

You know, what Alan has said in - several times with the clever blocking or whatever and this would be bad. So that means we should look really more probably other creative into what the unintended side effects could be if we introduce additional protection mechanisms which go beyond the existing mechanisms. Thank you.

Thomas Rickert: Thank you, Wolfgang. Alan.

Alan Greenberg: Thank you. I think what I heard Wolfgang say the GAC has suggested is not what I recall. I recall that they said that they would come up with a subset of organizations that are indeed eligible for the DotInt but that we were not going to use the DotInt qualifications themselves.

They actually are controversial and there's some disagreement. And there is in fact an application process to be - to decide whether you can get an In domain or not. And the Board resolution makes reference to that. So even in that case there is an application process although it might not be to us, it might be to someone else.

So I don't believe there is a reasonably short list of anything that we could use blindly. Thank you.

Thomas Rickert: Thanks, Alan. And just to add to that let me quote from the Toronto communiqué which says, "Building on these criteria the GAC and IGOs will collaborate to develop a list of names and acronyms of IGOs that should be protected."

So I guess that clearly supports the idea that even the GAC only - or potentially wishes to pass on a list which is a subset of existing lists to ICANN. Chuck, please.

Chuck Gomes: Yeah, just going back to the work that Avri led and that Mary and I were a part of on the admission subgroup, we, I think, agreed that we like the idea of an application because one of the reasons was that there's no use taking a name out of circulation if in fact there's really no desire or need for protection.

Now obviously that all depends on how broad the criteria are for protection; if it's a fairly narrow list then maybe it's a moot point and an application process may not be needed. But as I recall we really thought that having people apply for the protection lessened the breadth of coverage which we thought was a reasonable goal.

Thomas Rickert: Thanks, Chuck. Greg, please.

Greg Shatan: I guess a couple of things. I think there's kind of a - to comment on the last thing that Chuck said I think there's a balancing act here between having, you know, an opt-in type of process with an application and perhaps, you know, more robust protection versus having a kind of just qualification type system which might make more robust protections harder to justify or at least to achieve pragmatically, you know, in this organization in recommendations for the GNSO Council, ICANN Board, etcetera.

I think that - so I'm not, you know, unilaterally opposed to the idea of some kind of an opt-in process here, you know, especially if there are worthwhile protections to be garnered.

I think, you know, with regard to the DotInt it's a very narrowly based admissions criteria and I think that the - kind of goes back to the early days of the Internet when I was, you know, trying to do some quick research, you know, one of the first things I ended up looking at was a memo written by John Postel so that kind of tells you where it starts with.

It appears that you pretty much have to be basically an organization that's been created by an international treaty or a UN observer or a UN agency to apply. So while it might be a criterion that could be used it certainly - not being qualified for DotInt at most INGOs would be, you know, shouldn't be a strike against anybody, you know, being eligible for protection. Thanks.

Thomas Rickert: Thank you, Greg. Does anybody else want to speak up on this one? So I think, you know, maybe as an interim result we can derive from this that there is sort of a rough consensus that a application process might be needed. So let's gather that in the back of our minds. But we will certainly bring it back to the table once we know more about the scope of potential protections.

Berry, can you go to the next page please?

And that's the discussion of protections. And I'd like to use the reminder of this call to discus this again. And just to refresh your memory we have stated that the existing and upcoming RPMs do not permit all potentially protected organizations to use them.

We also learned that RPMs work in a curative or reactive way. And certain parts of the group did not like that. We also can take, as a starting point, that while a lot of reference has been made to reserve names list those asking for their designations to be put on reserve names list probably don't really want that because the reserve names list mechanism as it stands would not allow for the organizations in question to use the names themselves.

I see Alan's hand going up, please Alan.

Alan Greenberg: Yeah, thank you. It's Alan Greenberg. That third line on the list is not correct. It does not allow for new registrations of those terms. It doesn't stop them from using it. There's an IANA.org, I believe. And there's ICANN.org, there's all sorts of reserved names that are currently in use and would continue to be in use.

It does prohibit them from being blindly registered although I suspect if there was a new top level domain that is associated with networking IANA would get a dispensation to register in it should they choose. But it doesn't prohibit use; it prohibits registration which is a very different measure. Thank you.

Thomas Rickert: Thanks, Alan. Certainly the niceties of the consequences are not all included in these few words. Just adding to that certainly existing registrations would not be affected by the reserve names list. So without any changes being made in terms of policy, you know, names that are already registered would still be existing registrations even if the new gTLDs come in to play so that's something that we would need to consider as well.

Likewise even if we had designations going on the reserve names list it would not be, per se, excluded that eligible parties might use them at a later stage. But the registries involved would need to go through an (unintelligible) process to get that achieved.

And this is why, you know, the - using the reserve names list - and I just want the group to speak the same terminology. I guess those requesting protections are not really desiring to get on the currently existing reserve names list. But what they're seeking is protection by means of - let's call it a modified reserve names list or some other new RPM that has the effect of proactively preventing illegal or illegible third party registrations from taking place.

I hope, Alan, that you can accept the wording on the paper with these additional explanation including yours.

Alan Greenberg: Well I - it's Alan. I think simply by changing use to registration it becomes correct. So I don't know that we need a lot of elaboration on it. I understand that what the parties that we're talking about right now might want is not a reserve names list but some other sort of modification. I'm just pointing out that that categorical statement is wrong and easily fixable.

Thomas Rickert: And we will do that. Thank you, Alan. Now we have discussed the suggestion to open existing and new RPMs to all beneficiaries of the potential protection. And that idea was very welcome and there have been some who are opposed to that and let me make reference to Ricardo who has mentioned that on the email list.

But it is my understanding that since we spoke offline afterwards that he also supports the notion of having something which - something of the kind of a modified reserve names list. So unless I hear objection to the suggestion to open the RPMs up to other beneficiaries as well I think that's a point that we have at least some common ground on.

However there is no agreement that there should be proactive protections. And there is, you know, on top of these - this refusal of proactive protections the other position is that only those organizations that hold certain designations or are entitled to those designations should be entitled to registering those names so that actually no exemption mechanisms are needed.

And I think that maybe some common ground can be found by further discussing a model that I had briefly outlined on the mailing list and that was the idea of having a central database maybe compared to the database that is deployed to be used in the framework of the trademark clearinghouse.

Where let's say for the - upon application certain organizations can register their names and acronyms and then from the central database this information would be distributed to the registrars or the registrars could ping the database, whatever technical implementation one might choose, so that, you know, additional services - new services - permanent services could be developed to accommodate the request of the parties that seek protection within this PDP.

Alan, would you like to comment on that?

Alan Greenberg: Yeah, thank you. Just a quick comment, when talking about doing the equivalent trademark claims on an ongoing basis instead of just for the first 60 or 90 days registrars have said that that is exceedingly problematic especially for resellers. And there may be very large implementation issues of doing anything like the trademark claims on a permanent basis.

So I'm - I personally think it's a great idea and we should somehow figure out a way to implement it. But the people who have to implement it have stated that it might be problematic. So it's something to keep in mind as we go forward.

Thomas Rickert: Thanks, Alan. However let me please note that I was referring to the trademark clearinghouse and not to the trademark claims service. The trademark clearinghouse has two services which is the sunrise service and the trademark claims service.

But I was actually proposing - and let me also say that this is not my proposal but that's an idea that I've taken from previous discussions that I had with members of the community - that one might take a central database as a starting point for organizations to apply with and have their designations stored in one place.

And then would build an additional service, which might be comparable to the trademark claims service but actually would be a new service. Alan.

Alan Greenberg: Yeah, no but that - that is what I was talking about. If we're using the trademark clearinghouse basis to say a name is unilaterally blocked that's easy. But to use it for something which may be judgmental, may be equivalent to the trademark claims in how it functions might be problematic. And I was just alerting to - the group to that.

Thomas Rickert: Understood, thank you, Alan. Chuck.

Chuck Gomes: I think it's correct that the trademark clearinghouse will be in existence indefinitely because there has to be renewal of trademarks and so forth every year. And so I think it could be used as a validation device whether it's used for - specifically for a sunrise or a claims process. But I just throw that out as a thought there.

Thomas Rickert: Thanks, Chuck. It is certainly correct that we, while we're thinking of policy, should bear in mind the implications on the implementation of such policy. For the moment I'd like the group to think a little bit out of the box and leave aside the problems of technical implementation.

And that would mean that we should have a discussion on what a potential new RPM should look like. And I think that the idea of having a centralized database where the basic information on the strings that should be protected would be stored is a good starting point.

So maybe that's something, you know, you don't have to say anything now but as we move along I will certainly test the waters again to see whether there's any opposition to this idea.

And then what's been built on top of that that's the second question. So I think the central database, the trademark clearinghouse database equivalent, should certainly be maintained on a permanent basis.

I guess that those requesting protections would also seek the service built on top of that to be a permanent service. And I would expect them to expect the service to prevent third party registrations from taking place without having the eligibility of this third party checked.

Now I alluded to the fact earlier that there are members of our group who say that no exemption mechanisms are needed. My understanding prior to that intervention having been made was that there is merit for exemption mechanisms, which is why I would like to - you to respond to that.

And even though Alan is certainly right that we should not be guided necessarily in our deliberations by the Board or by the GAC, let me quote the GAC in this case again from the Toronto communiqué which stated, "While the GAC continues its deliberations on the protection of the names and acronyms of the intergovernmental organizations against inappropriate third party registrations," and then it goes on with the GAC advice.

But to me that is a clear indication of the GAC assuming that there may be legitimate registrations of designations that are related to IGOs because there is no other reason, at least in my view, why the GAC should otherwise specify that it just wants to get - to avoid inappropriate third party registrations.

So I would assume that we would need to discuss exemption mechanisms and that only an RPM with exemption mechanisms would find broad acceptance. Not talking about consensus.

And I'd like to open the floor on that. What could a potential exemption mechanism look like? How do we ensure that, you know, if we want to have an exemption mechanism how do we ensure that legitimate third party

registrants are not facing any disadvantages or substantial disadvantages that outweigh the risk for the beneficiary of this program? Any views on that?

Okay Kirin please or maybe it's Jim?

Jim Bikoff: Yeah, no I was just going to say that I think there should be exceptions because I think that with all of these designations that we're talking about there are probably legitimate uses that can be shown by somebody, some place. And there should be a procedure that can be used to vindicate legitimate rights in a designation.

We did that in the IOC RC group last time. We had recommended an exception procedure. And I think that would be proper to do in this proceeding also.

Thomas Rickert: Thanks, Jim. I guess when we're talking about an exemption procedure we would need to specify a little bit further what that should look like. For example I have read that exemptions should be granted by the organizations in question. While others have voiced concerns with that and they would prefer independent bodies to actually evaluate whether an exemption or a third party legitimate user is actually applying for a certain registration.

So maybe that's something that members of this group also would like to comment on? I see Greg's hand up and then Chuck please.

Greg Shatan: I think it would be helpful to circulate to the group what we arrived at in the IOC RCRC DT so we can, you know, use it as a starting point in our next call and between calls.

I am not as cynical as some or even about whether organizations, you know, would give an exemption if asked for one. I would see perhaps, you know, having that as a first resort with an appeal to a WIPO type, you know, arbitrator.

If (a sale) I think the idea was to not make it expensive initially if it could be worked out between the organizations. Maybe could be clear that, you know, no consideration, you know, can be sought financial or otherwise for allowing the exemption.

But I'm certainly, you know, all in favor of the exemption versus no exemption which would seem to be, you know, rather harsh and not recognize the (unintelligible) that at least some of these potential domain names, you know, would have more than one potential applicant or user one of whom would be an IGO/INGO and one of whom would not be.

I think if you get to full string whatever, you know, OECD actually stands for I doubt that there's somebody - anybody other than them could register for the entire string legitimately.

But, you know, for other things like, you know, WHO, you know, World Health Organization, but arguably a rock band probably technically, The Who, but there's - you get into words rather than spaghetti-like acronyms that you probably do get - certainly have the need for some form of an exemption process that recognizes that there are legitimate rights of others in addition to the legitimate rights of the IGOs and INGOs.

And that, you know, some form of a process that deals with all of that appropriately would be welcome. Thanks.

Thomas Rickert: Thanks, Greg. Chuck, please.

Chuck Gomes: Thanks, Thomas. At least as far as I can tell there's pretty good support in our group for some sort of an exception or exemption procedure. I think to work out the details of that is going to take us a separate effort.

But one thought that comes to my mind in the case of exceptions for somebody who has a trademark certainly the trademark clearinghouse could be used as a validation mechanism at least one step in terms of granting that exemption. It may not be the only one but that's another place, I think, where a trademark clearinghouse might come into play at least for mark holders.

Thomas Rickert: Thank you, Chuck. Kirin or Jim.

Jim Bikoff: Yeah, no, my suggestion was - and I think this is more to Greg's point - it would save a lot of time, money and effort if the organization itself consented. So I think you'd have a two-step procedure. You'd have the organization would be asked to consent and if they didn't consent then the applicant could appeal to another party. And I think that would work out.

And I think - I agree that if the organizations are reasonable a lot of them will consent to legitimate rights that are being asserted by another party.

Thomas Rickert: Thank you. Alan.

Alan Greenberg: I think that any exemption process you have to build a timeline. I know I've tried to apply for rights to use things and they don't say no, they just don't answer. And that kind of thing is problematic. So I think there's a timeline that's necessary.

And the second thing is presuming that the organization doesn't just say yes we have to make sure that the cost of obtaining permission through the appeal process or what it is is not unreasonable because otherwise they have an effective veto by simply not saying yes and an organization that doesn't have an awful lot of stake in using the name may be shut out just because of the difficulty in going through the process or cost. Thank you.

Thomas Rickert: Thanks, Alan. Chuck.

Chuck Gomes: We have an example in the new - in the application process that fits this I think pretty well. And that is where applicants needed to get - initiate in their own part - if somebody wants an exemption they can go to the organization for which they're going to need approval and request a letter of approval or support from them in advance of the process.

That might simplify the process some and deal a little bit maybe with what Alan's talking about in terms of lack of (unintelligible) but put the onus on the organization that wants the exception.

Thomas Rickert: Thanks, Chuck. You've been accompanied by some funky music in the background so maybe that was because the idea was good, I don't know. Kirin, is that an old hand or a new hand? Oh, it's gone now. Alan, please.

Alan Greenberg: Yeah, I want to ask Chuck to explain a little further. What I thought was talking about is the applicant - the one who wants the name - has to make an application. And I was worried about the legitimate owner, as it were, simply not responding or delaying it. I'm not quite sure how what Chuck was suggesting fixes that. Maybe I misunderstood.

Chuck Gomes: Well, Alan, this is Chuck. I don't think it fixes all of your concerns. But what I was getting at if rather than after the - a domain name registrant requests a name and having to get approval for it after the fact requiring them to submit a letter of support from the applicable organization in advance would deal - would solve that problem in advance.

Now there's still the problem that if they can't get any cooperation from the applicable organization it doesn't solve that problem.

Alan Greenberg: Yeah, no so I guess I hadn't even thought about the exact order of whether you ask for permission and then apply or the application triggers a request; I hadn't even thought at that level. And of course we can solve the whole

problem by saying if you don't respond within three days you're deemed to have said yes so.

Chuck Gomes: Right.

Thomas Rickert: Well we only have six minutes left but let me confront you with this idea; why not work on a first come first serve basis? Only those create requests would not be processed until the eligibility of a party has been determined by the trademark clearinghouse equivalent?

So if, let's say, a legitimate user is faster than one of the eligible organizations then he or she would get priority over the organization because one might say that if there is legitimate use then there needs to be a level playing field for the legitimate user versus the organization in question.

And then one might add to that an objection process. And if then the registering party revokes the application for the domain name all is well; but if it doesn't then those - then this create request would be shelved until they have extra-judicially or judicially resolved the matter. Alan.

Alan Greenberg: Yeah, I wouldn't think that we'd want to say someone registering who.animalcalls would stop the World Health Organization from using their name or something like that. So I think we need to be careful about that.

Robin Gross: This is Robin, can I get in the queue?

Thomas Rickert: Please, it's your turn now.

Robin Gross: Great. Yeah, I just got a little bit of concern when I heard notions that people would need permission from these organizations to use these domains because a lot of times you don't need permission. If you want to criticize one of these organizations you don't need their permission. They're not going to give you their permission but you have a right to criticize them.

So I'm a bit concerned if we're heading down a path that seems to imply that an exemption will depend upon permission from the organization that one could see as being a competitor of the domain.

Thomas Rickert: Thank you, Robin. And, Greg, you will be the last person to make a statement today.

Greg Shatan: I think what I was envisioning at least was that if the organization refused or failed to answer within a set defined period of time that at that point the other party could go to, you know, a third party arbiter or some sort of decision maker and seek it from that body and under, you know, a criteria that we could determine.

So I'm not sure that we have - the issue of competition is as significant in this area as in the commercial area but I think, you know, whatever those criteria would be I think it just would be more usable - user-friendly really to have the organization be kind of the first line.

If people are concerned about that go directly to an arbitral body or some sort of other mechanism. But it seems to me that we're actually kind of making it complicated where it might, in fact, be simple. Thanks.

Thomas Rickert: Thanks, Greg. And I think we should take this interesting discussion to the list and please, let us discuss between now and next week's call. So let's keep up the momentum. I think we've been exchanging very good thoughts. And I think we - on the basis of these thoughts we might be able to come up with a joint position.

I'm going to skip Point 4 on the agenda for the sake of saving time. The next meeting is going to be at 1900 UTC and one week from now. But for the week afterwards we will start two hours earlier so we're going to rotate the times a bit between 1900 UTC and 1700 UTC because, as you will remember

there have been several complaints that this would be a difficult time to come to meetings for European participants in particular.

So but you will also see that reflected in the next invitation. But also tell your friends that want to participate so that they're not late in two week's time. Thank you all for your participation for - and for a very good discussion. I hope that we can wake up this group. Not all of you were asleep certainly but I think we need to be working more proactively in order to come to achievements in a swifter manner.

And I think it's much more fun if we come to conclusions rather than having this linger on. Thank you so much. Have a great day. Bye-bye.

Jim Bikoff: Bye.

END