ICANN Transcription

IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 13 February 2013 at 19:00 UTC

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Attendees:
Iliya Bazlyankov – RrSG
Jim Bikoff – IPC/IOC
Avri Doria – NCSG
Chuck Gomes - RySG
Alan Greenberg - ALAC
Catherine Gribbin - Red Cross
Stephane Hankins - NCSG
David Heasley - IPC/IOC
Evan Lebovitch - ALAC
Kiran Malancharuvil - IPC/IOC
Christopher Rassi - Red Cross
Thomas Rickert – NCA –Working group chair
Greg Shatan - IPC
Claudia MacMaster Tamarit - ISO
Mary Wong - NCUC
Mason Cole - GNSO Council vice chair - RrSG
Osvaldo Novoa - ISPCP
Elizabeth Finberg - RySG
Lanre Ajayi - NCA
Debra Hughes - NPOC

Apologies:
Robin Gross
Wolfgang Kleinwachter

ICANN Staff:
Brian Peck
Berry Cobb
Gisella Gruber

Coordinator: Excuse me, this is the conference coordinator. I would like to take a moment at this time and inform participants that the call is now being recorded. If anyone has any objections you may disconnect at this time. And you may begin.

Gisella Gruber-White: Thank you very much. Good morning, good afternoon, and good evening everyone. On today's INGO call on Wednesday, 13 of February, we have Iliya Bazlyankov, Jim Bikoff, Avri Doria, Chuck Gomes, Alan Greenberg, Stephane Hankins, (David Hesley), Kirin Malancharuvil, Thomas Rickert, Greg Shatan, Claudia MacMaster Tamarit, Mason Cole, Lanre Ajayi, and Evan Leibovitch.

 (Elizabeth Finberg) has notified us that she will be late on the call and have I left anyone off the role call?

Mary Wong: Yes, this is Mary Wong. I'm here.

Gisella Gruber-White: Mary Wong, my apologies. Mary Wong is on the call as well.

Mary Wong: No worries.

Gisella Gruber-White: And if I could remind everyone to state their names when speaking for transcript purposes. Apologies today noted from Robin Gross and (unintelligible). And from staff we have Brian Peck, Berry Cobb, and myself, Gisella Gruber. Thank you. Over to you, Thomas.

Thomas Rickert: Thank you very much, Gisella. This is Thomas Rickert speaking and I'm the Chair of this working group. I'd like to welcome you all and I'm going to make this announcement at the very beginning of the call as well as at the end, please note that we will have rotating starting times as of next week.

So we're going to start two hours earlier next week and then again at the usual time. So please bear that in mind and keep your eyes open for the invitation emails that you're going to receive via the list.

Before we move to the next agenda item I would like to ask whether there are any updates to the statements of interest. Hearing none and reading none in the chat we can now move to Agenda 2, which is the status of the General Council request. And I'd like to pass on to Brian Peck to give us an update. Brian, please.

Brian Peck: Thank you, Thomas. This is Brian Peck from ICANN staff. General Council office is wrapping up the collection of various outside Council research. So far they have not still received anything that has been run counter to or anything different from the trend that we reported kind of a couple weeks ago.

If I may, maybe just to refresh everyone's mind and just maybe kind of clarify, you know, that today - given as well some of the on-line conversation discussions, you know, based on the research conducted to date the General Council has not found any domestic law that specifically prohibits the registration of a domain name utilizing the Red Cross, IOC, or IGO names by any party in the domain name registration chain; examples, you know, registries, registrars, ICANN, so forth.

The trend that they have indicated or have determined so far is that there are domestic laws which will provide causes of action to challenge those registrations along the lines of what we reported a couple weeks ago.

So just wanted to try to clarify, that's the trend that they have seen from the research collected so far. As additional research has come in from other jurisdictions that trend continues but, of course, they've said two things.

One is that they would alert us if anything different comes in. And I've asked them again to try to provide a completion date so that we can get a final formal report from them. So hopefully we can report on that soon.

Thomas Rickert: Thank you very, Brian. Unless there are any urgent questions from the group to Brian I would like to move to the next agenda item because you will remember that we have discussed the scope of the General Council request extensively and so I would prefer not to spend more time on this - during this call but rather wait for the results and then discuss the results.

In - and I don't see any hands raised nor do I see any questions in the chat in which case I think we can move to the next item on the agenda, which is the discussion - Chuck, have I missed you raising your hand? I've been notified of that.

Chuck Gomes: This is Chuck, Thomas. I - sense you want to defer that to later I'm okay with that. I was going to ask Brian a question but it can wait.

Thomas Rickert: Please, go ahead. I mean maybe something that Brian should...

Chuck Gomes: Well, Brian, in your quick report there you mentioned - it sounded like there was a trend in - with regard to national legislation. Did I understand you correctly that also with international treaties that there's nothing clearly prohibiting registries, registrars, and ICANN to register such names?

Brian Peck: Yes, that was in the scope of the research is including both international treaties and domestic laws.

Chuck Gomes: Okay, so there really is nothing so far that's explicit prohibiting registration of the names.

Brian Peck: That's correct.

Chuck Gomes: Thank you.

Thomas Rickert: Okay, so Brian, just to - final remark on this, thanks for your update and - first of all but I think it's a little bit troublesome that we don't yet have a definitive delivery date for the General Council's request because - and those who have followed our discussions over the last couple of months will have noted that we'll get back to this point every now and then. So that seems to be a major hurdle for this group to make substantial process.

And for transparency reasons I'd like to share with you that I am in contact with Jonathan Robinson, the GNSO Council Chair, whom I regularly update on the progress that we make. And he also shares the concern that we're still without an answer from General Council.

So we might try to also open up other communication channels to maybe get a definitive answer on at least the delivery date so that we get some more predictability in our work plan because as you know I have been more or less skipping the work plan update for quite some time now because the outcome of the General Council request is a big unknown with huge impact on our work actually.

Okay, thank you very much for this. Moving to the next agenda item, that is the review of the SG&C input. And in this case input from NCSG. I'm not sure whether Robin Gross who has sent in an apology for today's call has received my question whether one of her colleagues would actually be on the call to be able to show us through their group's responses and be ready to answer some questions.

And therefore my question to the group is there anybody from NCSG that could lead us through or quickly show us through the response? Obviously my request to Robin did not reach her in which case I'd like to open the - Mary, Mary, please go ahead.

Mary Wong: Yes, thanks, Thomas. I'm not sure that I would be in a good position to read through that although I could try if that was the group's view. But I just wanted to note that it's quite likely Robin didn't receive your request because I believe she's been traveling for quite a significant period of time the last few days.

Thomas Rickert: Okay, Mary. Would you be in a position to at least highlight some of the major points in your group's response? I don't mean to put you on the spot so if you don't volunteer that's okay.

Mary Wong: No, I mean I would be - I think I would feel not particularly comfortable because this was developed as a group view in which some participated who are not on this call or even in the group.

                But what I could do is if there are questions that you or anyone else in the groups has to the extent that Avri or I could answer them with some sufficiency on the call we can try. If not we can certainly take the questions back to the group and that may speed things up a little bit in terms of getting a response back from the group to this group.

Thomas Rickert: Mary, that's very helpful. So let me open up the question to the group. Are there any questions for NCSG regarding the statement? Hearing and reading none, I would like to encourage you to post those questions on the mailing list and I'm sure that Mary and her colleagues will be more than happy to respond to those.

                But you know, certainly having read the document I think what is worthwhile noting in the course of our discussion is that NCSG is obviously willing to consider protections but they're also asking for evidence of harm so that adequate responses can be drafted or at least considered.

                So I don't take this as a quote because I'm sure I'm paraphrasing but you will remember that we had a quite vivid debate on this very question on the

mailing list. And I'm sure that we'll get back to that in a second. So I wanted to make that - bring that message across to the group that NCSG was also requiring some sort of information on this.

Now we have a new Agenda Item 4, which Avri has kindly reminded me of inserting, and that is the discussion of the pending ICANN Board resolution on IGO protections and corresponding deadline until the 28 of February.

Just to give you a little bit of background information, the ICANN Board has in fact said two deadlines, which are comparable I would say but not all of you might agree with this where the ICANN Board asks the GNSO Council whether there are any reservations or whether there are any concerns with respect to the global public interest.

And the deadline for end of January was relating to the provisional protections for the IOC/RCRC and the 28 of February deadline refers to the provisional protections for IGO name.

And Avri has requested that we put this issue on the agenda of today's call for the group to discuss. Avri, before I move to you let me give you a little bit of background information.

And I might need Brian's help with this because when the January deadline regarding the IOC/RCRC names approached I had a communication with Jonathon Robinson, the GNSO Council Chair as you know, and we discussed - or I alerted him to the fact that some sort of a response was required by the GNSO Council.

And as you would truly guess, no such alert was required because that was already on the radar of our Council Chair. But he then communicated with the Board and then that specific instance he also corresponded with Brian Peck who confirmed that in the light of the recent Council discussions and actions no further response was required before the January 28 deadline.

And Brian, can you please give us a 30-second update on the reason for that or maybe a little bit background information of the sequence of happenings at the time?

Brian Peck: Sure, with regard to the January 31 deadline as you pointed out Thomas, this was related directly to the Board's decision to provide second-level protection for the IOC and Red Cross names for the first round of new gTLDs.

And basically what the Board asked in this request was if the GNSO Council had any advice or aware of any reason, you know, concerns of the global public interest that would come into play for the Board to change its decision or to consider its decision in that light.

Given that the Council adopted a resolution back in December 20 to extend - or to provide protections of IOC and Red Cross names at the second level for the first round, that we viewed as indeed sufficient and in responding to the Board request by the January 31 deadline.

Thomas Rickert: Thank you very much, Brian. So that's - I guess sufficient information to give you enough history to start our discussion. And Avri, please go ahead.

Avri Doria: Okay, thank you. Yes, part of the reason I brought this up - this is Avri Doria speaking. Part of the reason I brought this up is because it came up yesterday in our monthly NCSG policy meeting. And basically it came up in our meeting because I believe it's on the GNSO's agenda for its meeting later this week. And that's what reminded us all of the deadline.

Now I'd like to point out two things in terms of - so partially I wanted to make sure that Thomas, when he went into that meeting, went in with us having had a conversation and therefore brought it up. I want to bring up two things though.

One, in terms of the IGOs, while I don't remember the date there was a while back when the IGO request first came through a GNSO decision against going forward with protections for IGOs.

I'd also like to bring up the whole notion of the rule of PDP within ICANN and as we are in the midst of a process at the moment, a policy development process at the moment on this issue.

I think it would be against the public interest for the Board to create new expectations of entitlements to protection before such time as either the group had a chance to finish the work or the issue was pressing in that they were about to eminently approve a new gTLD going into the room.

Since neither of those two conditions has been met, I think the public interest is in the GNSO saying, we've got a process ongoing, you know, no need for an emergency decision from the Board just yet, we're working on it, we'll keep you informed, or something like that. Thank you.

Thomas Rickert: Thank you, Avri. Any further contributions on this? Okay, I give you a little bit more time to think it over.

Avri, to be quite honest, when I discussed this with Jonathan my train of thought was that the provision of protections for the IOC and RCRC also were done and decided upon prior to the GNSO finalizing or at that point in time even having started a policy development process.

And since that is the case, we - in both cases don't know yet the outcome. And while I hear what you're saying my thinking was that if the mere fact that the GNSO Council has agreed to provisional protections pending the outcome of the policy development process was deemed a sufficient answer by the ICANN Board in response to the question of concerns for the global public interest I thought that a proposal could be made to the General Council that we treat this specific instance of the IGO names the same way because

in this case also we do not know what the outcome of the deliberations of the community will be.

Avri, I'm not sure whether your hand is still up or up again?

Avri Doria: Definitely a new hand.

Thomas Rickert: Okay, there you go.

Avri Doria: Okay, thank you. Yes, I had put down my hand when I finished the other one like a good citizen.

Yes, I'd actually like to respectfully disagree with your thinking on this. First, there is a concrete difference. At that time there was no PDP in process so one could say in the absence of a PDP, in the absence of being worked on, the Board has no prohibition against going ahead and doing its own thing.

Many of us thought it was ill-advised, some thought it was well-advised, that's water over the dam as it were.

However, in this case, there is indeed a PDP in process and the emergency notions that, of course, the Board has the right to make a decision in emergency does not pertain yet.

And so therefore the situation is not as the situation was before then when there was no process in effect. Yes, there was also no emergency but the Board got it in its head to do what the GAC had asked because maybe there were other emergency in GAC Board relationships. I don't know.

At this point though the situation is not the same so I do not believe that that is a good precedent for putting in emergency policy, otherwise we're creating the precedent that says any time the GAC thinks something is important enough to make the Board - make a request to the Board then the Board will

put in a decision that could be voided if the process - if a process occurs and goes against it.

And that's a whole new way of doing policy that I really don't believe the GNSO wants to encourage, you know, this notion that - well, nothing's happening so we decide. And especially they don't want to encourage that when something is actually happening. Thank you.

Thomas Rickert: Thank you, Avri. And you're certainly free to disagree with my view and I think this is a very good discussion and rest assured that I will report those concerns to the Council at the next call. Alan, please.

Alan Greenberg: Thank you. It certainly was in the right of Avri or NCSG or the GNSO Council to believe that the Board didn't have the right to take this action and use the Board reconsideration process or some other process to call them on that.

But I don't think it's this work group's job. The motion stands unless it gets challenged formally and is rescinded. And at this point the motion is asking the GNSO, not this workgroup, asking the GNSO whether they know of any reason for - in the public interest or (unintelligible) stability that the Board shouldn't - that it is planning to do.

So I don't see how it's within the purview of this workgroup at anyway.

Thomas Rickert: Thanks, Alan. I think that at least the group's view should be presented to the Council during its deliberations on this question. May I ask you to - I think we shouldn't open the discussion to comments on the past doings of the Board as such because I think those pros and cons and controversial opinions have been discussed at length.

I think the main question for us as a group is to give information to the Council whether there is enough reason for different treatment of the deadline

for IOC, RCRC, and for IGOs bearing in mind that those need to be made in the absence of finalized PDP. Avri, please.

Avri Doria: Yes, quickly. I thank Alan for the suggestion of a reconsideration of the previous Board and I'll take it back to the NCSG as something to consider.

The only reason I brought up the issue was because you had posited it as a precedent and I wanted to say that I did not agree that it was a viable precedent.

I was not trying to make that an issue for this group but I do believe the opinion of this group is something that you as Chair should be able to bring into that meeting as a GNSO Council member. Thank you.

Thomas Rickert: Thank you very much, Avri. And I'd really like to encourage others from the group to speak up because so far I have seen Avri and I've heard Alan's concerns.

I have seen Evan supporting Avri's view and if it was actually true that there's no one in this group that thinks that the 28 of February deadline can be treated as we did the end of January deadline then I should know. Because I had planned as I reported earlier to report to the Council - to propose to the Council that we treat them the same.

You will remember my thinking that in both cases we don't know what the community will say so I thought there was no reason for different treatment but if the group chose to take a different view then certainly, you know, it's not about me pushing my views. It's me trying to represent as accurately as I can the group's view. Greg, please.

Greg Shatan: Thomas, this is Greg. I was just going to voice support for your views. I really have nothing eloquent or even non-eloquent to add at this point but did want to put that on the record. Thank you.

Thomas Rickert: Thanks, Greg. Any further comment on this or statements, just plus ones or for Avri's view or for my view? You know, this is not a vote. I think I just need to get some indication as to the group's view in order to report back to the Council.

I see Kirin or Jim's hand up, please.

Jim Bikoff: Yes, Thomas. I just wanted to say that I read this morning an email from David Rose Turner and I actually support his reasoning on the fact that these dates mean something because why would the Board have required information by dates if they could be, you know, not taken into consideration.

So I think - I would just ask his views be considered as to both dates.

Thomas Rickert: Thank you, Jim. Lanre?

Lanre Ajayi: Yes, I think the case for the IOC and RCRC is not too different from the case of the IGO (unintelligible). And I think they should be treated the same way. So I think I would like to support your view on this.

Thomas Rickert: Thank you very much, Lanre. And unless there are further statements I will do my best to present our discussion to the Council tomorrow.

Fortunately I see at least Alan as a witness of today's discussion being present on the next Council call as well so he might be able to help out to ensure that the group's view is presented as accurately as possible.

Okay, thank you very much for this. Which allows us to move to the next agenda item, which is the harm evaluation discussion, next steps, which is Number 5 on the agenda.

And as you have seen on the mailing list, Berry has conducted research on domain registrations and I would like to explicitly thank Berry for this enormous work that - enormous - the enormous amount of time that he has put into this.

And the reason why we chose to do this is because there were - and continue to be discussions amongst the members of this working group as to what if any information should be provided to evidence harm.

You will remember that some participants or some groups represented in this group or - actually you don't represent the groups necessarily but you represent personal views.

But there are parts of the working group that said that they would like to see some evidence of harm to be able to consider adequate responses that actually fix a problem that is in existence. And I think that's a word or sentence that Alan was using or - to be able to create responses that correspond to the actual threats.

There was some inside the group that - who said that for legal and other reasons that this was not required but in fact we felt that if it would help those who are requesting evidence of harm to answer the question of the presence or absence of harm on the basis of the domain assessment or survey that Berry did then we might be able to actually overcome this hurdle and bring the group closer to consensus.

I have asked Berry to show us through his work and therefore at this stage, again, thank you for the work that you've done. It's much appreciated. I'd like to pass on to you, Berry, to show us through the spreadsheet.

Berry Cobb: All right, thank you, Thomas. This is Berry with ICANN staff. So as Thomas pointed out, most of you have seen the spreadsheet. Again, which is just a

derivative off of a preliminary analysis that (Dalen) had started. Now I added a bunch of bells and whistles to the report so to speak.

I - just a couple of points before I kind of quickly walk you through what the structure of the spreadsheet is like.

And first and foremost noting that this is still a draft form and certainly doesn't represent anybody's particular position about anything with respect to the types of abuse or the reasons for domains being registered and not - and certainly doesn't represent any position from anybody within this working group.

A couple of notes about the scope is first and foremost this is only a direct match analysis of the acronyms that were provided from those that assigned the letter that was sent to the Board late last - late in 2011.

And it does not include any other types of potential harms that may exist out there where an identifier plus a key word or a typo of that identifier was used. Of course, that increases the complexity of that kind of analysis. So again, this is just direct match only.

As well, it's something that should be pointed out here and it kind of ties into the color scale that's been provided or is the key for assigning types of attributes about the use of a particular name is that none of this represents any action by the respective organization.

For instance, some may have a very aggressive strategy for protecting their name, some others may not. But none of that is implied within this analysis.

And lastly, certainly I think everybody knows that they're well over 200 plus country code, TLDs, out there. I only selected 11 that I thought were kind of the more popular for lack of a better word or probably the most registrations

within a ccTLD. If analysis needs to deep dive further into the country code used we can consider that at a later time.

So I tried to narrow this down to keep this within reasonable utilization to try to complete. All of it is manual, none of this is automated that you may see in other types of studies.

One other point that I'd like to make here, which is in terms of conducting the analysis in and of itself, as I was reviewing through each organization I tried to take the stance of wearing that organization's shoes for lack of a better phrase in that their - you know, here's the problem, let's review the problem, and then highlight some of the concerns or possible threats from that organization's perspective. And so again, it's just something to take into consideration.

(Unintelligible). I do apologize if people cannot see this very well. Again, it's one of the limitations of sharing a spreadsheet within Adobe Connect. So if you are having trouble viewing it please just kind of try to follow along with the spreadsheet on your own machine.

So what we tried to - or what I tried to accomplish in this study first is there's basically two questions that need to be answered across the scope or the sample pool. Again, the pool is defined by 30 different top-level domains across 20 organizations. There are actually - sorry, it's 18 organizations but 20 different strings.

Certainly there are other organizations that were included in the scope of that letter but, again, I tried to trim it down just to try to make this manageable and get some kind of more comprehensive picture and we can evaluate the other organizations as necessary if we need to move further with this study.

So for each organization, two questions that were trying to be answered. First, is the domain in question registered or not? And then secondly, in

reviewing Whois information does the organization in question have control of that particular domain or not.

And then we'd also review through what was listed as the registrant information within Whois as well as taking the quick look at how that domain resolved and what was the end result.

So as you can see, you know, for example, in Row 4 for the European organization of nuclear research or CERN, CERN.CA was registered. It's not in the control of that organization. It's actually belongs - or registered to the (unintelligible) exposition - the name that I can't pronounce.

But the use of that particular domain did appear that it looked as though it was a legitimately used domain by a different organization that just happened to be using that particular identifier. And that's where we get into the legend that you'll see over on the left.

Basically there's two columns, one registered, one per org control, and each has their own declined - their own defined scale.

So for a particular registered domain, if it didn't happen to be registered the color scale goes from a light blue to a black.

Light blue meaning that it appeared that that name was reserved in one fashion or another but it wasn't counted as being registered or if the domain was not necessarily registered I tried to gauge as to the availability or the ease of registering that domain.

One of the points that I mentioned in the email that included this is that country codes and generics and generic restrictions and sponsored all had different criteria for policies for - that allowed for the registration of that name.

And sometimes those policies can inhibit a registration of a name by a third party outside of the organization in question.

And then lastly, with black being - if that domain was not registered in that particular TLD perhaps the registration policies are very limited that it would be very easy for a third party to register that domain. But it may show that certainly that domain was not registered by the organization in question from a defensive or other use perspective.

With respect to the organization control, again, it's divided in three; green, yellow, red. Green being that it appears that there is possible legitimate use of that particular domain name for that TLD. L, a yellow would indicate that the particular domain name was either part or used in some kind of particular way or certainly does not resolve.

And then the red indication meaning that it appears that that domain is used not in good faith, i.e. is that it's monetized or maybe trying to mimic the organization in question to either cause confusion or, again, for monetization efforts.

So that's basically what you see down the scale across the TLDs. And then I'll talk about the gray-shaded areas and then turn it back over to Thomas.

So basically what I tried to accomplish here is to summarize and each of the two column values of what we're dealing with. So for (unintelligible), continuing with the example of CERN, of the 30 TLDs that are in this study, 17 showed that they were registered. And of - and then, of course, three were shown to be in the control of CERN, the organization in this case.

And then below that there are several rows defined by the TLD type. So comprehensively across 30 TLDs, 17 were registered that would result in 56.7% being registered. And then you'll look at the percentage to the right of

that which is H35 will show that of those 56.7% domains registered or 17, 17.6% of those are within the control of the organization itself.

And then below that is just a breakout of TLD type so that you can review from a country code, generic, generic restricted, or sponsored.

And then just the last thing I'll point out to you is as you scroll to the right across the 20 organization - I should say, the 20 strings across the 18 organizations, you get over into Columns CG and CH, which are rolled up summaries by TLD and of course by the summary metrics themselves.

So we can do a row analysis and review from a TLD perspective. So we'll use .MOBI as an example. Across the 20 different streams, 85% of those were registered and only 11.8% of those that were registered were in control by the organizations within the sample pool.

As well as you can work your way down into the list around Row CH37, which are more global statistics, again, by TLD type.

So as a macro view of the samples, out of the 30 possible TLDs across the 20 different strings, only three - I should say, 341 registrations were found. Of those 341, 93 were in control of the organization one way or another. And then those are broken out by percent.

The last thing that I will state is something that the working group should consider when you're trying to digest this information is should we have any - you know, course corrections in the definitions here.

For example, what you'll see on Row CT33, the domain name, RedCrescent.XXX is reserved by ICM registry. Should these be incremented as one and one - I mean should we consider that these domains are registered or not? Well, they're not technically registered but they do show up in the zone itself.

But then second, do we consider this within the control of the organization or not because the reason why I left these are zero is technically the domain is not registered and it was hard to ascertain if it was the organization in question that had the name reserved through Sunrise or if the registry was being proactive in trying to reserve these names. So that's something for the working group to consider.

And then lastly something else to consider would be the definition of what raises the yellow or red flag when looking at one of these domains. Is it enough to say that park is only yellow and monetization is only red?

You know, I hate to use this word but that's kind of where some of the subjectivity of this may come into play - come into review.

So definitely available to answer any questions. If you have any other suggestions to move this forward welcome to them. Thank you.

Thomas Rickert: Thank you very much, Berry. And I see Alan's hand up. Alan?

Alan Greenberg: Yes, thank you. Just a quick comment on one of your last comments on .XXX. Unless I'm mistaken .XXX did not proactively reserve names for people unless they're willing to pay some money ahead of time and from my point of view that's no different than registering a name.

I mean whether it's usable or not is - may be different but it's effectively - the companies have asked - the organizations have acted to make sure their names did not get registered by someone else.

Now there's some earlier ones for some of the domains where apparently the registry has reserved the name and, you know, that one I think is more subject to question how we define those. Thank you.

Thomas Rickert: Thanks, Alan. Greg?

Greg Shatan: Alan, actually I think that's not correct. I think XXX did reserve on its own initiative a number of names relating to celebrities and to other - and not so much to, you know, profit-making corporations but - they wanted their money.

But they did preemptively reserve some names that they thought would cause them trouble if - even if the entities that controlled them didn't go forward. But, you know, we can look into that.

Alan Greenberg: I stand corrected then.

Thomas Rickert: Thanks, Greg. If I'm not - Berry, please.

Berry Cobb: I'm sorry, Thomas. And just real quick, and this is Berry, and that's precisely why I kind of left these at zero. It was hard to make that ascertain when reviewing the Whois or anything like that. So great comments, thank you.

Thomas Rickert: Thanks. Any further comments or questions for Berry? I think, Berry, that the participants of the group have to digest all the information a bit further between now and the next call. So I'm sure that we'll get back to that.

The question that I'm asking myself is whether those who were asking for evidence of harm think that this exercise is useful piece of information for them to may be convinced "that there is harm" or that they can themselves take this as a basis to see whether in their subjective view there is sufficient harm to move on or to proceed considering some protections, whatever that might - they might ultimately look like.

Maybe you will remember that this is - that we did this effort or particular, Berry did this effort to help those that require evidence of harm to better understand what the word out there is.

And I - let me quote Alan again, he said that we can't predict the future but history is what we have. So the information that is currently available might be a basis to determine whether there is sufficient harm.

So can I hear something about that because, you know, I think discussions on refining definitions would be moot if those that seek additional information on the absence or presence of harm think that this is simply an exercise.

And I please encourage you to speak up. Alan, please.

Alan Greenberg: Thank you. I certainly don't think it's vain since I started the process. I think it's a useful exercise.

You know, I'm - I suspect the numbers are a bit skewed because of all the sponsored registrations but then again I was surprised by how many of the - in the sponsored domains, some of these names are used, you know, in ways I wouldn't have guessed.

The only thing I would suggest might be helpful is a color to say that domain is registered by the organization in question because that will give us a better sense of how many of them, you know, were registered by the organization, either in terms of defense of registrations or real need.

So I think that's the one color that's missing that would - if it was there it would be a useful measure. Other than that, yes, I think it's useful.

I mean I think what it's demonstrating right now - and that's what I was trying to indicate when I originally started the process is, yes, there are problems with some organizations and probably far less problems with others.

And the variation is why I believe - and at large believe that we need to look at the needs and not do it blanket because of purely - because of legal status. Thank you.

Thomas Rickert: Alan, a follow up question, if we tweak the spreadsheet according to your wishes, do you think that would be sufficient information for you and ALAC to base a decision on whether they can proceed or not?

Alan Greenberg: When you say can proceed, I'm sorry?

Thomas Rickert: The question - you know, we - or I was as a Chair trying to find out who is willing to provide information on harm and what that information should be.

And there didn't seem to be too much unanimity on that specific question because some of the organizations said, well, we have already provided information on that and in fact they did.

But they were sort of left in the dark whether that information was sufficient for those requiring information. There were others that said the law is strict enough so we don't see a need to provide any further information.

But still I think it's important not to lose your group's, for example, support at that stage just because others have made use of their legitimate ride to say, no we're not willing to provide any further information.

So my question to you is to have been asking for information to then determine whether protections can be considered, whether the set of information you find in the spreadsheet would actually answer your question?

Alan Greenberg: Okay, I think the answer is not as clear as it might have been a few weeks ago because we are now possibly talking about other protections other than exact matches.

So - and that fuzzes up the questions because as you said, some organizations and particularly the Red Cross and the IOC and the previous drafting team did present information but that was largely information not of

exact matches but exact matches plus a variety of other things, which now may be we are considering and may be we aren't.

But I still believe that some measure - and not an accurate measure, you know, not something we're going to apply to make a decision on an organization but what level of harms are being experienced? We now have some idea of what might reflect harms or might simply affect proactive registrations.

And it varies because in some cases - and the Red Cross is an example and the IOC is an example. We know the local organizations register the names under country codes and various things like that.

In other cases they may be preemptive registrations to try to protect against harms.

And in other cases, you know, the - if you had to make an empirical decision based on the number of registrations they have they're probably not experiencing a lot of harms because they haven't even bothering registering them in some of the more common, you know, domains where harms occur when they, you know, based on UDRP type experience.

So yes, I think a survey - a sampling survey is not the definitive list for all IGOs or INGOs but if - I think that will still give us some measure of what we're trying to fix. Because I believe we should be looking at this as a point of view, fixing harms, preventing harms.

We need to have some idea of what those and to make sure if nothing else that our fixes are going to be effective. And the whole issue of exact matches or strings contained in isn't a good example of that.

If the harms are all happening on things contained in and we virtuously provide exact matches, well, we've - you know, mangled the rules that we've

been using for domain name allocations for a long time and not helped anyone. And...

Thomas Rickert: Thank you very much, Alan. Before I move to Evan let me say that usually I am disconnected after an hour when a participating in ICANN conference calls from my cell phone, which I'm doing now. So should I be disconnected I'll be right back and I'm not running away. So Evan, please.

Evan Leibovitch: Thanks. I'd lower my hand. I think Alan said basically most of what I wanted to essentially - you know, the chart is extremely useful. Whether or not it's sufficient is a different question.

Thomas Rickert: Thank you very much, Evan. Now to some - or maybe let me make some final remarks regarding this agenda item. As I said, ICANN staff, i.e. Berry, put a lot of work into this to help those that have asked for information - to get information because we knew there was hesitance by certain parties to provide information.

I think ICANN or ICANN staff can't go much further with this. So I guess what we should find out on the mailing list is whether those asking for information and - I'm particularly looking at Robin and maybe Mary from NCSG because they've also asked for some sort of evidence of harm, whether their need for information is satisfied with this.

And we should not only look at the spreadsheet but we should also look at the information that Jim and Kirin have recently reminded us of, that they have submitted earlier as did the RCRC. There have been a few example mentioned, one of which I think was mentioned by Claudia if I'm not mistaken.

So I think we need to find out whether those asking for information are okay with the information they got to draw their conclusions. And Alan, you're

perfectly free to state that the information in the spreadsheet is sufficient for you and/or ALAC to make a determination on exact match protections.

And there's something that can work on but I want the group to learn whether additional information is required and if so I guess the burden would be on these groups to willingly or reluctantly provide this information to avoid that those asking for the information will not further support potential protections.

At the same time, if we see that additional information is needed then I (unintelligible) that no additional information is needed, we may close our book on that specific aspect of our work. Alan, is there something that you would like to add or comment?

Alan Greenberg: Yes, there is. As I have freely admitted before I believe there are harms for some of the organizations we're looking at, there are significant harms. There are fewer, I believe, for others.

If we don't get information directly from the organizations but rely purely on this kind of peripheral information that we've collected from Whois we may set criteria which don't really address the problems. We may end up being far too restrictive and deny special protections to organizations where they could have explained why they need it and have not been given the opportunity.

So yes, we could use just this chart. I believe it is not giving us a granular enough and a detailed enough analysis to reasonably set what the criteria are. Thank you.

Thomas Rickert: Thank you, Alan. And I think that has been sufficiently clear. You will have learned that I'm trying to avoid that this discussion about harm is going to be a moving target. And I said this during earlier calls.

I don't want the organizations that ask for protection to provide evidence and put a lot of work into that. And then those requesting information say, well, that's still not enough.

So I think that we can take this as a basis. I think we need to take this discussion back to the group and move it from there. Greg, you wanted to respond to this? Please do.

Greg Shatan: I have one other thing we still need to clarify. What's the exact role of this investigation into harms is in our work? And, you know, perhaps I misunderstood what you were saying but the idea of, you know, a particular group asking for protection would need to provide evidence of prior harm in order to get that protection. You know, is - it seems (unintelligible) to me.

If what you're referring to is whether those groups that have kind of, you know, joined this working group and are seeking it as part of this process should demonstrate that there's a problem that needs to be solved and some of them, I think, you know, have provided that information. I think that's a different question, but I just want to clarify that you're talking about the latter and not the former.

Thomas Rickert: Actually to be very open with you; maybe the idea was a little bit naive, but if the question was deemed answered by those asking for evidence of harm, if we did a survey on publicly available rules information and to see who has registered what for what purpose and the purpose can be seen from a look at the Web site; then I think we can easily overcome this hurdle and suit everybody's needs to avoid that there is friction the group on the basis of certain part of the groups being willing to provide information.

Maybe they have already provided information and other parts of the group being reluctant to provide information, maybe because they're unclear what is done with the information, whether it would be sufficient. So I had hopes that

we could maybe talk a shortcut with this, but it seems like more work needs to go into this.

Evan, please.

Evan Leibovitch: Greg, is your hand up or - okay.

Greg Shatan: No.

Evan Leibovitch: Okay. I guess my point of view on this is simply that Thomas you're absolutely right in saying, you know, can't go on forever in saying, you know, it's not enough. It's not enough, it's not enough.

That wasn't the intent of this; the intention was simply to say, "Okay if the intention from IGO's and INGO's is to demonstrate harm, put forward what exists." "And then if the intention is to get ALAC or other constituencies to say, okay sufficient time has been approved;" then either it happens or it doesn't. It doesn't mean that your request proved forever; it just means, you know, with the information at hand we need to make a decision. The decision may still be after the evidence is presented that it wasn't sufficient to support.

That doesn't mean it has to go on forever; certainly it means that doing a cut-off is appropriate. But at a certain point supplying evidence doesn't guarantee that it's going to be evaluated as being sufficient as to justify blocking.

Thanks.

Thomas Rickert: Evan, that's very helpful and I certainly did not want to convince those requesting information in the group to write a blank check and say yes to whatever may come. I just want to make sure that we have a set of information sufficient to base a decision on whatever that decision ultimately might look like because I think we need to actually move to the next stage of our work.

Greg, please.

Greg Shatan: I'm putting my hand down. Thanks.

Thomas Rickert: Okay. Any further remarks on this specific item?

Hearing and seeing none, I would propose that we take this discussion to the group. I would like to encourage you to take a closer look at the spreadsheet. It's really worthwhile playing with because, you know, one can find very interesting information in there and I'd like to encourage you to exchange some views on that. And maybe with the help of staff we can prepare one email of the things that we have.

You will remember that we saw certain examples in previous emails on the mailing list. We have been referred to interventions and evidence that has been provided to the list earlier on by the IOC/RCRC and potentially others. So maybe we can put all these examples into one place and then start a discussion on what is still missing.

And then to be quite honest, I think that procedurally the burden of proof would be on those requesting information and it would be their determination to either provide more information and increase chances that there will be more support for their position or to not provide information and take the risk that some that otherwise might have been willing to support their position might not do so in the absence of certain information being made available to them.

So I think leave it at that for the time being. I'm happy that I'm still not disconnected so we can continue our discussion.

And I would like to ask Berry, there's a final remark on this...

Alan Greenberg: Yes.

Thomas Rickert: ...may I ask you to keep a chart Alan?

Alan Greenberg: Yes Thomas, I think what you just said is the onus is on those requesting information to prove - to demonstrate that they really need protection. I think you meant those requesting protection?

Thomas Rickert: If I didn't say that, then certainly that is what I meant. Thank you for that.

Alan Greenberg: I may have misheard, but I just wanted to correct. Thank you.

Thomas Rickert: Thank you Alan. Berry, do you by chance have the email that I circulated to the list yesterday, so that we might be able to go through the points that I wrote down?

Okay. I hope everybody can read this. Just to bring us all to - on the same speed; you will remember that on the last call - during the last call we tried to discuss the amalgamation of feedback from the various sub-groups and in terms of protections I stated that we sort of come to the conclusion that RPM's do not permit or potentially protect organizations to use them. That RPM's work in (maturative) way while some of the participants of this group, particularly those that are requesting information, would like to see proactive or preventive protection mechanisms.

We also can state that the reserved names list does not allow for the use by legible parties easily I should add; we had a little bit of discussion surrounding that. And we can also state that the suggestion to open RPM's to all beneficiaries of the potential protection was welcomed at least by I would say most participants of this working group.

So there was no agreement that there should be proactive protection. In fact some saw jeopardy for freedom of expression with that. They also claimed

that in many cases one can only determine whether applicable laws would be infringed on after having seen what the domain name's actually being used for. And we spend considerable time so far on the discussion on the basis of the idea on the Trademark Clearinghouse.

And it turns out that there were at least some people in the group that sympathize with the idea of building some sort of new protection mechanism or variation of an existing protection mechanism and play with this idea to see whether that could fit for our purposes. So the question is what should a mechanism look like to proactively protect while (unintelligible) and we also discussed the question whether an exemption mechanism is needed.

We'll get back to those points as we move along, but I'd like to state that the only group opposing to exemption mechanisms if I remember correctly were the IGO's. I think (Ricardo) mentioned that -- unfortunately he's not on the call -- that due to the protection it would not be allowed for any part to register certain designations. I think that David Roache-Turner commented in the same direction that the GAC with its Toronto committee wanted to prevent any third-party registration and that would also allude to the conclusion that no exemption mechanisms are needed.

Apart from that I think almost everybody was - or at least nobody opposed to the idea that exemption mechanisms would be needed for those who are in a position to legitimately use certain designations.

Now to start - I think as a starting point to talk about the variation of the Trademark Clearinghouse since there was some confusion; we need to make sure that we don't confuse the new protection mechanism with the Trademark Clearinghouse because clearly the Trademark Clearinghouse is designed to serve the needs of Trademark owners and we're not talking about Trademark's here.

So I think we should give it a different name; the best that I could come up with was modified reserved names as Clearinghouse. But I'm more than happy to hear suggestions for better working titles for this because look at the funny acronym which nobody can pronounce. And, you know, I was jokingly saying that the acronym's almost as complex as our work.

Greg, please.

Greg Shatan: Thank you. I guess one of the things that - in terms of the Trademark Clearinghouse, one of the potential ways to get a spring into the Trademark Clearinghouse is if the name is protected by statute or treaty; it's not just a Trademark per se.

Now I haven't done any deeper digging into what, you know, how that prong of eligibility for the Trademark Clearinghouse is going to be applied or what its genesis was. So just my copious free time wasn't copious enough for that.

But I think the idea that something that is - that I think we've been taking maybe an overly narrow view of what the Trademark Clearinghouse in fact allows and the very least maybe needs a little deeper dive than I've done to see that protection by statute or treaty is sufficient to allow for a Trademark Clearinghouse inclusion.

Thank you.

Thomas Rickert: Thanks Greg. And let me react to that. My idea for leading the discussion is that we don't try to make the Trademark Clearinghouse match our situation or see whether all potentially legible names can be squeezed into it; my idea is rather to boil it down to the general idea to see (unintelligible) 1 and 2.

The idea for Trademark Clearinghouse is that you have a central database in which certain information is entered and then you have services that use the

data in the database. In the case of the Trademark Clearinghouse it would be the sunrise service and the Trademark Claims service.

But let's not try to stick too close to that notion of the Trademark Clearinghouse. So let's take a step back; let's take a broad perspective and say, okay the idea of having a central database into which legible parties can put legible names and then create some sort of service on top of that that could suit our needs. I think that idea could be cute and that's something we should focus on rather than trying to find the differences or the similarities with the Trademark Clearinghouse.

Alan, please.

Alan Greenberg: Yes thank you. You just said part of what I said - or part of what I was going to say in that let's focus on what we need. We need a repository. If we only end up with 53 names in the repository using the term "database" may be overkill.

You know, the current reserved names list, you know, is partly a file on the IANA server which people can look at. So let's talk about a repository and identify what we need; whether it needs to be incorporated into the Trademark Clearinghouse or a brand new database will depend to some extent on the volume of the uses and the number of entries in it.

So let's not use buzz words to get our concept forward; that's number one. Number two, Greg asked, you know - or sort of asked the question of what was the motivation of why does the Trademark Clearinghouse allow entries from, you know, treaty and laws and it was just to fix the problem we're talking about. The UDRP does not allow that as only trademarks; we tried to fix the problem so that the URS and the sunrise processes would be more flexible and allow the kind of organizations we're looking at to be in it.

Thank you.

Thomas Rickert: Thanks Alan. Evan?

Evan Leibovitch: Thanks. I find myself in the interesting situation of slightly disagreeing with Alan and agreeing with Greg, but so be it.

As far as the Trademark Clearinghouse goes, this is - I'm interested in reducing duplication. The last thing I feel like doing right now is getting ICANN involved in creating one more list, one more repository, one more thing into which registrants have to look, one more thing that is going to make registry's lives more difficult.

Just simply if ICANN has already gone down a path of saying, "Here is a database of words and strings that registrants should not use and might be subject to early warnings and other things like that;" it was probably a misnomer to call it Trademark Clearinghouse because it should have had a more widespread use. And I - frankly I'm sort of moved to want to go down the path of wheel reinvention.

If there is a mechanism that has already existed that ICANN has already budgeted money and hired contractors to do, I'm sort of reluctant to try and reinvent that wheel and would prefer to make sure that if there is a mechanism that ICANN has already set in place to reserve words in the case of the TMCH of commercially registered trademarks that if there is - are forms of non-commercially registered trademarks of names that still need to be protected. And the names we're talking about in this group certainly apply to that.

I would definitely want to consider being part of that process as opposed to inventing something, you know?

Thanks.

Thomas Rickert: Evan, thank you very much. Still I'd like you to bear with me and maybe do the exercise of, you know, moving away from the Trademark Clearinghouse for the moment and see what our particular needs are.

So our thinking should not be confined by existing mechanisms, but if you scroll down the document and look at the last - the third, but last paragraph, you will read the following; "It might make sense to use the infrastructure of the TMCH for such service -- and then in brackets -- [should it make its way through all the stages of adoption and implementation as there might be synergies to save costs and avoid duplication]."

But that's not for us to decide, so in fact I think that we need to make sure that we define something and propose something if at all that serves our purpose. And then in the implementation phase we might make a recommendation to add the strings to the Trademark Clearinghouse database and maybe have those doing the validation also evaluate these names. But I think that's actually for ICANN to decide during the implementation phase.

Alan, please.

Alan Greenberg: Yes. You've just basically said if we're talking implementation here, it may well end up that the Trademark Clearinghouse is the right vehicle or we may find that (unintelligible) contractor's involved will charge us an arm and a leg to change what they had not planned for. And to change at the last moment and that some other mechanism is in fact much easier and cheaper.

It's implementation. Let's worry about the policy first.

Thomas Rickert: Thanks Alan. Greg, please.

Greg Shatan: Hi guys. Just to kind of follow on my earlier remarks and this kind of ties back to some of the email traffic regarding eligibility and the issue of statutes and

treaties; I was more pointing out that the Trademark Clearinghouse has a limited role in - or has a limited capacity to take in certain of the strings that might also be falling into our daily work.

But certainly depending upon where we end up in terms of eligibility criteria and the like and given that, you know, for the vast majority of INGO's, depending upon how you interpret the phrase statue or treaty, you could well say that their names are protected by neither by statue - a specific statute naming their name or a specific treaty by which they were created since NGO's aren't created by treaty.

That, you know, at this point we are talking about sui generis protection. And at that point, you know, I would - you know, I'm certainly - you know, I'm generally in favor of the idea of creating, you know, a second repository. I just wanted to kind of recognize that the Trademark Clearinghouse wasn't exactly what it's - wasn't as narrow as its name implied and created some limited rights for some of the entities that we may be considering here.

Thank you.

Thomas Rickert: Thanks Greg. That's very helpful. Now I'd like to discuss with you the - you know, I wouldn't say proposal, but actually the accumulation of ideas that I heard with you. You will remember that - many of you that when it comes to ultimately deciding where the protections should be made available or not; they would sort of understand the whole package.

And so I guess this might be a more vivid part of our discussion because now we're going to look at what an actual protection mechanism could look like. And this is more or less testing the waters. I have jotted down what I think would be discussion points as well as points that might find a lot of supporters. And please do speak up if you don't like certain ideas that are presented in there because otherwise I think that could be used as a basis to further define potential processes.

I'm not inclined to use the word strawman because the strawman term has been used quite inflationally and if you ask me. And it might also have the wrong tone or references to it. But still the idea is that we sort of take this as a very rough sketch of a protection mechanism and please do speak up if you don't like certain ideas.

So I'm going to show you through this if you agree. Again, the idea is to take the basic idea of a Trademark Clearinghouse as a starting point i.e. the central database with certain information in it and the building of certain services on top of that. And looking at the first part of that, that would be the central database and that would store a set of information which at the minimum would be the string or strings and details of the entity requesting the entry.

Now you will see that these are very general terms, so information could be whatever we ultimately decide it should be. But I think that the string on certain - and details on the requesting party should be the minimum and there could be more to it. That information would only go into the database after it has been validated because we can't afford that somebody just takes, you know, an organization's name and he's not actually presenting that organization asking for protection.

So that should actually be originating from the legible party and it should be ensured that the legible party is actually entitled to certain designations that they want to have entered into the database. Again, please do scream or raise your hand if you think that these ideas are something that you don't like.

And Alan?

Alan Greenberg: Yes and it's not that I don't like it; I'll just point out that if we end up as some of us have suggested with an application process, then the terminology we use is a little bit different because it ends up going into the database or

repository as a result of the application being approved by whatever the party is that does that. So it's just a terminology issue though.

Thank you.

Thomas Rickert: Thanks and I'm - not being a native speaker I'm very thankful for everybody pointing out some language nuances to me so that I can build that into the next original document.

Lanre, please.

Lanre Ajayi: Yes this depends on this (unintelligible). It is not much to discuss efficient. I thought it was just unclear that you want to focus on (unintelligible).

Thomas Rickert: Lanre, I had a hard time understanding you because the line is not too good. Can you please repeat?

Lanre Ajayi: Okay. I said the process you're trying to describe now looks to me like an integration and I guess just agree that you want to focus on the policy.

Thomas Rickert: Thanks Lanre. That is actually a valid question and my view on this is that if we can we should be as precise as we can as a group to inform how our policy should be implemented. So you're completely right that some of the aspects in here might be perceived implementation, but nonetheless I think questions such as whether protections are granted upon application only or per se are policy questions.

I just tried to sketch the picture that is a little bit more complete so that we can actually get a better understanding of what the protection mechanism might ultimately look like. I'm more than happy to take questions or hear concerns from other participants of the group; if you think that this exercise is not helpful, then we can do it differently and focus on merely the policy aspects of our discussion.

Nonetheless I think we have seen GNSO policy in the past that was intentionally or unintentionally so much focusing on policy aspects, not giving any or very little information on how this policy should be implemented that at the end of the day we face the problem that we're now facing I many cases where discussion starts with a certain aspect of implementation are actually aspects of implementation or whether they would require further policy making.

And therefore my preference would be to be as precise as we can and to even as, you know, the GNSO Council should even more closely observe how implementation takes place and that would actually be the full cycle of policy making and the implementation part of that in my view. But that's just my personal view. The implementation part of that has often been neglected.

Lanre, does that answer your question? Are you willing to bear with me and go through the document though?

Okay. You might have muted your microphone again. So if you have further reservations please raise your hand again.

And in the absence of further comments on that I would like to move on in the document. So the first question that I think would be quite controversially debated and actually that would be a policy question is whether the protections, once they're established as a technical tool would require an application from the requesting party. There have been those that said that protections should be granted to certain organizations per se.

I have cited to the group during our last call that the board is making available or planning to make available interim protection for IGO's upon application only. Thus I would now like to hear views from the group whether you are in favor or against the requirement of an application to be entered into a central repository.

And let me also state that I would take your silence as a group as consent. Not in terms of consensus; we're not voting here. We're not - this is not a consensus call, but I'd just like to make sure that we test the waters a little bit on where the common ground is and where we need more conversation.

So I would deem this point as more or less widely accepted by the group. Then another question would be whether fee would be required because if no fee would be required, the question would be who pays for the service if not those requesting protections. This doesn't have to be answered now. I see Avri hating the acronym and to be quite honest I do too. Maybe you have a better nickname for it to be using because I would like us not to further dwell on the analogy to the Trademark Clearinghouse.

Okay. So let's skip the fee point; there don't seem to be any interventions on those except for Evan who I guess with respect to this point thinks this is too much of an implementation matter. But I think that this will come up sooner or later. And then we would have further questions for the central database such as do we need further requirements. And that basically leads us to the admission or additional criteria question.

And as Evan pointed out on the mailing list a couple days ago, the group might wish to define different levels of protection that could be offered depending on the fulfillment of a different set of criteria. Can I hear some views on that? Shall we jot something to this rough sketch or shall we leave it to a later stage?

Okay. So we leave it like that, but I take that general idea is sort of understood and liked by the group. Evan, if you ask me to speak on potentially the different levels of protection, yes I wholeheartedly like to invite you to speak on that if you would like to share your ideas with the group. Please do.

Evan Leibovitch: Okay. Thanks. I guess part of my frustration in working with all of this is what seems to be in some cases an all or nothing approach; that is in some cases remedies being asked for, being before the fact blocking which is an extraordinary measure by ICANN standards has not been given to, you know, international trademark holders like Coke and IBM and yet is being asked for here.

At the same time certainly within At-Large there's a feeling that yes there are harms being done to certain public benefit organizations and that there needs to be some protection. The question is what seems to be going on here is almost an all or nothing; that either we're arguing for the most - the harshest of protections or we're arguing for none at all.

And I guess what I'm hoping to get here is something maybe a little bit more nuanced is that, you know, as Greg was saying, you know, the criteria - the minimum criteria right now seems to be very, very exclusive. I wouldn't have a problem being far more inclusive if the core RPM's didn't involved blocking; if they were things like simply, you know, making the UDRP, URS and Clearinghouse available to all the names that we're talking about here.

And have a very, very high bar to the very extreme protection of blocking. And so this I guess has been the approach that I've sort of had in my own mind all along in that, you know, by taking this into an all or nothing approach it's becoming very confrontational. It's getting into a lot of splitting hairs and I think there would be a much more widespread agreement if there was an understanding that not everybody that we're talking about needs the same level of protection.

Some have definite issues of harm that are performing, you know, emergency humanitarian events that require day to day creation of new domains that could be subject to real diversion of resources. So can there not be some kind of an acknowledgement that one size doesn't necessarily fit all; that yes

there's a certain minimum level of protection to organizations that meet a certain minimum level of criteria which is already being discussed elsewhere.

But to go to the extreme measure such as blocking, a fairly high, extraordinary level of harm and protection needs to be demonstrated in order to justify a high and extreme level of protection. And that's basically what I was getting at.

Thanks.

Thomas Rickert: Thanks Evan. That's very helpful. And as you will see further down in the document we have different outcomes of protection mechanisms and I think as we discuss those separately we might get back to the - or we will surely get back to the question whether a standard approach -- if standard is the correct use of the word -- is actually adequate.

Chuck, please.

Chuck Gomes: Thanks Thomas. It seems to me that there are a couple ideas that there seems to be pretty broad support for. Now we should test that and make sure I'm not concluding incorrectly. But one of those is the idea of an exception process that was already talked about and there's also the idea of modifying the RPM's so that names of IGO's or INGO's as applicable could use those processes if they're not already eligible to do so.

If I'm correct on that I wanted to throw out a suggestion that it might be useful to solicit volunteers for two sub-groups to work on those concepts and develop some recommendations in that regard. Now I have to say I'm not volunteering for those because I'm spread pretty thin right now, but it might help us move forward if in fact there is fairly broad support for those two ideas if we have some people starting to put together some ideas for both of those.

And then I'm thinking of two separate little sub-groups that could develop some recommendations for the broader group in that regard.

Thomas Rickert: Thanks Chuck; that's very helpful. And to be quite honest the original idea of fitting all work into different sub-sections and have sub-groups working on it was that they would take care of these particular questions or aspects of our work.

We had to find out though that the groups were not able to come up with more or less consensus positions which is why I took it all back to the group as such to see what common ground there is. But certainly when it comes to operationalizing ideas and further defining what we're up to, I hope that we can revise the sub-groups to work on these aspects. And certainly participants of this group are welcome to join sub-groups or move from sub-group to the other to see - to work on questions that they particularly like.

But thanks for the suggestion; I will surely pick that up.

Now in terms of the services that could be built on a central repository, to avoid the word database as Evan suggested is that we might see the need to define one or more services that have to be used by registries and/or registrars depending on the technical setup. And that whenever a domain name has been registered or there's an attempt to do a create request, then certain things could happen.

You know, if you look at (unintelligible) and I'm talking about exact matches, now there might be other services relating to similar string, but we'll get to that later on potentially or during the next call. So the registrant which is to register the domain name. Then the string would be checked against database or the central repository.

Then two things can happen; either -- you know, we're talking about exact matches -- either the result of the query is negative i.e. this specific string is

not stored in the central repository and then the domain name is created. Or the result of the query is positive i.e. there is an exact match in the central repository. And then the registration request is given special treatment which leads us to Point C.

So if there is an exact match in the central repository, there is options. One could say that the domain registration is denied and that's something that I think others in this group would call drafting so that no third party could get access to that specific string as a domain name. Or the domain registration request can proceed after the customer has received and confirmed something comparable to the Trademark Claims service.

So just to give a warning that the person trying to register the domain name is about to potentially step on somebody else's toe and that they should - better double check if they are actually making legitimate use of the domain name. And one could also link to that another implication to the entity that has filed the request or the entry in the central repository. Or one could say that the domain registration is queued and pending further processing in which case we would move to D.

And D would be the exemption procedure. I state here again that many members of the working group were in favor of establishing an exemption procedure and this is why you'll find it here. And options for that could be that domain registration would only be completed successfully if the exemption procedure is passed by the customer who is trying to register the domain name.

And the requirement could be that the customer trying to register the domain name can demonstrate the need for user designation. But then the question is who establishes that, how is legitimate use or eligibility demonstrated. I think it was Robin who said that it must still be possible to criticize an organization so they might make legitimate use of a certain name according to Robin's proposal that whether that's going to be true or not can only be

determined after having seen the combination of the domain name and the actual Web site behind it.

Because only then you can find out whether it's free speech or whether actually the rights of the organization are potentially be infringed upon. There was also the idea of the approval being required by the organization in question and I think it's almost a year back that Avri Doria called this type of behavior opening the door to a licensing scheme. So there are questions - a lot of questions going along with this. I'd like to hear your instant feedback on whether you think that at least the sequence or the parts of the process are something that you like.

Okay. I was tempted to say that sounds encouraging, although nobody said something. So it can't have sounded encouraging, but it's good to see that there seems to be at least some support for this approach so that we might task the sub-group with working further on it. There are also further questions with it for example regarding contention sets. How do we foresee contention sets to be resolved.

If it's say an organization that has put an entry into the database and a legible third party both apply for the same string, do we think that first come first serve it would be appropriate. So that let's say to use the famous example of the IOC and Olympic paying - both trying to register the domain name Olympic in a new gTLD, who would be the entity getting the domain name if both are eligible users? So FCFS could be an approach.

What if the contention happens during sunrise? Would those being entered into the central repository prevail over other third parties that might not have an entry in the database?

And, you know, that would be the potential design for an exact match service that could be built on the central repository, but we might also think of -- and this was asked for by some of the group to design a service for similar strings

-- you know, then we would need to deal with the tool for sets of similar strings being strings containing the exact match that is in the central repository and strings consisting of or containing a variation of the exact match.

Others have said that such service would not be required because for similar strings people could use the URS or UDRP once it's been opened. So my question to you is now that you seem to be liking the idea of the process described, shall we also at this stage also think of services for similar strings? And maybe there are volunteers who can think about who are willing to work on that and further specify that.

No volunteers? Does that mean that nobody is actually requiring or requesting at this stage the creation of the service for similar strings?

Okay. I'll give you a little bit more time to - Greg, please.

Greg Shatan: I don't think that's the interpretation. I don't - of course I know you don't think that either. I think it may be just some - a little bit of ICANN fatigue setting in. But, you know - and lack of bandwidth. But I don't think I could lead on such a sub-group, but I could join it. So.

Thomas Rickert: Thanks Greg; that's very helpful. And we take good note of new volunteering.

Alan?

Alan Greenberg: Yes I won't make a statement that is not quite as positive. In my case I was very interested in doing and working on something like this. My commitments are such that I will not even want to participate at this point, but not through a belief that it isn't needed. Just it's not possible. So.

Thomas Rickert: Thanks Alan. I think what we need to find out or what I would like to learn from the group is given the limited resources that we have, whether we

should at this stage focus in parallel on potential solutions for similar strings which was at least in my view a little bit of an expansion of the original task that some of us including myself had foreseen.

Or whether we're trying to work on this sequentially, so that if exact match protections might go through let's just assume for the sake of giving an example that then on top of that we would consider similar strings. And I don't want to waste anybody's resources, but still I want to keep the process as quickly as possible. And since the requests to look at similar strings - both levels of similar strings has been made, I want to give the group the opportunity to work on that in parallel.

But for those who are still thinking, you know, this is not a lost opportunity, certainly please send an email to the list later on and we will respond to that.

Stephane, you've raised your hand. Please go ahead.

Stephane Hankins: Yes it's Stephane Hankins; Red Cross/Red Crescent. Thank you very much.

I've been listening to the whole conversation and we've taken notes of course of the procedure that is being discussed. I have a few comments; one of them is well, you know, we're happy to see that you have the range of options are being foreseen including the string similarity review with containing exact match, containing a variation of exact matches, et cetera.

So, you know, from that point of view, I think the paper doesn't encompass some of the concerns that we have expressed with regard to the Red Cross/Red Crescent designations if such mechanism was established. I just want to make a couple points; one of them is that, you know, the very first question about the central database and obviously, you know, an application procedure could work as to the fee because, you know, no one has intervened.

I mean I feel we're a little bit back to an issue which we've reviewed many times along the way mainly that, you know, if we record the fee, then you know, we're actually compelling the organization's concern to devote funds which would otherwise, you know, be devoted the global public policy which, you know, they serve. So I think we're a little bit back to square one.

To me obviously I think, you know, we have to make sure that this is not a heavy procedure if only as you have mentioned because, you know, that would require of course years to be established and put into the management of such a mechanism. And, you know, I can't help thinking, you know, where the - you know, this is really the easiest way. You know, whether - and I'm - I don't - and maybe I don't know enough, but I don't feel that the group has really examined, you know, the direct implications of, you know, requesting the registries to manage this.

To me, you know, with an instruction from ICANN to registries to implement the reservation, the protection, not be, you know, an option or something that, you know, we need to consider and to consider also the way that it would imply for registries and registrars and of course that it would imply for them to actually to implement this. You know, if - you know, the list of exact matches is given and, you know, proper consideration is given to a string similarity review.

So this is a comment I wanted to make. Thank you very much.

Thomas Rickert: Thank you very much Stephane and I think we need to continue that conversation, but we only have six minutes left before the hour. So Alan, you're going to make the last contribution.

Alan Greenberg: Thank you all. I'll be very quickly. If what we end up with is a small - moderately small list of names for exact matches, then - you know, and no application process, then there's not likely to be a fee.

If there's an application process or a fair amount of cost associated with maintaining the lists that we're talking about and if we're starting to talk about strings contained in a large number of things, ICANN has a general policy that these kind of things have to be self-funding just like the Trademark Clearinghouse and sunrise and things like that are self-funding.

So there's likely to be a fee if it becomes more complex than a small number of exact matches just because of the cost. And to ask registries to implement it, again if it's a short list, fine. I don't think registries would have a problem. If they have to build a whole new interface to communicate with some database system, to be able to query it and understand what's going on, if registrars have to implement that level of complexity, there's going to be costs to them.

And I'm not sure that ICANN, you know, is going to say, you know, "Suck it up. Too bad. That's what you have to do." There's likely costs to be associated with it and the various parties are going to have to bear some of the costs; hopefully not as much as registering your names in 1500 TLD's. But perhaps some cost.

Thomas Rickert: Thanks Alan. And Stephane, one little remark on your point; certainly the easiest way might be to put all the strings on the reserved names list. But then as I mentioned during more than one of our previous calls, those names could only be registered by the organizations in question themselves or legible third parties after a quite cumbersome (unintelligible) process.

So I'm not sure whether that's something that would find the group's broad support because my understanding was that exemptions and procedures were felt needed by the majority of the group, at least the participants on the call. And that would require a little bit more sophisticated processes and technical infrastructure.

Okay. I'll leave it like that. I hope that we're going to continue our discussion on the mailing list on this one. Let me use the last two or three minutes to talk about our next steps. We will hopefully be able to craft a solid work plan including milestones and delivery dates and all this by the time we know when to expect the general council requests. So we will keep you updated on that.

The question that we can discuss and should discuss now so that ICANN staff can do appropriate resource planning is whether the group would like to have a face to face meeting in Beijing. And if you ask me I would find that most valuable. We are working as a group, as a team and I think nothing is more appropriate for a group to meet in person to come up with a result, than a face to face meeting.

And all these telephone conferences and virtual meetings are fine, but I think it would be great to see you all and have faces of those that I don't know to email addresses and voices.

Alan, please.

Alan Greenberg: I strongly support the intent. Experience has shown it's awfully hard to schedule a working meeting which most participants in a group this size can attempt.

Thomas Rickert: Thanks Alan. Is there anybody who...?

Brian Beckham: Tom, Brian from staff; just very quickly...

Thomas Rickert: Brian.

Brian Beckham: ...in terms of scheduling just to let you know and to let the group know that there probably will be a briefing to the GNSO Council about the group's work over that first weekend before the meeting begins. And that the meeting, you

know, face to face meeting will probably be scheduled on a Wednesday or Thursday of that week you mentioned.

Thomas Rickert: Thanks. So I - my understanding is that the group would like to see a face to face meeting being scheduled. So Brian, if you could please take good note of that and try to make the necessary arrangements. That would be great.

Brian Beckham: Sure.

Thomas Rickert: The next - and thanks for that. The next call is going to take place next Wednesday, two hours earlier than the starting time today which if I'm not mistaken would be 17 hours UTC.

And I hope that we will have even better turnout than through these meetings because the rotational starting times was explicitly requested by some participants. And hopefully that time will work for them.

Today I thank you all for participating in the discussion, but also for listening to me so much and being patient. I think this was - or I hope that this was helpful for the group to get a clearer picture of what might be a result of our work potentially, to get a more comprehensive picture of what we're working on. And I hope we can continue our discussion on the mailing list.

Have a great day. Have a great evening. Have a good afternoon wherever you are.

Thank you. Bye bye.

Man: Bye.

Man: Bye bye.

END