

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 18 September 2013 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of the IGO-INGO Protections Policy Development Process (PDP) Working Group Teleconference on Wednesday 18 September 2013 at 16:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-igo-ingo-20130918-en.mp3>

On page: <http://gnso.icann.org/calendar/#sep>

Attendees:

Griffin Barnett – IPC/IOC
Jim Bikoff – IPC/IOC
Chuck Gomes – RySG
Catherine Gribbin – Red Cross Red Crescent
Stephane Hankins – Red Cross Red Crescent
Wolfgang Kleinwächter – NCSG
Evan Leibovitch - ALAC
David Heasley – IPC/IOC
Judd Lauter – IOC/IOC
Christopher Rassi – Red Cross Red Crescent
Greg Shatan – IPC
Claudia MacMaster Tamarit - ISO
Joanne Teng - WIPO
Berly Lelievre Acosta - WIPO

Apology:

Guilaine Fournet - IEC
Elizabeth Finberg – RySG
Alan Greenberg – ALAC
Ricardo Guilherme – RySG / UPU
Osvaldo Novoa – ISPCP
Thomas Rickert – NCA –Working group chair
Avri Doria – NCSG
David Maher - RySG

ICANN Staff:

Berry Cobb
Mary Wong
Julia Charvolen

Julia Charvolen: Thank you (Tonya). Good morning, good afternoon and good evening everyone. Welcome to the IGO INGO Working Group Meeting on Wednesday, 18th of September 2013 at 6:00 UTC.

On the call today we have Jim Bikoff, David Heasley, Judd Leuter and Griffin Barnett. We also have Chuck Gomes, Stéphane Hankins, Wolfgang Kleinwachter, Christopher Rassi, Claudia MacMaster Tamaritt. We have Greg Shatan who will be joining hopefully at the second hour.

We have apologies from Thomas Rickert, Alan Greenburg, Osvaldo Novoa, Guilaine Fournet, Avri Doria, David Maher and Ricardo Guilherme. And from staff we have Berry Cobb, Mary Wong, and myself Julia Charvolen.

May I please remind all participants to please state their names before speaking for transcript purposes. Thank you very much.

And over to you Berry.

Berry Cobb: Thank you Julia. Welcome all, this is Berry Cobb with staff.

If you have seen the agenda that was sent out yesterday, you'll have taken note that Thomas our Chair was unable to attend the call today as well as many others. I guess it could almost be argued that we really don't have a quorum for the call today which is unfortunate given our extreme timeline to get our draft final report out.

But with that said, I'll offer up to the group that nobody objects to me leading the call today in Thomas's place. I'll be happy to do so, otherwise we can look for another person to do that. And certainly not hearing any issues, so thank you with that.

Let's go ahead and we'll talk through the agenda and ask if there are any statements of interest or changes to Statements of Interest. And hearing and seeing none, our agenda basically is almost a replica of last week's. Essentially we'll be reviewing through the draft final report and we'll also more

specifically look through the proposed recommendations in the draft final report plus other changes that were submitted to the list.

Before we get started into the report itself, I want to update the Working Group on the consensus call that was started a couple of weeks ago. Since our last meeting, Thomas and myself have reached out to several of the stakeholder groups and constituencies, and as you can see on the Adobe Connect screen, we were not able to get a written response from the TBUC or otherwise known as the Business Constituency. They responded back that they will submit their support or their position for the various recommendations through the public comment forum.

I've also asked them in the meantime to assist us by filling out this particular form. I suspect it would be several weeks before we could see their public comments submission, and so I'm hopeful in the meantime that we can at least get a summary within our consensus call chart here that, unfortunately, won't make the time for when we want to submit the draft final report for public comment. But at least when the working group reconvenes to review the public comments, we'll have that information there and make a determination of the consensus level that have been determined thus far.

I'd also like to add that we've reached out to the registrar stakeholder group, and we're still waiting a written response. And until we get that, we really can't update this document. Word of mouth or verbal is not sufficient in terms of determining the formal consensus call.

What I will say is what Thomas has shared with me and what we understand thus far is the Regarding Stakeholder Group position is very similar to the last time that they had submitted their position on the recommendation. And in a brief nutshell, it was that they did support protections for the ICO, the RCRC and I think most of the recommendations for the IGOs, of course not including acronym protection. At the time I believe that they didn't support any the INGO protections.

But as you can hear me clearly, I'm speculating and I can't put speculation into this paper. So I'm hopeful that in the next day or hopefully today, we'll get a written statement from the RRSB. But I'm not 100% confident that we'll get it and we'll have to play it by ear as to what happens in the next steps.

As you've probably noticed, there are a few recommendations in the draft final report that hinge on the discussion of whether the registrar support a particular recommendation or not and we'll get into those when we go through the report. But at least I just wanted to brief in general about where we stand with the other two groups and their submission.

Chuck, I see your hand raised please.

Chuck Gomes: Thanks Berry. I'd like to suggest a possible way forward so that we can get the public comment period started quickly. And I'm throwing this out for discussion by those who are on the call today and then we can test it if there's interest in pursuing this direction. We could test it with the others on the list over the next couple of days.

First of all, I myself am comfortable giving Thomas the freedom to make his assessments based on his best judgment as Chair and posting them that way. And in that regard, I would also throw an option to him that might help with the cases where we're waiting on the registrars.

Now obviously, if the registrars do give us their position in the next day or two, probably what I'm suggesting is mute and that's okay. But if they don't, I think we ought to move forward anyway because we don't know how long they'll take. They have a very large group and they do have an executive committee and so forth, but they're all so busy on so many things right now, we can't count on it happening I don't think in the next day or two.

So my suggestion is this. in the cases where the level of support depends on the registrar position and assuming we don't get that position in the next day or two, that we identify those as an either or; for example a consensus or strong support or whatever the two ways that could sway depending on the registrar position.

And that - I mean that seems like that's sufficient for now and we'll be able to determine more after the public comment period. That way we could go ahead today and work on finalizing the report as far as edits and there would be an option for those cases where it's dependent on the registrar's position.

So I just throw that out so we could discuss it. If people don't think that's a good idea, that's fine; I can live with that. But my highest priority I think is let's get this thing moving, let's get it out for public comment.

I really don't think that putting an either/or in the support status column for a few items that are dependent on the registrar support would really have any drastic effect on the comment period. In fact it might even be good.

So I'll leave it that. Sorry to take so long to talk about that, but I'm just curious what others think.

Berry Cobb: Great, thank you Chuck. Before I turn it over to Claudia, I would basically, I shouldn't say support, but I do agree with your comments in general, that you know, without a definitive written statement from the registrars, I think most of the consensus levels we have, Thomas has more or less taken that into consideration from a verbal perspective even though we don't have the final written aspect.

And it's certainly up to the Working Group overall to utilize the either/or option. Certainly it's not, you know, I think the ones that are in question, it's either strong support, significant opposition or consensus. And it wouldn't be a leap beyond the next level.

And the only other thing that I would add to Chuck's comments is of course this is definitely not our last time drinking at the well. This is only the draft final report. Once we receive all the public comments, then unlike our last public comment period, we will have to review through each comment and the Working Group will have to decide together whether they support the comment, support a change to any of the recommendations, and/or adjustments to consensus levels based on any new information before we finalize the final report and submit it to the GNSO Council.

So most definitely between now and our proposed deadline to try to get this wrapped up in preparation for Buenos Aires, that would allow us a little bit of freedom to obviously make any last minute adjustments to the report.

Claudia, please.

Claudia MacMaster Tamaritt: Hi, Claudia here. We would very much stand behind you Chuck on your suggestion. I think that's a very sophisticated solution and it leaves absolutely all the room that we would need when we do get written comments and can adjust consensus levels there.

And for our part, knowing that one of the first recommendations for INGO's is one of those situations where it's a bit on the edge, we would be very satisfied with that kind of solution. I think that it is very important that we get moving to the public comment as soon as possible. We can deliberate on a lot of (unintelligible) for a really long time, but time is of the essence and we've worked really hard for over a year.

So Chuck, I would support that. So if that's the way Working Group goes, we will definitely not object. Thank you.

Berry Cobb: Thank you Claudia.

So I think with that, it sounds like we have a pass forward in that regard, and I'm going to just slightly course-correct on our agenda here and I've put up the proposed work plan for the Working Group. And I wanted to draw the group's attention specifically with the 19th of September or tomorrow.

As you all recall, we have a 42-day total comment period that must be met. And if we're able to submit the report tomorrow for public comment, the reply period closes the 31st of October. And for any motions or documents for the GNSO Council to consider, that they must be submitted by the 10th of November at 23:59 UTC. So that gives approximately 10 days of wiggle room.

If the Working Group - if we can't get enough closure on the draft final report to open up the public comment period tomorrow, if at all possible, I would really like to be able to open it up by Friday afternoon just so that we do have this buffer zone.

One of the things that Thomas has mentioned is the possibility of the GNSO Council having an extra scheduled meeting to perhaps consider any of the recommendations and/or vote on any of the recommendations for the IGO/INGO protections so that it could be addressed and wrapped up prior to everybody convening in Buenos Aires.

It's not 100% sure whether that will happen or not yet, and I couldn't even try to give a probability as to whether that happens or not. But at the very least, the timeline that we do know that we can march towards is the 10th of November timeframe just with the motions and documents.

And then one other reminder is that once the reply period closes out, of course as I mentioned that the Working Group will come together to review comments. But you'll notice though is the 10th of October timeframe, about the middle of this document is when the comment period closes and the reply period begins.

Hopefully this time around we'll get adequate feedback from the community external of the stakeholders that are involved in this working group. And so that's a hope that occurs, but more importantly, if we do start to get a significant amount of comment, there's nothing that will prevent the Working Group from starting group view those comments in parallel to the reply period so that literally the day that the reply period closes and if on the 30th of October we've finalized the final report, on the 31st we recognize or know of comments or our reply submitted to the comment period, then we can still close off the report and immediately look to submit it to the Council early.

And if that did happen, that could perhaps allow the Council to reconvene just to address this one particular issue. Otherwise - of course all of this is up to Jonathan as Chair of the GNSO Council.

Chuck, I see your hand is raised.

Chuck Gomes: Yes Berry, question for you and others in the group as well if they have a response.

Is there any significant difference between posting it tomorrow or posting it Friday in terms of the longer term impact?

Berry Cobb: The only significant - I would say there is no significant difference. It just adds another day, so the reply period would close on the 1st of November as opposed to the 31st of October. So again, we do have a few days buffer.

But I for sure - if we do want to hit the Buenos Aires timeframe, we can't miss being able to close out any of the final documents at our last scheduled meeting for the 6th of November. If for any reason we miss that, then we're in a very high probability of missing the 10th of November and then we're definitely sunk.

And I should also - just to remind the Working Group as well that Thomas intends to brief the GNSO Council on the proposed recommendations in parallel to the public comment period noting that, you know, none of this is written in stone, but we want to inform the Council as much as possible so that when we do formally submit the report and the motions for their consideration, that they'll be able to - they'll have already pretty much hopefully deliberated on most of the issues. And what we're trying to do is to avoid a delay and pushing any kind of Council action into the December timeframe.

Chuck Gomes: So Berry, this is Chuck again. Assuming there are no objections to the approach that I suggested and assuming that Thomas is comfortable with that as well, which we'll have to find out, and thirdly, assuming that he would be able to get his part done in terms of identifying the levels of support for those that are in question, the recommendations that are in question, then it seems to me that there's no reason why we couldn't get it out tomorrow.

Now if Thomas can't get to it, and of course that also means that we don't give people that are not able to make this call very much time to express their opinion on the approach, but should we just go ahead and try to shoot for tomorrow if the fall buck has to be Friday? It's not a total loss, but like you said, sooner is better because where the time crunch is really going to be important is after the reply period ends and we have to very quickly turn it into a final report and get it in on time.

Now there's - I think the 6th of October - is it the 6th of October or the 6th of November? I don't know; whatever. I think the 6th of November would be our regular meeting time. And it seems to me that if we needed we could schedule another one if people were available to meet that November 10th deadline. Anyway, I'll throw that out for discussion.

Berry Cobb: Thank you Chuck. Absolutely, that was my desire. What I intend to do after we review through the report for the changes today, that I was going to roll

those up, send out the next version my time this afternoon, give the Working Group till 23:59 UTC tomorrow for any last minute objections.

I'll pretty much document a lot of what's been discussed here the last few minutes within the email that, you know, of course this isn't the very last time the Working Group will have a chance to make any changes to the report; certainly we have public comment to digest, etcetera.

But I do agree that if we can get it out tomorrow that will be great. But in the email that I send out later this afternoon with the next version of this final report, I'll leave the door open that if anybody objects that we still aren't allowing enough time, then they are more than welcome to and then we can try and shoot for Friday. Because certainly there's not full representation on the call today.

Okay, I don't see any other comments or questions in regards to the work plans. So if nobody objects we'll move over into the draft report.

Essentially I think there were three submissions from Version 0.3 to Version 0.4. I incorporated all of those into this Version 0.4. I sent that out yesterday evening. It does include all of the suggested changes either from the list or directly into the Word document itself. I

I think one thing that is new from the version that we reviewed last week is that it does include a section now for the minority statements that have - or minority positions that have been submitted thus far which, ,again, was just literally a cut-and-paste from what was submitted to the email list into this document.

So before we get down into the individual sections, I think there was one macro change that Chuck had mentioned in his revision or suggested changes to the report. And that was to float the recommendations section up to Section 3, what is now considered the background section, to basically try

to spear the reader right away or immediately into the recommendation and not waste so much time with some of the background and deliberations of the Working Group. I think everyone agrees it's all about these recommendations, and then if they really need to dive in deeper, then they can go into the background section.

I certainly have no opposition to this. I didn't make that change in this document yet for two reasons. First, I wanted to get the buy-in from the Working Group. But secondarily, as Chuck had mentioned, it would redline the heck out of this version. So I didn't want to make that change so that we couldn't even digest any of the other changes.

But if there are no objections to reordering the section of the document, then I'll make sure to make that change prior to submitting this version by this afternoon.

Okay, so if you'll follow along in the Adobe Connect session, I'll scroll down - I think Chuck, you had some several minor statements that was either wanting to get rid of duplicate statements or grammar corrections and minor changes. I don't think anybody has any overwhelming objections to those.

So I think what we'll do is just scroll directly down into the recommendation section itself and then we'll start to review through each of the particular changes that were suggested, and of course, more importantly getting to the recommendations themselves.

Yes Chuck, please.

Chuck Gomes: Thanks Berry; Chuck again. Just one suggestion with regard to the one major change I suggested for consideration of moving the recommendations to Section 3. And assuming there are no objections to that (unintelligible), we probably ought to also, right after this call, test that with the rest of the group

since we have so many missing today, to make sure there are no objections to that.

Man: Berry is on mute.

Berry Cobb: Yes, thank you. I will definitely highlight that within the note that we send out this afternoon. I can't imagine there would be too many objections.

It's - personally for me, I think what has always been kind of a pet peeve is that when we put these really large documents together, you know, we try to embolden the executive summary as much as possible because I think most people understand that's where a lot of the reading of these reports occurs.

Personally, what I appreciate about the complexity of the recommendations we have here and the quantity of the recommendations, is there is no way to summarize that and to the executive summary. So what you kind of notice is I basically stated that in the executive summary to force readers down into the true heart of the document, which again, will move up a little bit closer to the executive summary.

But I definitely am in support of that. You know, it will force the reader one way or the other to have to read each recommendation line-by-line as we've set up here within this version.

Okay, so with that, we're starting off on Page 24. We've already reviewed through Chuck's first comment again. We'll go ahead and reorder the sections of the report.

I think one other big change that was discussed from last week is in regards to the consensus scale and rehighlighted or adjusted that the minority view doesn't look as confusing as though it was a level of consensus. So hopefully that's a little bit more clear.

And Chuck, if there is - if while I scroll through here, if there is any particular one comment that you'd like to raise to the Working Group, if I've passed it, please interrupt me and I'll be glad to review through it. I'm really wanting to get into the recommendations themselves.

So with that, we'll start off with the Red Cross recommendation. Chuck had made some suggestions about holding the top level versus second level which I think draws out the distinction a little bit more. And I agree with those because need to highlight the subtle nuances between these recommendations.

And before we move on, I think there is one other critical change that was suggested by Stéphane and his response to the list. And discussions with other ICANN staff, this may be an option for the Working Group to consider.

If you'll recall from previously, when we were starting to build out what the recommendations framework would look like across all the organizations, there use to be recommendations that were listed here that would for example call out the protection of acronyms or the use of sunrise during the Trademark Clearinghouse. And because those recommendations never got the support from the Working Group, they were pushed down into a separate table of just kind of general recommendations.

And I believe Stéphane is on the call, so if I'm misstating any of this, please chime in and correct me.

But I think his general request was that even though a particular recommendation which is found in the general table, and most of those, I believe, minus the UDRP/URS one are pretty much all divergent or maybe strong support/significant opposition.

But they are mostly recommendations that are generalized that didn't have full support by the Working Group. And they're almost kind of outliers. And the original

reasoning for separating them out is there was the idea about if there wasn't support for a particular recommendation, that it wouldn't necessarily pass along to the GNSO Council.

And I've been corrected on that. That there is nothing within the bi-laws or the guidelines that prevents a recommendation, even though - pardon. Even though that if it didn't have support that the Council could still view it.

So the option that's on the table is to take a particular recommendation that's in the general table and migrate it back up into each organization table that specifically calls out that second level recommendation.

And as an example of what that might be is that - go down to the page. So for example, recommendation Number 4, Second Level Protections of the exact match acronym identifiers are placed at Specification 5 as the Registry Agreement.

That specific recommendation, although there is a conflict of whether this should be divergence or consensus - we'll get to that in a little bit. But specifically, that fourth recommendation would, for example, go back up into the INGO second level protections of exact match acronym identifiers are placed in Spec 5 of the Registry Agreement and then still show divergent.

Or the same thing would happen with the Red Cross. It would be slightly modified that it would call out scope two name, but it would be specifically owned - or it would be specifically connected to the Red Cross and their set of recommendation, but it would still show that there wasn't support in the Working Group for that.

And I didn't make that change, but I definitely wanted to bring it up to the Working Group and see if there was opposition to that or if it helped clarify the overall recommendations as a kind of a total package and which ones showed support and which ones didn't. And so I would like to open that up to the Working Group to discuss before we get into other changes itself.

Chuck Gomes: Berry, this is Chuck. I didn't quite stay with you on all that. Could you run it by me again please?

Berry Cobb: Okay sure.

So Stéphane had submitted to the list their feedback to the report. I think most of their feedback or changes to the draft final report was an update to this section about some of the previous responses from the community down in Section 6 from here.

But within the email, they also touched on the fact that they thought it would be better that if there was a particular recommendation that they sought protections with were poor, that if even though it still did not have support with - from the Working Group, that recommendation would still be appended or added to the Red Cross red crescent set of recommendations and spelled out exactly for them, but it would still show that there was divergence for that particular recommendation.

And I see Stéphane and Claudia's hand up. I would like to go ahead and turn it over to Stéphane first and perhaps he can provide a clearer explanation of what he was asking for rather than me trying to summarize it. And then Claudia, I'll turn it over to you.

Stéphane, please.

Stéphane Hankins: Thank you very much; Stéphane Hankins, Red Cross Red Crescent.
Thank you for giving us the floor.

Yes indeed, what we - along the lines of what has been described, we have indeed submitted to the group a proposal that indeed in the table identifying the recommendations and the level of support to the recommendations on the protection of the Red Cross Red Crescent designations and names.

We have indeed brought forward that, you know, the propositions on which the consensus, or lack of consensus, is being assessed, does not fully reflect the scope of the request that we have put forward. This in particular relates to the scope two names as our Chair of today has indicated. Notably, the scope two names are addressed in the recommendations, but the recommendations that is being made is below what, you know, what we had hoped and called for.

So our position is indeed that for clarity of the GNSO which will have to pronounce itself as well as for the Board ultimately, it is important that, you know, in the list of recommendations be indicated the scope of what was requested even if, you know, as the case may be, consensus or full consensus is not assessed.

So what we have provided is a series of four additional propositions which we propose to include to the table which would call for the same protections to be awarded to scope two names as the scope one name with regards to Red Cross Red Crescent designations and names. And we have made a proposal for that.

And we feel that, indeed, you know, if the authorities that will decide upon this can decide with a full understanding, they need to have the full scope of the options that were examined including those that were rejected. Thank you very much.

Berry Cobb: Thank you Stéphane. Much more well put than I could have done. Claudia, please. And Claudia, you may be on mute.

Claudia MacMaster Tamaritt: Sorry - hello?

Berry Cobb: Yes, now we can hear you.

Claudia MacMaster Tamaritt: Do you hear me? Okay, good; sorry about that.

I am not sure if what you were proposing, Berry, is exactly the same thing as what Stéphane was talking about. I think in terms of bringing up the recommendations where - and I can point to 4 and 2 in general recommendations where very, very little support was received for these.

I think putting them back into the four different groups could be misleading and confusing. I think we might have even seen different results if we had seen that originally. So we would very much oppose now moving those - anything from the general recommendation section back into the list under any specific organization. I think that that would be inappropriate at this point in the game, so just to put that out there.

Berry Cobb: All right, thank you Claudia. And Chuck, your hand is raised.

Chuck Gomes: Yes, thanks Berry and thanks Stéphane and Claudia. I want to propose a compromise.

Rather than including them in the table, and I think Claudia has a pretty good point there, what if we were to add a footnote for the - we could put with the title of the table that communicates what Stéphane suggested and maybe also the fact that this didn't reach much level of consensus in the group but we would like people to feel free to comment on it.

Berry Cobb: Thank you Chuck. Claudia, you raised your hand again please.

Claudia MacMaster Tamaritt: Yes I did. Actually just following on what Chuck was saying, I don't think that's actually a very bad idea at all.

I think, from our perspective, we don't want to hide anything; we want it to be very clear. We just also want it to mean that it's not misleading. So if there was a footnote that said, "There is a minority statement or minority view on

this point. Please see further explanation. There wasn't a great deal of support but this is a viewpoint that's very important to those who put it forth."

I think that's actually a very good idea, and it might pacify - and we ourselves also have a minority statement so I understand the position, it might satisfy some of the worries that someone will come to the report, look only at the recommendations and ignore the minority views. If at least there's some sort of indication of there's a minority view on this particular point, maybe that's not a bad idea at all. So Chuck, I would support that direction with the caveat.

Berry Cobb: That's great, thank you Claudia. Well if no one objects to that, I can easily add that to the general recommendation table. I think there would probably be a series of five or six first notes that can, first to note that a particular recommendation such as recommendation for Second Level Protections of Exact Match Names would in this case apply to the Red Cross and to the IGOs as an example. And then as Claudia suggested, refer them to the following section that contains the minority position so that those recommendations aren't overlooked.

And then I think that is good middle ground. As we submit the report through the public comment period and if we get feedback that it's confusing, we can always readdress this issue as we prepare the final report.

Chuck please.

Chuck Gomes: Thanks Berry. I don't have any problem with making the changes in the general recommendations, but I think and I'm trying to argue for Stéphane here; he should correct me if I'm not.

But I think it would also be helpful if there was a footnote in the title of the table for the Red Cross Red Crescent section that also indicated that there is a minority report on this so that people that maybe are just focusing on the Red Cross, that they wouldn't have to depend on going down to the general

recommendations to realize there was a minority report that took a different position that's not covered in the table.

So if I'm wrong on that, Stéphane, please correct me. But I think both places would be better, and I think it's important - and the same thing for INGOs. Rather than just having reference to the minority statements in the general recommendation which I don't oppose, it's helpful to have some footnote under those so that the connection is even more obvious for people without having to read through all the general recommendations.

Berry Cobb: Great suggestion Chuck; thank you very much. Stéphane?

Stéphane Hankins: Yes, thank you very much. Stéphane Hankins, the Red Cross Red Crescent.

I hear what has been said inserted by Chuck. I mean I - it's still a little bit confusing to me why, you know, on certain points which have been discussed, you know, they are listed as options on which the group has, you know, not expressed - or has expressed consensus or has not expressed consensus as the case may be, and why some are omitted.

I mean, if indeed, you know, Chuck's suggestion provides sufficient clarity. But I would be quite hesitant to consider that, you know, referring to a minority statement that has to be, you know, researched is sufficient.

I do think that, you know, if I were in the shoes of those who will be deciding on this in GNSO and then the Board, I would require clarity that, you know, despite the words, you know, consensus, consensus, consensus that are all over the table Red Cross Red Crescent movement, there be clarity on, you know, which specific request there was no consensus.

You know, I still feel that, you know, whether it's a footnote or an indication in the title, it's much easier for the reader to see, you know, that you know, that

while there was consensus on a sub-solution, there was not on the full protections that were requested. Thank you.

Berry Cobb: Thank you Stéphane. And whoever is typing please mute your phone. Chuck, I see your hand is raised.

Chuck Gomes: Thanks again Berry.

One concern I have about doing that, and I get Stéphane's point, is then I think we need to do that for every one of the tables. And I think the tables are going to get much too lengthy, they are already lengthy, and too complex for people. That would be my concern.

If we do it for the Red Cross, then we should do it for any of the other tables where there is similar situations where certain recommendations were considered but didn't gain traction.

And I think we've already got a very lengthy set of recommendations and that would lengthen it considerably more and make it even more complex for comments.

I do think we need to be upfront and make sure people are aware of those. But I'm really concerned about the - you know, we've already got a bunch of recommendations we want people to consider. And if we add a bunch more that we're all divergent, we're making it even more different for people to comment.

Now I want them to comment on what Stéphane is bringing up; don't get me wrong on that. But I guess I still favor the footnote approach unless people think that this is the only place, the Red Cross Red Crescent table, where this might be a factor but I suspect it's not. So I'll leave it at that.

Berry Cobb: Great, thank you Chuck. Most definitely a change like this would affect all four organizations, or actually I should say three. I don't believe any of these would affect much of the IOC except for (haslike) if we were to include the Sunrise.

What I might also suggest is the previous document that had to be for our formal consensus call, I've maintained a revision history on the Wiki that contains everything from that we started from Day 1 a year ago almost to where we wound up today.

What I can do is find the particular version - when we involved from the initial report, then we took all the recommendations. At that time, they weren't sorted by organization, they were sorted between top and second level recommendations. Then we modified them to be distinguished between the organizational organization type.

Then we started to do the consensus call. We saw that several of the recommendations that are now in Section 5.4 didn't seem to get traction, so that's how they appeared in Section 5.4.

So I think in terms of moving forward with the footnote idea, what I can do is also add an additional footnote that will link to the prior version of the set of recommendations that would contain the entire set for that organization. Because I think we did get to that point, I just can't remember exactly which one it is but at least there is reference there.

And then I agree that there will be reference to the general recommendations and footnotes, and then within the general recommendation chart we'll have reference to the minority positions stated down in the next section.

And I think, then again, I'll repeat this. this isn't our last chance, at least for this draft final report, you know, we'll still have another opportunity before we package this up to send to the GNSO Council. And if for any reason there is

continued confusion about the overall set of recommendations, we can certainly readdress this for the final version.

Okay, so I'll take you back up to the Red Cross section, I don't think that there were any specific changes considered here other than, just again, bolding the distinction between top and second-level motions of the recommendations themselves.

And we'll go ahead and move down to the IOC. And I think based on some feedback we had gotten over the list in the past week, there was a concern about the level of consensus that (unintelligible) assigned here. And based I think on the outcome of our call from last week, that had been promoted back - or to consensus from strong support to mixed opposition.

And then we'll move right down into the IGO's. I think that the only change that we had here was in respect to Recommendation 5 which is Second Level Protections of Exact Match Acronym scope two identifiers for the IGOs and that they be bulk added to the Trademark Clearinghouse.

I think - so this kind of takes us back to one of our initial discussions today about the Registrar Stakeholder Group not having submitted their positions yet. And I think it was believed by Thomas that if, you know, we've gotten verbal agreement that I think that the registrars would submit or support the acronyms going into the Clearinghouse.

But again, we haven't gotten a written one and I think, using kind of Chuck's words, it was kind of his judgment call if we don't get anything written about the level of this. And certainly, I don't think anybody from the IPC is on for clarity.

So at the current time this will still remain strong support with significant opposition, and we'll highlight that, you know, we're still absent the registrar and the Business Constituency and this could possibly change based on their input.

But before I move on to the next section and what we had chatted about earlier about putting both levels, strong support but significant opposition/consensus depending on the RRSg, would the Working Group have any opposition to me including both, but again with the caveat that we're still waiting for other stakeholders to submit their positions?

Okay hearing and seeing none, thank you. WIPO, I'm not sure who is going to be speaking but please.

Berly Acosta: This is Berly Acosta from WIPO. We would be opposed to that.

We believe that the appropriate level for support for this one should be labeled as strong support but significant opposition. We've submitted an email in this regard I think it was yesterday. We do not support such recommendation and we believe that the responses received by the other working group colleagues so far (unintelligible) this particular labeling of the level of support and not a consensus one.

Berry Cobb: Okay, thank you Berly. Well, for this version I'll certainly maintain this level that is depicted here. And you are correct, you submitted the response to the list about whether you would still support this or not and so we had that there.

Okay, so we'll move on to...

Chuck Gomes: Berry, this is Chuck. Notice there is some opposition to the WIPO recommendation. It's not from me, I just wanted to point that out in the chat.

Berry Cobb: All right, thank you Chuck. Yes, Evan has mentioned that he disagreed with the WIPO statement that was just mentioned.

Chuck Gomes: So Berry, this is Chuck again. Sorry for jumping in. But is this one that we could call an either/or like we're doing with some others?

Berry Cobb: That was what I was trying to suggest, and WIPO or Berly had disagreed with that.

Chuck Gomes: But I lost track. Which recommendation are we on? This is Chuck again.

Berry Cobb: It's recommendation Number 5 under 5.2.

Chuck Gomes: Okay.

Berry Cobb: And Berly, this is why - we discussed this last week. You know, based on the recommendations that are on the table now and with the support, and I believe you'll understand my statement, is that it doesn't appear that there is support for scope two identifiers or acronyms to be protected at the top or second-level in terms of a reservation.

And I guess - I would be confused and I imagine others that read the document would be confused that, you know, we understand your objection that this level of protection or this particular recommendation doesn't match the level of protection that you're seeking. But at the same time, if you don't think that you're going to get support for a reservation of an acronym, why would you refuse at least this protection of getting into the Clearinghouse and using the Claims Notification at the very least?

And I think that would probably - it almost might even be a footnote here to help the readers understand the difference because the reason why this is listed as strong support but significant opposition is not only the IPC comment, but as well as the IGO coalition comment as well.

And if you prefer to still continue to object to the recommendation, you know, we'll be happy to move forward with it. But I think it could probably use an explanation of why, you know, or at the very least, if you don't mind me doing, I can take your comments that you submitted to the email list and I'll post that over into the consensus call document. Understand that you - so that there is

understanding that you just object to the recommendation all together on the basis that it doesn't provide the level of protection that you're looking for.

Berly Acosta: Yes, this is Berly again. Yes, I mean we wouldn't be opposed to that of course. It would be only fair to have my email of yesterday included in the report for better explanation.

So let me reiterate here that yes, we do oppose that Recommendation Number 5. You have identified the reasons why we do so. The other ideals that are member of this working group also, of course, oppose that recommendation as well, that the UPU and the OECD now and yes. It's been quite clear so far that we will not get in this final report any consensus on the idea of having our names and acronyms of the second-level - our acronyms reserved on the reservation list.

But not withstanding that, we will still oppose Recommendation Number 5 because as I said, it's not enough. So now if people do not necessarily understand why it's not enough for us so that we could support that Recommendation Number 5, there is so much we can do, right. We've explained the reasons behind our position and I think that's as far as we can go.

Berry Cobb: Great, thank you Berly. Chuck, you have your hand raised.

Chuck Gomes: Yes, and I think he just answered my question but let me make sure.

So even if there is no protection in terms of reservation, you still oppose this recommendation. You wouldn't want to use the Trademark Clearinghouse option. Did I understand that correctly?

Berly Acosta: Yes, yes because it's not sufficient.

Chuck Gomes: Thank you.

Berry Cobb: Thank you Chuck. All right, so in the meantime absent any update from the registrars, or like I said, I don't think we'll get a BC position. I'll leave this as strong support but significant opposition and remove the comments here.

Okay, with that let's move on to - it's only top of the hour and I feel like we've covered so much all ready. Now we're on to the INGO section, and there are of course a number of changes here and we'll go through each one.

First and foremost, I think that towards the end of last week's call, who were on the list. I can't remember which, I had asked the working group about the language component. And there's - and what I had listed here was that it was just going to be the English-only for now.

I know that in terms of the formal consensus call, it was left that TBD without any objection from the Working Group will maintain English-only. I think that kind of more or less implied that certainly the Ecosoc List in its current form is within the English language only. I think it just draws out that it's just going to be English only and no additional languages to be considered. And if there are no objections to that, then we'll let that change go through.

All right, secondly, the Recommendation Number 1 about top-level protections of exact match full names for scope one, Claudia had responded back to the list to be reassessed as further groups publish their views. Otherwise, we suggest that this should meet consensus.

I think to our earlier discussion today, this is where we would leave both there with the caveat that we didn't get statements from all of the stakeholders and it will be refined as we move through the review of the public comments and then to the final report. So essentially, that will read - basically there would just be a horizontal slash in between the two to show that both levels are, you know, it's going to be one or the other.

And then moving on down to the fourth recommendation, this was a change as a result of our last call. And I think that one group had agreed that this was really more consensus than strong support and significant opposition.

Lastly within this section, there was an update from Chuck about updating the title here that were considered but not adopted by the Working Group. This section was added as a result of us still, I guess, kind of deliberating on whether the Scope 1, Scope 2 identifiers and use of the Ecosoc List was going to be adequate enough.

And I think the question I have for you Claudia is are you - in terms of the INGOs, is there satisfaction with the use of the Ecosoc List being the qualification criteria, or is it more important to also include this subsection about alternative criteria although it was not necessarily adopted by the Working Group.

I think if there is satisfaction with you so the Ecosoc List, then it might be easier for the readers if we just remove this alternative qualification criteria. But I will leave that up to the Working Group and Claudia, if you'd like to respond or anybody else.

Claudia MacMaster Tamaritt: Yes, I definitely can respond. In our statement and our minority statement, we did mention that of course for our part, you know, we had initially - well we still and initially and still supported, you know, one set of criteria for all four.

Now that - I know. We all know and I don't need to rehash it. We know that that hasn't been supported by the majority by the group.

And then of course, in second (best), we presented some rather narrowly tailored criteria that did garner some support but just not enough to really consensus. And the Ecosoc List seemed to be getting further traction and that's where we went.

We can support the Ecosoc List and so can IEC. We've discussed it and we stand behind it. I think for us it's important to find a way forward to protect INGO's - other INGO's other than the IOC and the RCRC in some meaningful way. So we can definitely support the Ecosoc List even though it's not the criteria that we would have ideally seen in terms of INGO qualification.

Berry, to be honest with you, we don't mind seeing the ISO/IEC criteria here. But also in our minority statement. And so if it's easily assessable to readers who are going to be looking at this criteria for INGO's, I think we could live both solutions. If there's a benefit for removing this section, fine.

If we'd like to keep it in and also mention, as Chuck had mentioned, you know, some of the reasons why even though there was some support, we ultimately went with another set of criteria. That's fine.

So I think as long as it's assessable, as long as it's clear, we - I think we'll see the ISO/IEC criteria in this report and that's important. But otherwise I think we can go with what the group says on this. Thanks.

Berry Cobb: Great, thank you Claudia. I think what I'll do is I'll leave this section as it is and I will put a footnote here just pointing towards your minority position just so there's continuity from getting down to that area.

Okay, lastly is the infamous general recommendations section and I think we decided to leave this intact. And we'll footnote this across all the various recommendations and the specific organizations that they would affect.

And I believe that there's, again, Recommendation 4 will be - this is one I can't recall, and Claudia I may lean on you again. I think that you had submitted to the list that - oh, now I remember.

So this is something that we wanted to discuss and I think Chuck, you were kind of on either option, it didn't really matter to you in whether we should change the wording of the recommendation to, in this case, should not be placed in, and show that there is consensus, or leave it as intact and just show that it's with divergence.

My personal opinion would be to leave it as is and show that there was just divergence against this recommendation. But again, it's really kind of up to the Working Group how they would want to proceed.

If we do move forward with modifying the language of the recommendation to show that there is consensus that it shouldn't be supported, then we may need to do that for all of the recommendations here. So for example, Recommendation 5 would be IGO/INGOs not allowed to participate in Sunrise and those kinds of things.

Claudia, if your hand is raised.

Claudia MacMaster Tamaritt: Yes, we felt strongly about Recommendation 2 and to some degree it can be applied - sorry, Recommendation 4 and it can be applied to Recommendation 2 as well. And the reason is - and you'll understand from the history of our statements regarding ISO and the acronym for the IGO as well.

We're afraid that hidden behind a divergence, it gives an impression that the Working Group really could kind of makeup it's mind. That there were many different views and there wasn't any particular strong view in terms of reserving exact match acronyms.

And that's really not the case, right. The majority of the group has been against it. and you look at the view points on that recommendation, we understand that there's only, you know, there's the IGO coalition and then there was one individual and that was it.

And so I think it's dangerous - if a reader doesn't know that divergence in this case means actually most disagree, that some can view something else can be read out of that recommendation. It could be the sort of thing that the reader says, "Okay, well they didn't really feel very strongly about this so I guess either way is fine with them." When that's actually not the case.

So from our perspective, it's not so much the language, it's what it means. If divergence meant, you know, only minority supported, then that's fine. But it seems that divergence usually means neither yes or no.

And that's not what this Working Group has settled on those particular recommendations. If anything, most of us have felt rather strongly that blocking or reserving acronyms is very problematic for a pilfer of reasons. So that's why we suggested the possibility of putting (sid not).

I understand that it's difficult to start dealing with rewording a recommendation at this particular moment, and I'm not going to stand in between us getting to the public comment as soon as possible; I don't want to do that.

With that being said, I just would like us to think about the best way to make it clear that the realities of the majority or the Working Group was against that particular recommendation and not let it be that it looks like the recommendation was neither here nor there for us when we actually felt rather strongly about it.

So that's what our feeling has been on that particular recommendation. But again, I won't stand between us, you know, publishing a recommendation, the report, as soon as possible. But we're just very worried about any possible confusion and misleading significance for that recommendation level.

Berry Cobb: All right, great. Thank you Claudia. Greg, your hand is raised.

Greg Shatan: Hi, it's Greg Shatan. As I mentioned on the list (servant) as Evan as mentioned in the chat, I don't think we need to change the wording of the proposal, we can just say that consensus against or consensus in opposition to the proposal.

Obviously this was a complex working group, and you know, needing to deal with kind of multi-layer proposals. You know, there is a challenge to that, to the exercise itself.

And while, you know, I can see my way to changing the language of the proposals, I don't think it's necessary. But I do think it's necessary, and to echo Claudia, to reflect the level of support or in either direction, and that divergence has a particular meaning.

And you know, it's almost like we're trying to say that you can't have a number that's less than zero when in fact, you know, if this was on a scale from ten to minus ten in terms of support for versus against a particular proposal, you know, this one might be at minus 8 or minus 5 or whatever would be appropriate for consensus or if it's not consensus, strong support but significant opposition.

And you know, divergence is not a negative five. You know, not that we're voting, but we're talking about levels of consensus so every level of consensus should be clear whether it's consensus for or consensus against. Thank you.

Berry Cobb: Great, thank you Greg. And Chuck, please.

Chuck Gomes: Thanks, a couple of things. Consensus a term, consensus against, I understand that and it makes sense. I don't understand divergence and favor. What does that mean?

Now another way of solving the problem - and I think Claudia, it does raise an interesting problem. The term divergence has a broad range of meanings and

I think it might very well be helpful to make sure, and that's why consensus against probably is helpful.

Another way to approach it - forgive me for coming back to footnotes again, but we could clarify that it was strong support against in a footnote. I don't care whether we do that or say consensus against, but somebody please help me understand what divergence in favor means; that's very unclear to me.

Berry Cobb: All right, great. Thank you Chuck. Evan, do you care to respond?

Evan Leibovitch: Hi Chuck. Since I'm the one that wrote that in the comment, I'll respond. I was using that simply as a rhetorical tool. Anytime we put divergence, we're talking about divergence of the term in favor of whatever is in the box to the left. So rather than saying, "Okay, here's something," and there's divergent in support of that implied; simply that it's simply a matter of clarity to say, "There's consensus against."

When we say, you know, when I said, "Divergence in favor," divergence in favor is always implied anytime we say divergence in support of whatever was to the left of that. So I was simply using that to give it a tiny sort of straw phrase to work against simply in just suggesting that that was a matter of clarity.

Divergence simply means there is no agreement when there is agreement but the agreement is against the recommendation, then it's far greater sense of clarity to say, "There's a consensus against it," rather than divergence in agreeing with it. Thanks, that's it.

Berry Cobb: Great, thank you Evan. I think in terms of modifying the terms of consensus or divergence, these are explicitly listed in the Working Group Guidelines, and I'm not sure that I would feel comfortable about changing those certainly without consulting with Marika and other ICANN staff about that. and I

suspect they would be opposed to defining new terms on levels of consensus that haven't been adopted by the GNSO and through the Working Group Guidelines.

But I do appreciate Chuck's recommendation that we again use the footnote and we can explicitly state that there was zero support for this recommendation just so that it is clear. And if nobody objects to that, then we can maybe go down that road.

And I see Chuck took his hand down so I don't think he objects to that.

Chuck Gomes: This is Chuck. You actually said what I was going to say, so thanks.

Berry Cobb: Great. Greg?

Greg Shatan: You just clarified what would be said in the box itself above the footnote? I'm not clear on that.

Berry Cobb: So the box itself - let me - would say - it would continue to say divergence. Let me bring up the other document again so that we have this in front of us. And then next to divergence would be a footnote stating that there was no support for this particular recommendation, and I'm definitely open to specific language that should be placed into that footnote.

Greg Shatan: This is Greg. I would object to that. I think that's not what divergence is. I think divergence is, you know, close to equipoise or to, you know, as WIPO types in the chat, "Divergence is where there isn't strong support for any particular position."

In this case there is strong support for a particular position and the position is opposition. We should reflect that. I think we have to have negative numbers.

The fact that in this, you know, complex tree we, you know, didn't double the number of boxes to show that we had, you know, consensus - some place to show both consensus for or consensus against, you know, is just a limitation of how (bisitene) we want to make this box set up. It's not the idea that somehow we can't reflect that a particular level of support is underwater or deeply underwater just because of the way something is phrased.

I'd rather crack all the eggs and make an omelet and reword the language and put divergence next to something on which divergence is not the case. You know, divergence means we all had often different directions. As Steve and (Lee Cox), the renowned Canadian humorist once said, he got on his horse and road off in all directions.

That's not what this group is doing on that. most of us are riding in one direction. And whether you're in the majority or the minority, you know, I don't care; I don't even remember which way I went on this one or the IPC went on this one. The point is to reflect the will of the group as a level of consensus.

And I think that divergence reflects a situation where there is no particular level of will. And there is a level of will here and I think it needs to be reflected. Thank you.

Berry Cobb: Thank you Greg. Chuck.

Chuck Gomes: Yes, I think the problem that we're dealing with is that in the Working Group Guidelines the definition of divergence isn't clear enough. I don't think it necessarily means what Greg just said that we're all going in different directions in the Working Group Guidelines.

At the same time, I agree that having clarity on the Working Group positions is important which several people have said including Greg.

The - I don't effectively see the difference between the two options; one using a footnote to make it clear, and the other, changing it to consensus and changing the wording. But like Greg pointed out himself, if we do go the other direction, you have to change the wording.

So effectively, I'm comfortably the way - I don't see much difference either way.

Berry Cobb: Great, thank you Chuck. Mary, you have your hand raised.

Mary Wong: Thanks Berry. So I've just posted an excerpt from the Working Group Guidelines. I know most people if not everybody probably knows them really well all ready. But I thought it might be useful to remind folks of at least the descriptor in the Working Group Guidelines.

As Chuck says, it may not be as clear or as precise as sometimes it needs to be. But as a general guideline there we have it.

So without characterizing this discussion, I want to echo what Berry has said. That if the report is going to be phrased in a different way than what other working group reports have done and specifically and importantly in terms of how we describe consensus, divergence and so forth, I think two things. One, as Berry says, I think we, as ICANN staff, probably need to go back and have a broader discussion about how to present the ramifications and so forth. But where the group is concerned, I think the reasons for doing so have to be called out very explicitly up front.

So I'm glad this discussion is going on, but I didn't want people to, A, get a sense of what the guidelines actually say, and secondly, be aware that the ramifications beyond just this Working Group and just this report. Thanks Berry.

Berry Cobb: Thank you Mary. Claudia.

Claudia MacMaster Tamaritt: Yes thank you. Mary, I was looking at what you just posted.

For us, you know, the most important part of that paragraph is that there is no strong support for any particular position and in this case is just not the case. There is a strong position. There are two positions; those who are against and those who are for. And the only ones who are for are a very limited group.

And so we're worried about this being misleading. And I think that if were to go down this road, then it kind of opens the door for other recommendations where only one group or limited group supported it.

For example, ISO IEC support for having had only one set of criteria. You know, we didn't push this because it didn't get traction in the group and we didn't want to attract the group when we were making, you know, good segue in other directions. But that's something that we still strongly feel about.

So should we add a Number 9 and say recommendation that the four groups be scratched and we come up with one list of just one criteria and that would be divergence? I think a lot of people in this group would end up thinking that's misleading to say that that would be divergence. They'd rather see that position in a minority statement which is what we've done.

And I think that if we don't feel comfortable with putting divergence, then perhaps this recommendation needs to go out completely and it needs to remain a minority statement if there is such a limited group that supports it and such a large group that is against it.

But in any case, I really do hope we can find some sort of a solution for this because when there is a strong position for one way, and we're being held mad just because we don't want to change the wording, this doesn't make sense to me. You know, we risk being misleading just to spend a little bit of

time to either change the wording or put in a footnote or whatever it is that we need to do to make it very clear.

And then recommendations are very important. You know, these recommendations, we've been seeing a lot of - I mean the GAC has had a position on this, IGO has had a position on this. We've had lots of different letters. You know, we've written a letter. This is a very, very important recommendation and it's very important that we let the reader understand exactly how we felt about it and not hide behind divergence. At least that's our position anyway; thank you.

Berry Cobb: Thank you Claudia. Mary.

Mary Wong: Yes thanks Berry. And again, you know, without wanting to classify or predict the outcome of this discussion, again I've posted another X-7 that describes a minority view which I understand was where the report was prior to this discussion.

So I just going to stick my neck out here a little bit and say that, again, and emphasize the point I made earlier, to essentially put out a report that is different in terms of classifying consensus levels from what other working group reports have done, and perhaps most significantly, either create or modify a classification that's already in the Working Group Guidelines does have ramification. And Claudia, you may have just raised one of them.

So like I said, I'm glad the group is discussing this. but speaking as staff, we do need to go by and talk about is where the group wants to go. But I personally would ask you folks to be cautious if proceeding down this path. Thanks.

Berry Cobb: Thank you Mary. So as Mary stated, I'm not sure that we're going to get finality about this at least on this call. I will take the immediate action - we

have a meeting with the legal team and with Marika and a few a little bit later, and ask them about this.

I suspect again that we're only going to be bound to the levels on consensus as outlined in the Working Group Guidelines. The only bridge to this is that instead of a footnote we can put divergence and we could say something along the lines, "Divergence, per the consensus call, no one in this Working Group or only one stakeholder out of all of the stakeholder," whatever the language would be, "no one agreed to this protection." And we can try to put stronger language next to the divergence.

But I just don't think that we can do some of the other suggestions of earlier of coming up with new terms. We can extrapolate in detail what really occurred. And as Claudia mentioned, not to hide behind, you know, a particular level and I would even agree with that kind of statement.

And to carry this one bit further, I think what we're starting to discover here is a true working implementation of the Working Group Guidelines and that perhaps this is something that the Council and the SCI may even want to look at down the road in terms of maybe there is a fifth level of consensus that is called zero support or whatever that may be; that's beyond my pay grade.

But again, I'll just wrap this up that I don't think we can divert from the current levels of the Working Group Guidelines without introducing a great amount of risk. But we are flexible to add language that specifically states that the group didn't support this recommendation whatsoever.

Greg, your hand is raised.

Greg Shatan: Thank you. You know, with all due respect, that is just not divergence. Putting divergence there is just wrong. It is misdefining the term. It is, you know, again, trying to be - I guess maybe not trying to be charitable, it's turning into double speak at this point.

Divergence has a meaning and it's a meaning that's in the middle of a scale. If nobody or only one group is in support of something, that can't possibly be divergence.

If - you know, we're not trying to define a new term here. We're trying to use the terms we have to define the level of support for or against a particular position. You know, when nobody is in support of something, that's called unanimous consensus. But again, if you're going to take this position, you can't have consensus against, you also can't have unanimous consensus against.

And if we're going to take position that there is no kind of ability to say Consensus Against, that somehow that's a new term, then I think we have to change the wording of the proposal. Otherwise, we're hiding the results of the group and that's a question of substance.

I think we're elevating form over substance to hide the level of the group. I haven't heard a single substantive explanation of why this is divergence or for why we should keep the wording the way it is and somehow through that drive divergence through.

You know, as an intellectual property lawyer, I love WIPO. I think it's one of the great organizations in the known universe. But yet I can't, you know, find sympathy for the position because I feel like it's a results-oriented position and it's an attempt to hide a lack for support for particular proposal.

And that we can't do; we need to put the truth out there on the paper. And we need to do it either by saying there was consensus against this or by changing the terms and saying there is consensus for the opposite of it. but we can't say it's divergence if we're not divergent. Thank you.

Berry Cobb: Thank you Greg. Chuck.

Chuck Gomes: Thanks again Berry. Well Greg, I agree with you in terms of the definition of divergence and it's common meaning, but I don't think the Working Group Guidelines define it that way, and that's where our hang-up is. And so I think we need to provide clarity on that.

Now as I have said in the chat and previous comments, I frankly don't care which way we go. Reword it and put consensus or put a footnote on divergence and make sure it's clear and give a more concise meaning to where the group stood.

Because we're seeing divergence on the chat in that three organizations oppose changing the wording, I think the footnote option is the best way to go. And people still strongly oppose that, then I suggest we give Thomas's Chair working with staff, the authority to do what they think best in this draft report, and we can work on this further before we get to a final report.

Berry Cobb: Great, thank you Chuck. And just to carry on hence more what Chuck was saying, I would even propose that we don't make them footnotes and we elevate it to the same assistance or placement as the term that is defined in the Working Group Guidelines.

Again, I wasn't being made necessarily clear what the language should be, but I don't see an issue with calling it divergence because that's what the guidelines state, and then comma and explicitly stating that only one stakeholder out of the entire Working Group supported this and everybody else was against it. whatever that language should be, I don't think that's an issue. It would be an issue of actually changing the terminology that doesn't exist in the Guidelines.

But like I said, I'll try to clear this with Legal and get some more expert advice. But I think that our only path forward is to use the existing scale and we can document the heck out of it that reflects what the true representation about this particular

recommendation should be, and then we can also flag this with the GNSO Council for them to consider it.

Otherwise, the only other option is that we do rephrase each one of these recommendations that did not get - that are listed as divergence. And - but my fear in that is that will delay us and we need to share that with the Working Group.

So the only proposal that I can come up with in terms of doing this is that I can create two charts at 5.4 to share with the Working Group on the list immediately. Version 1 is essentially this that just lists divergence with kind of a side explanation about the level of or lack of support for this so that there is no hiding here. Or the second version will include an updated wording to these recommendations that state the opposite where (unintelligible) would be.

But outside of Recommendation 4, I don't think that we could say the same things for Recommendation 6, 7 and 8, that that was necessarily consensus. I would have to look through the results, but I don't think it's going to be as cut and dry as Number 4 is.

Chuck, please.

Chuck Gomes: Thanks. Again, I think we only have four options here as far as what goes in the support column; full consensus, consensus, strong support or divergence. I like some of the other terms but they're not in the Working Group Guidelines so we need to use one of those.

Again, I don't see any significant difference whether we reword it and call it consensus or whether we leave it the same and say Divergence and put a footnote to clarify that it was really strong opposition to it.

But regardless, people seem to be determined that, you know, some on one side and some on the other, so again, I suggest we leave it to the Chair since

we can't seem to come - to the Chair, and let him do what he thinks best working with staff and put it in the report that way. I think we've spent enough time on this.

Berry Cobb: Great. Thank you Chuck. Greg and then Evan and then I guess we'll close this off and move on.

Greg Shatan: I think, you know, there are, you know, perhaps some other alternatives to what Chuck mentioned which, you know, one is to invert the language so that we can say that there is consensus, or the....

Chuck Gomes: I said that one Greg.

Greg Shatan: And another option is to take it off this list as well and put it on the kind of the end list of things that didn't get enough support to even be, you know, listed. And maybe that's where really this is.

I know that takes away the kind of - the what would you call it? The way that both lists work together, kind of their balance. But in terms of, you know, the definitions itself, you know, if divergence is no support - not strong support for any particular position. I think there is a strong support for a particular position and not many points of view.

So this isn't divergence by the Working Group Guideline definition of divergence. And if we're not going to change the language and we're not going to put, you know, consensus against, then it shouldn't be on the list as divergence because it's not. Thanks.

Berry Cobb: Thank you Greg. Evan.

Evan Leibovitch: Thanks. Again, I'm going to agree with Greg that we really can't use the word divergence here. I mean this is the real mind-numbing thing about all this is that there is consensus. The group does have an opinion.

And in the interest of clarity, especially in terms of, you know, the public and end-users that may be trying to read this, to try and get an idea of what was put forward. If we have an instance that there was a recommendation was put forward and, you know, the overwhelming view of the Working Group was no, there has got to be a way to express that.

And so if it turns out that the Working Group conventions that are put on us say, "Well, it can be only zero to positive," then you're right. Then the recommendation has to be reworded to reflect that.

Now, as you were saying, we go down the list. You know, if you're saying things like with 6, 7, 8, that if you start looking at them then it's not necessarily divergence. So it might be an opposition to 6, it might be, you know, strong support with opposition or something like that, you have your scale back from zero to unanimous simply by negating 6, 7 and 8 as well as 4.

You know, if - but that, as a matter of clarity, that simply brings across to the reader who is not involved with this Working Group. We're trying to convey to them what it was we were thinking.

And you know, to triple agree with Greg, you know, this is not - you can't say divergence because divergence basically says things were scattered, that we couldn't come to an agreement. Well the agreement was made but the agreement was made against the recommendations.

So yes, I guess the challenge is on the Chair. My suggestion then is to redo, you know, 4, 6, 7 and 8 in a way that enables us to use a positive scale. And if the positive scale says, "Well, we agree with the negation of it," well then so be it if that's the way that will do this in a way that conforms with the Working Group Guidelines the way that Chuck as said. I think that's the way we need to go.

As Greg says in the comments, "We're not working for the process, the process is supposed to work for us." Thanks.

Berry Cobb: Great. Thank you Evan and thank you everybody for your contributions. I think first and foremost our first hurdle is to get past this and as suggested by Chuck and others, this is the first thing I'll be bringing up with Thomas when we're scheduled to meet early my time tomorrow morning, mid-afternoon his time so that we can work through this issue.

Secondarily, I will state with ICANN staff and perhaps as the Council goes to deliberate around the final report, that this definitely is an issue that needs to be worked through for future efforts in, you know, I'm not sure if it's the SCI or who would go about modifying the guidelines to include a new level. But clearly we found a gap in the current consensus scale and it won't be lost here.

And so with that, let's go ahead and hopefully move on to the remaining sections. We've got about 20 minutes left.

But like I said, before this is sent out to public comment, I'll also ensure that Thomas sends a note to the group with what the final decision is to get this moving forward through the public comment period. And as I stated earlier on the call, this is not the final final before we submit this to the Council.

And certainly we can - there are two sides to this particular argument. I wish I could be in a position to make a decision, but I'm not. we'll work through it. we'll advise the Working Group tomorrow and figure out what our go-forward strategy is. So thank you for the contributions.

Okay, moving on to the other parts of the report.

Chuck Gomes: Berry, this is Chuck. Before you move on out of Section 5 - current Section 5 anyway, there were - my 24th comment at the bottom of Page 34, actually at the top of Page 35, we need I think to decide, you know, who is going to prepare the form there. If that's a staff responsibility with staff working with community is probably fine, we probably should say that.

So what are we going to do there? Are we going to say who is going to do that or are we going to save that for the final report?

Berry Cobb: Chuck, I'm still trying to - you said comment number 24?

Chuck Gomes: Yes, my comment - well, it may not be 24 if other comments were added later. I'm looking at my version because the one on screen doesn't have that.

So - here, let me tell you the section. Unfortunately a way - where's the section number? Outline of proposed procedure - it's...

Berry Cobb: The Proposed Procedure.

Chuck Gomes: Yes, and then - what section is that in? I don't know, it's a long - oh. It's under 5.6. And then going down to outline and Proposed Procedure under Number 2, the first bullet under Number 2...

Berry Cobb: Okay, yes.

Chuck Gomes: It says a standard form will be provided. I don't think - I don't think it's going to be a standard form if each registry does it. so I think the simple solution is for that responsibility is staff working with registries for example or community. I don't care which. I don't think it's a big deal but we probably ought to clarify that.

And then following that, just to move quickly, the last bullet there before 3 says - it talks about an independent examiner. And I asked the question, "How will this be defined and implemented?"

Now, we're not going to answer that question here, but there's some work to be done on that. It seems to me it's okay to leave this as an implementation task, but it shouldn't just be a unilateral thing that staff does.

And then in three, I ask, "When will this happen - examination procedure? I think we ought to suggest a time relative to either this draft report or the approval of any related policy there.

And again, I'm okay with you and Mary and Thomas working up something there or even to say that this needs to be more clearly defined in the final report. But those were holes I thought needed some filing even if it's, you know, deferring it to the final report or something like that.

Berry Cobb: All right, thank you.

Chuck Gomes: Yes, there was one more earlier in Section 5 that I thought a question that needed to be answered. It's way up towards the top, and it's - hold on, I'll tell you where. Right towards the beginning of Section 5 at the end of that first paragraph.

Is everybody okay with the wording of that last sentence? I tried to fix it but I didn't do a very good job I don't think. It still seems awkward to me. It says, "Definitions are provided below and attention should be focused on which scope - this is after my changes - focused on which scope of identifier is utilized for specific protection with each recommendation."

Is that clear enough? I wasn't totally satisfied even with my changes.

I guess my suggestion unless somebody has a suggestion on this call for time sake. Just to - if Thomas and Mary and Berry can make it better I encourage you to do so. If you think it's okay that's fine with me too. That's all I had on Section 5.

Berry Cobb: All right, thank you Chuck. Yes, in relation to the last sentence on the very beginning of Section 5, I did intend to - the idea here was any suggestions you made that if there were no objections to any of your suggested changes that I was going to incorporate those. I would agree that definitely that last statement in Paragraph 1 needs to be improved a little bit to make it more clear and we're definitely going to make that change.

With respect to the suggested changes regarding the Exception Procedures, I guess to be honest, personally, I almost wanted to omit these because we haven't really nailed these down as much as we probably should within the Working Group. I chose to include them because they were part of the initial report and it most definitely is something that needs to be considered, as you mentioned, from an implementation standpoint.

So I guess I have one clarifying question. With regards to your three comments at the bottom of the Exception Procedure Option 1, your understanding is that these aren't necessarily policy implications, but they are very high power implementation issues, correct, that should need to be considered before this goes to the GNSO Council. Correct?

Chuck Gomes: Well, you know, again, first of all, I don't think we should delete that information that's there because it was output from the Working Group. But I personally am okay with considering those as implementation issues that need more work and definitely clear definition and timing. Does that make sense?

Berry Cobb: Yes. How about - so like for example with the first suggested change is standard form will be provided, and I'll kind of cut and paste your thought

within your comment within parenthesis, and then we can create not a footnote but almost a Number 4 here.

Additional language here that states that these particular components will have to be heavily considered in terms of implementation such as implementation review team if and when these are adopted or something along that language.

Chuck Gomes: I'm okay with that as long as everybody else is too. They were just an area that identified where there was something missing and it's okay for that missing part to be fixed in implementation.

Berry Cobb: Excellent and I would definitely agree with you that I think that, you know, trying to foresee down the road when these particular recommendations, if they did become approved and staff was responsible for implementation, that without a doubt there is going to have to be some sort of IRT team out of the GNSO that works with staff to ensure that, you know, the implementation is going the correct way much like we've done with previous working groups like (Hedner) and IRTP and those types.

Chuck Gomes: Berry, if we're done with Section 5 and nobody is jumping in right now, going back to Section 4.1.1, there was a comment I made there that I didn't know the solution too. It's in the - let's see - 4.1.1 - I guess it's part of the first paragraph. It's where I had - yes, towards the end of the first paragraph.

It says requiring harm in the last sentence. So it says, "Although the purpose of requiring harm goes towards the fact that resources otherwise earmarked for inept." I'm okay with you and Thomas and Mary fixing that. But I don't think that requiring harm is what we want to say. I don't think we want to require harm.

But anyway, I'm okay with you guys fixing that but I did want to call that your attention because I don't think it's worded correctly right now.

Berry Cobb: Yes that is a good catch. I would assign some latches to Brian because he wrote this section and now he's not with us. But definitely we'll take a look at that.

Chuck Gomes: We can blame him and you guys can fix it. Anyway, I think that's the only ones that I highlighted where I didn't necessarily provide an edit that could be used, but I did want to call those out. Thanks.

Berry Cobb: Absolutely. Thank you Chuck; appreciate that. Evan, you have your hand raised?

Evan Leibovitch: Yes I do. I just want to speak to the issue or requiring harm because this is something that ALAC has brought forward from the very beginning. The whole issue of harm being a relative component of this.

So I don't think we ever use the term requiring harm. Essentially I think what we were trying to get to is that at least some of the criteria for saying whether or not something should be protected or not has to do with being able to demonstrate harm to the domain owner or so on. And I mean this goes back to the fact that ALAC took the position right from the very beginning, that groups like (Oxfem) and MSF arguably had even more entitlement to protection than say an IGO, that you know, didn't solicit public funds.

So that is sort of at the root of the harm demonstration. I know it wasn't universally accepted, but certainly this was a component. And I think that's where this comes from here.

Berry Cobb: Agreed; thank you Evan. Okay, I think in terms of running through some of the other suggestions that Chuck had, that was pretty much all that...

Evan Leibovitch: Sorry, point of order, I just got a very weird message on my Adobe Connect screen.

Berry Cobb: Yes, I see that. Julia had left and she is the master of the domain which only gives us about four minutes. Either she had a network connectivity issue or she had to leave. But I don't have admin access to keep this going, but I think we're getting ready - oh, there she is. But I think we're getting close to wrapping up.

After reviewing the changes highlighted by Chuck, those are basically the ones on my list to review. If no one else has any other changes or suggestions to modify the draft final report, we'll probably look to start closing down the call.

As I mentioned, I'm going to work on the next Version 0.5. I will send out a version this evening although I won't be able to consult with Thomas tomorrow at which point the moment I do get to meet with him, and he makes any final decisions about the outcome of the report, we make those updates, I will send another version out to the list so that you have that.

Depending on the outcome of that meeting, again, I'm really hopeful that we can try to open up a public comment. There may be a couple of changes that might push this to Friday that we'll need input back from the Working Group on the list again, and we can try to advance this forward.

If we can open up the public comment this week, I don't see a need for meeting next week, but I'll also include that in the email to the list. I guess for the moment, for the few that remain on the call, just assume that we will have a call next week although it's likely we won't, but I will advise the group on the list as to what our next steps will be in regards to meeting.

Chuck, please.

Chuck Gomes: Yes, real quickly. Berry, it would be helpful if you would create a clean version of the document before you add the latest edits so that when we look

at the document tonight, it's real easy to see what changes were made as a result of our call.

Berry Cobb: Absolutely and I definitely want to make a clean version before I organize the major sections as well because that will create a lot of red line when I do that. But I will be sure to include both.

Chuck Gomes: Thanks.

Berry Cobb: Thank you Chuck. Stéphane?

Stéphane Hankins: Yes, thank you; Stéphane Hankins.

So just one question. So basically you will send us a new version including notably the question of the footnotes that we discussed at the beginning of the call. Because, you know, this for us is a little bit of the essence of our positioning. So you know, if we can receive that.

And then the deadline for submitting comments would be - what, it would be tomorrow evening New York time or what's the timing if you want to post it already on Friday?

Berry Cobb: I mean to be honest, I don't know that there really was a deadline anymore. The deadline was yesterday at 23:59 on this version. However, depending on meeting with Thomas tomorrow and what his decisions are especially in regards to the general recommendations, he may want to have another deadline. But again, if that happens, then we do push the public comments to Friday, it will literally be less than 24 hours to provide any other feedback.

To answer your original question, the first part of our call we were talking about the footnotes from the organization section down to the general recommendations down to the minority positions that are included in the document now. So willing and assist in the version that I send out tonight. But

in terms of updating the Section 5.5 which is the general recommendations chart, I won't make any changes to that table until I confer with Thomas as to what his intended direction is and how he wants to proceed there.

Thank you Stéphane. All right, if there are no other final questions, I really do appreciate everybody's input and participation today. Thank you again, and Thomas did again apologize that he couldn't be here.

We'll put everything that we can on the list over the next two days, and hopefully we can get this out. And I'll let you know about whether we meet again next week or not. If we don't meet next week, you can definitely expect for us to meet - bring up this document again. If we don't meet next week, then for sure we will look to probably meet on the 9th of October to start reviewing hopefully comments that are sent in to the group.

So thank you again everyone and I'll speak to you on the list. Have a good evening, afternoon or morning. Thank you.

Stéphane Hankins: Thank you.

Greg Shatan: Bye.

Evan Leibovitch: Bye all.

END