

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 27 February 2013 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of IGO-INGO Protections Policy Development Process (PDP) Working Group on Wednesday 27 February 2013 at 19:00 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-20130227-en.mp3>

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

Attendees:

Jim Bikoff – IPC/IOC
Elizabeth Finberg - RySG
Chuck Gomes - RySG
Alan Greenberg - ALAC
Catherine Gribbin - Red Cross
David Heasley - IPC/IOC
David Maher - RySG
Kiran Malancharuvil - IPC/IOC
Thomas Rickert - NCA - Working group chair
Greg Shatan - IPC
Claudia MacMaster Tamarit - ISO
Mary Wong - NCUC
Jonathan Robinson - RySG - GNSO Council Chair
Mason Cole - GNSO Council vice chair

Apologies:

Wilson Abigagba - NCSG
Avri Doria – NCSG
Evan Leibovitch – ALAC
Lanre Ajayi - NCA
Paul Diaz – RySG
Guilaine Fournet – (IEC)
David Roache-Turner - WIPO
Ricardo Guilherme – RySG
Christopher Rassi - Red Cross
Iliya Bazlyankov – RrSG

ICANN Staff:

Berry Cobb
Brian Peck
Julia Charvolen

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the IGO/INGO PDP Working Group call on Wednesday, 27 February. On the call today we have Wilson Abigaba who will be joining a little later, Jim Bikoff, Chuck Gomes, Alan Greenberg, Catherine Gribbin, David Heasley, David Maher, Kirin Malancharuvil, Thomas Rickert, Claudia MacMaster-Tamarit, Jonathan Robinson and Mason Cole.

We have apologies from Avri Doria, Evan Leibovitch, Lanre Ajayi, Paul Diaz, Guiliane Fournet, Debra Hughes, David Roach-Turner, Ricardo Guilherme and Christopher Rassi.

From staff we have Berry Cobb, Brian Peck and myself, Julia Charvolen.

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

Thomas Rickert: Thank you very much, Julia. Hello everybody. My name is Thomas Rickert and I'm chairing this working group. Before we move to the first - the second agenda item I'd like to ask you whether there are any updates to the statements of interest.

Hearing and reading none we can move to the second item on the agenda which is the status of the General Counsel request. And as usually this is the point where I hand over to Brian; Brian, please.

Brian Peck: Thank you, Thomas. Hello everyone. Brian Peck from ICANN staff. Confirmed with GC - Counsel office this morning that they plan to have the final formal response to the group next week. So that's where we are with that. They're committed to providing that final answer or I said formal response to the direct questions at that time.

Thomas Rickert: Thank you, that's excellent. That's good news. I'm - sorry for being picky on this. I'm sure General Counsel has not specified a date so that...

((Crosstalk))

Thomas Rickert: ...the reason why I'm asking is...

Brian Peck: Sure.

Thomas Rickert: ...whether it's going to be before our call or after our call?

Brian Peck: I've asked them specifically - they're aware that the calls take place every Wednesday. I asked them specifically that it would be, you know, extremely helpful for the group given where we are in the process to have it by the Wednesday meeting. I think they're aiming for that. But to be honest with you, you know, I didn't get the 100% guarantee they'd be done by Wednesday.

I mean, definitely within next week it will be completed and provided. And they are trying their best to get it by - in time for the group's Wednesday meeting next week.

Thomas Rickert: Okay thank you. That's good news so at least now we know that we have something to expect next week. And that's great. Berry, I'm not sure whether you've been able to get confirmation from NCSG whether somebody is on the call that could guide us through the input?

Mary Wong: Hey, Thomas, this is Mary Wong. I'm on the call...

Thomas Rickert: Hey, Mary.

((Crosstalk))

Thomas Rickert: Do you think you might be able to guide the group through the NCSG response?

Mary Wong: You know, unfortunately I don't think I can partly because I haven't had a chance to touch base with Robin, our chair, just to confirm some questions I had and also because since I'm actually driving right now I can't see like the document on Adobe. So many apologies. I hadn't realized that Avri was not going to be on the call.

Thomas Rickert: Okay, not to worry.

Mary Wong: Yeah, does anyone have any questions specific to that for the group that I can carry back to Robin and the rest just to maybe sweep this along in the event that somebody actually does have a question?

Thomas Rickert: So I have no - I see no hands up nor do I see any comments in the chat therefore I propose that we take this offline. Mary, thanks for your willingness to pass on questions to Robin. And I'm sure that participants will send questions to the mailing list and if need be we can open the subject again during next week's call.

Mary Wong: That would be great. Thank you, Thomas. Thank you, everyone.

Thomas Rickert: Thank you. Now we also kept on the agenda, as you can see, we move to Item 4 that we have put up the review of the protection matrix on the agenda again to give participants the opportunity to ask Berry questions and to give further feedback on this.

Okay hearing and seeing none that should be clear obviously. And then we look at the protection matrix actually and to start with let me say that I have certainly seen the communication that has been going on on the mailing list since I sent my proposal or amalgamation of the various points that were heard to the list.

Nonetheless I'd like to rewind a little bit and explain a little bit what the thinking behind that was. As you will remember during last week's call I have stated that the group has difficulty coming to consensus on qualification criteria.

We have been discussing the subject for a couple of months now and various proposals for eligibility criteria have been made and included in the original spreadsheet as well as discussed on the list.

We had a sub team working on that. And the outcome of that was that there was no consensus to find common qualification criteria for all four organizations or types of organizations that we are dealing with. This is why I have proposed in terms of approach to look at the four different working areas in isolation to see whether we can come up with qualification criteria for them individually.

And certainly if we came to the conclusion that there is a one-size fits all solution for all of them we could get back to that. But since there were so many diverging views and the group was not able to come up with a unique proposal that we could put out for a consensus call I chose to - or I proposed to the group to slice the work into the four various segments.

And unless we come up with the idea of putting it out as one recommendation in combination or more than one but less than four recommendations I would certainly be open to that suggestion. But for the time being I have proposed that we look at the organizations individually.

And also propose and ask for community feedback for each of those four different groups being IGOs, INGOs, the IOC and the RCRC because I think that in order to be able to get substantive feedback I think we can wait or there's little hope for this diverse group to come up with a - one proposal. At

least we haven't been able to come up with this over the last couple of months.

Now having said that I have now tried to - with the kind help of - from Berry, I've tried to come up with a visualization of the various areas that we have and the protections that are in place and protections that could possibly be applied or proposed for the various subjects.

If you look at the first page which is the qualification - or the matrix for the top level you should still bear in mind that in order to come to these we have to agree on some set of qualification criteria.

And I have proposed on the basis of what the various groups said on the mailing list and during our calls to come up with a subset of - or a short list, if you wish, a short list of criteria that are potentially objective or hopefully objective.

And the proposal was that we use the original definition that was proposed by Mary to sort of be the overall definition but then specify that definition by mentioning in bullet points the various criteria and then the additional requirement would be that at least two of these criteria need to be present.

So I'm not sure whether all of you had the chance to read and digest it. But the idea was not to have a single set of criteria for everybody but actually a list of criteria that we can then choose from.

And these criteria would be - and let me read them out for you, that we either have protection by treaty or protections in multiple national jurisdictions either by virtue of a specific law or treaty protection that is enforceable in multiple jurisdictions without the requirement of a specific enactment.

Because you will recall from earlier conversations and communication on the list that some countries chose not to have special laws enacting protections

by treaties in their national law but that these international treaties would grant protections per se and that is respected in this wording.

Then the mission serving the global public interest that's something that found quite some support in earlier discussion. And for the benefit of the INGOs the inclusion in the ECOSOC list. And again the idea was not to spell out criteria that work for everybody but to have one set of criteria where you need to have at least two of these factors present.

And I also took great care not to mention specific treaties in order to avoid the allegation that we would create I think, as Claudia put it, doors the size of the specific organizations to walk through but to give it more objectivity in terms of wording.

Now maybe to start with I'd like to ask for feedback or comments on that. And I see Alan's hand up.

Alan Greenberg: Thank you, Thomas. A quick question: When you're talking about protection under national law do you include trademark in that? Because if we're considering INGOs, which in general are not protected by national laws or any laws other than the rights that they assert, trademark is one of the relevant protections.

Thomas Rickert: That is true but I would open that up for the group to discuss. I think that it could be trademark protection but if you look at the INGOs I think they would qualify - at least that's the way that I understood Claudia's proposal, they would qualify by the last two qualification criteria, i.e. their mission serving the global public interest plus the inclusion in the ECOSOC list.

Alan Greenberg: That may well be the case. But, you know, if I'm looking at an organization - and virtually any INGO accepts the Red Cross and the IOC they tend not to be protected by explicit law but are protected because of the nature of them

trying to protect their own name. So I was not really advocating; I was asking a question.

Thomas Rickert: Yes.

Claudia MacMaster Tamarit: Thomas, may I step in very quick? It's Claudia.

Thomas Rickert: What is that?

Claudia MacMaster Tamarit: I just wanted to step in very, very quickly. I know I'm jumping in the line. I apologize for that. But just to quickly say just to answer Alan it's not all INGOs that would only be relying on trademark protection; there are INGOs like ISO, in fact, that rely upon protections that are recognized in a particular jurisdiction, for example, in our case, Switzerland.

So there is more than just - not all INGOs rely only on trademark protection. Not to say that only trademark protection is not very much, it can be quite a bit. But there are other legal protections and legislation that might recognize the protection of an INGO's particular characteristic or nature or so forth. Just to interrupt quickly. Sorry for that.

Thomas Rickert: But even in that instance a trademark protection would not be needed if criterion for, what is it, 3 and 4, a mission serving the global public interest plus the inclusion in the ECOSOC list were present. Chuck, please.

Chuck Gomes: Thanks, Thomas. A question on - in the qualification criteria column, you know, it's clear to me why we might use the Paris Convention and Nairobi Treaty, the Geneva Convention.

But if INGOs inclusion in the ECOSOC list my question is why does that list give us meaningful criteria? Now let me qualify that and say I fully appreciate the value of having a list that's stable and recognized. I'm not talking about

that. But why does the - do the organizations on the ECOSOC list deserve protection?

Thomas Rickert: Thanks, Chuck. And I think I'd be inclined to pass on that question to Claudia again. Claudia has picked up the idea of using the ECOSOC list and she made reference to about 140 organizations being on there that would fulfill certain criteria.

And I've just absorbed this idea because the - this is what I perceive to be the status quo of the various positions so the IGOs are referring to the Paris Convention, the INGOs have put forward as a proposal the ECOSOC list, IOC is referring to Nairobi Treaty and the RCRC to the Geneva Convention.

So it was not, as I said, a matter of personal preference but I tried to come up with the criteria that at least these groups wanted to have considered so that we can put them out for, you know, a test of waters individually.

But Claudia, would you be willing to elaborate on that a little bit more?

Claudia MacMaster Tamarit: Yes of course. I had suggested - I've looked at the list for pretty much the same reasons in the sense that it is, as Chuck as you said, a list that's established, that's recognized, that is relatively stable to, as Thomas was just mentioning.

To gain general consultative status on the UN ECOSOC list you actually have to pass rather rigorous criteria including things like having a, you know, a democratically chosen constitution, certain years of existence, two years (unintelligible), you have to show that you have a - quite a few criteria to be able to demonstrate that your organization is interested and works in most of, if not all of the policy areas of the UN Economic Social Council.

And so that list - there's only about 140. That's not to say that other INGOs might not also satisfy a criteria of being international in scope and operations.

But that is one list, for example, that sort of wanted to point to at least as a starting point I think in terms of INGOs - the kind of INGOs that we might be thinking about that are still - that are rather, you know, established and have, you know, formal alliances with IGOs, countries that are publicly funded, these kind of things.

So that's - I don't know if, Chuck, that answers your question but that's one of the reasons why at least in my mind I've been looking to this list as a starting point. I agree sometimes it's hard to - and as we can see in the last few months it's quite hard to come up with a criteria to capture something like global public interest. And so that's why I looked at this list and this list seemed to have some international recognition.

Chuck Gomes: Thank you, Claudia. And I think it does if all we're looking for is international recognition, okay, so I think it accomplishes that. I mean, I looked at the list of criteria that - in your email message. And - but none of them really jumped out at me telling me that these organizations need special protection. I agree that it would be a - one way of limiting the organizations and so forth.

But I'm still left wondering why do the organization son the Economic and Social Council list deserve special protection? If there's an international treaty I understand that; I get that - that provides protection. But in this case I, you know, and I agree with you, it would be one way of qualifying it. But I'm still left hanging about whether - why these organizations need special protection.

Thomas Rickert: Well, Chuck, the question is valid and you will remember that we - that we discussed this quite lengthy. There were those asking for information to determine whether there's worthiness or not. We tried to determine whether harm needs to be present.

But ultimately the information that was provided was not sufficient for those that were asking the question and the information that was requested others

thought they already had provided and were not really willing to - or prepared or didn't see the necessity to provide further information.

And on that basis I think we need to make the best out of the situation. And to me, as chair, the one valid option was to take what we have. And if, for example you said that this wouldn't be good enough justification to say yes to ECOSOC list organizations then you might want to recommend to the group that you're representing that the answer to that protection should be no.

Chuck Gomes: Yeah, and Thomas, by the way I'm perfectly comfortable with what you did so - and I think it helps us talk about these things. My main purpose in what I'm saying now is just that there's still a hole there for me on this one. Not that it shouldn't be in your table. I think we need to, as a group, discuss that as we move down the path.

And maybe some of the direction from the General Counsel's office will help us in that regard as well. So no criticism, Thomas, of what you did; I think what you did is helping facilitate ongoing discussion on this and we need that. Thanks.

Thomas Rickert: Thanks, Chuck. And I didn't perceive it as being criticism although criticism is welcome as well, it will help me improve and maybe speed up the process or have the process more focused.

But, you know, if there is any proposal from the group as to how we can expedite going through this process please do say so. What I can state for the moment is that we had a couple of emails proposing additional criteria or demarcations. There was the email from Jim after consulting with Mary. And that has been put to the list.

But my request to come up with alternative solutions or state whether the participants of the working group say yes or no to the various option has mainly remained unanswered.

Alan.

Alan Greenberg: Thank you. I think what a lot of us are trying to do is join the dots; that is find direct paths from the criteria that we're talking about setting through to offering protections.

And I think we need to acknowledge there's going to be difficulties in doing this. As Stéphane as said a number of times, and I'm sure I'm going to misquote him, the Geneva Convention protects the use of the Red Cross names and symbols in battlefield situations.

Well I haven't heard a lot of discussions on why battlefield situations are going to be impacted by having a confusing domain name. That's not the - the, you know, the thing that are going to be used to protect someone in a battlefield situation.

But the Red Cross has overwhelmingly strong arguments, in my mind, for why they are prey to malicious and various types of bad activities on the Internet because of their other activities and therefore deserve some protection.

And I think that's the kind of link that we see. You know, Oxfam is in the ECOSOC list and I'm sure they're prey to a lot of the same sorts of problems that the Red Cross faces.

Is everyone on the ECOSOC list prey to those kind of problems? No. You know, but we're looking for some levels of connection and that gives us, you know, something. If there's going to be an application process maybe ECOSOC is not sufficient but it's certainly a good basis to start on. Thank you.

Thomas Rickert: Alan, let me ask you a follow up question: What would the path then be? We have been - I think I can state that we've been moving in circles to a certain extent asking for these missing links. But I think we are now at a point in time where we need to put the loose ends together. And we can do this in various ways.

You will remember that I had originally proposed to come up with qualification criteria that would sort of be the first hurdle for an organization to take to fall under the category of organizations that are eligible for protection. And then a second step where we would ask for additional admission requirements.

So basically first you would open the door but then in order to walk through it you would need to fulfill additional requirements. And then the group or part of the group said that they would like to discuss this together because they felt that the separation of the two was kind of artificial.

And so my question is how can we - how can we proceed in a meaningful way without moving in circles but actually coming up with complete proposals that people can either improve or say yes to or no to.

Alan Greenberg: Well if you're asking me my answer is probably not going to please you because I don't see how at this point we can rationalize and meld together the positions that if I'm on the list I deserve protection, which is the statement that has been made about being protected by, you know, IGOs by international treaty and the statements that have been made by my organization and a number of other people.

And I think Claudia has said similar things, some of her statements, of we want to let people into this exclusive family who have a need.

Thomas Rickert: Yes...

Alan Greenberg: Simply being on the list is not necessarily sufficient. So I'm not sure how we merge those two together into a single criteria. I don't envy your task.

Thomas Rickert: No but I think it's - who was that?

Mary Wong: Thomas, this is Mary. I just want to get in the queue.

Thomas Rickert: Mary. It's your floor. Please proceed.

Mary Wong: Okay, I'm not sure how many hands were up in Adobe that's why - sorry for interrupting. I want to maybe follow up on some of the points that have been made by Alan, the question you asked and some of Claudia's points too.

I think first of all I'd like to thank Claudia for bringing up the ECOSOC list because to some extent, and as she said, it's a starting point for us in a more concrete way taking that framework that I suggested, which, you know, admittedly the second plank as Jim calls it is kind of suspect this question of admission and public interest and the importance.

So that's a great starting point. I think that the trademark question is interesting. And I want to make two points on that. First, I think in terms of why an organization of any type should be protected and the nature of that organization that should not be dependent on trademark law or trademark rights because trademark law and trademark rights protect very different types of behavior and activities.

A trademark has to be used in commerce or in trade to signify a link between a product and a service and the trademark owner. And I just think that in terms of what we're trying to do here that's entirely inappropriate for qualification eligibility and what the organizations are that should be protected.

That said, you know, I think partially - well part of an answer to the question that you and Alan have been discussing may lie in the nature of the

mechanism that's ultimately recommended and adopted. So for example it would go back to the clearinghouse discussion.

Two things about that which may be intriguing for us, first of all it does require voluntary (ask) on the part of whoever it is, right, in the trademark case the rights holders; in this potential case the organizations themselves.

And secondly there isn't really a question asked what that process happens as to, you know, what do you use a trademark for? How much cyber-squatting is there really against your trademark? It's simply protected because, A, it's a trademark and, B, the trademark owner applied for protection.

And the reason for that is it's not full protection, there's not a reserve list, there's not a block. So my sense is that if we can - and I don't want to jump the gun there. But in the sense if the proposal is because I'm on a list or protected by a treaty therefore it is a protection and that protection should be a reserve names list.

I don't think that that's going to get consensus nor do I think, speaking personally, that conceptually that makes any sense. On the other hand if we have the criteria for, you know, being included, as you said, Thomas, opening the door, to be along the lines of what's discussed but the ultimate protection mechanism is more flexible and does rely on some voluntary effort on the part of the organization I think that may be more preferable to some of the groups. That's it for now.

Thomas Rickert: Thank you very much, Mary. And that's very helpful actually. So my take home message from what you said is that you agree that the criteria that I have spelled out or put together based on the group's input in combination with maybe what you and Jim have recently posed to the group, could serve as Stage 1 qualification criteria, if you will, the door opener and that when it

comes to the various protection mechanisms that we would attach additional narrowing factors to the various measures.

And I think that we would need to specify those for the various stages and also the various levels. So it might be something - we might want to ask for additional - a different set of criteria for top level versus second level, for launch phase versus land rush. Is my understanding correct, Mary?

Mary Wong: Pretty much because, you know, I think we are further along than where we were. I think, you know, your summary and your suggestions were and are extremely helpful and so are those of Claudia and others who've jumped in.

I just don't want us to get stuck at this initial stage. And while we don't want to conflate all the issues I do think that that, what you just described, that's the agenda we are moving forward on the assumption that people are comfortable with that particular approach.

Thomas Rickert: Okay. Can I do a little test? Can those of you who are against proceeding as Mary described please give me a sign; raise your hand or type something into the chat or speak up. Chuck, please. Chuck, maybe you're on mute.

Chuck Gomes: Yeah...

Thomas Rickert: We can't hear you...

Chuck Gomes: ...I meant to hit agree instead of raising my hand but I think that she's - the direction she's going I think is constructive.

Thomas Rickert: Great. Alan.

Alan Greenberg: Yeah, to say what I put in the chat, I think once we recognize this is really a three-dimensional problem, that is the type of organization, the specific criteria you meet and the type of protection we're looking for and, you know,

the contents of that box in three dimensions will say yes, you deserve it or no, you don't.

So I, you know, I think we're starting to move in the right direction if we can get acceptance of the fact that there are three different sets of criteria so to speak or three different sets of parameters, rather, that control the yes/no answer or...

((Crosstalk))

Thomas Rickert: Okay.

Alan Greenberg: ...may be more granulated than yes/no but that, you know, I think you know what I mean.

Thomas Rickert: Okay. Is everybody happy to follow Alan's suggestion as well? Let me know if you object to that. If you don't object now I take that you are willing to proceed on that basis. Claudia.

Claudia MacMaster Tamarit: I think I object; I'm not completely sure I totally understand which - the three criteria will we be talking about. Definitely we object to the idea of writing criteria to specify certain organizations without including in that justification why we are granting protection in the first place.

I think we have to first define why we are granting protection leaving aside the question of whether we have to, for certain organizations, because that's the law and if that's the case well then let's do it and move on.

But we have to decide why are we granting protection first before defining certain organizations to then be granted that protection. It's rather the criteria need to reflect the purpose for granting the protection.

And if different organizations qualify in different ways, as certainly they must, that's great. But I don't know how naming some of the characteristics of the Olympic Committee, for example, is qualification criteria. That's naming different characteristics of the Olympic Committee.

And if those characteristics themselves don't, per se, grant protection on the level of a per se reservation then there must be another reason that we're granting protection and we should be honest about, you know, naming that reason.

And that reason, in my mind, should be the same reason that we would grant any international organization protection that is not a protection that's required absolutely in law.

Thomas Rickert: Thanks, Claudia. I think that - if I may respond? I think the difficulty with that is that the group will not be able to come up with a consensus position on that or at least I haven't seen anything that would be near at least rough consensus. And this is why I think we need to split up the criteria to look at the individual types of organizations.

And if you actually do - and any others - do say that you don't think that certain organizations would qualify for protections then you can make yourself heard when it comes to asking the community their view and then, you know, the result may be that all of them get protection or none of them get protection or a subset gets protection.

But the information that you're asking for I think we don't have. And Alan also said that he wants to determine on an organization by organization level at an earlier stage but without the information being publicly available and without the willingness of the organizations asking for protection to provide further information to satisfy these questions or answer them completely I think we have no alternative than moving forward on the basis that we now did.

Chuck, please.

Alan Greenberg: Thomas, it's Alan. Can I respond to Claudia?

Thomas Rickert: Let me take Chuck first and then, Alan, you will also need to respond to Jim and Kiran as well so you will have a little bit longer slot I think.

Chuck Gomes: Sorry about that, Alan. But I also want to respond to what Claudia said because Claudia is really saying what I was trying to get at with regard to ECOSOC; why are we granting protections there?

And the why I think - I think she's right, we do need to decide that before we can get too much other detail. Now I'm not opposed to looking at the other issues, don't get me wrong. But the why is where I'm focused and that's why my previous comments were about.

And I think there's a range of types of reasons from - that I'll categorize from the best or the most objective down to the least objective. But they're all possibilities for this group to base recommendations on.

Now I do not believe, before I talk about my range, I don't believe it's going to be possible to have one answer to the why question for all groups. So I personally think breaking it up the way you've done is helpful.

But to me, and you can tell this by some of my comments on the list too, not only recently but in the past, the best answer to the why question is something that's external, international and independent of any decisions by us, for example, an international treaty that explicitly says that domain names can be - should be protected for a certain organization.

That's the ideal. We know that the ideal may not be possible. But that's at the top end of my spectrum. And then that goes down to maybe the low end of the spectrum is where this working group will come up with its own criteria

and reach some sort of consensus, if that's possible, that these criteria must be met and we had to obviously make some subjective decisions; we can't hang our hat on some laws or something else.

And so the why is - and we don't have to - I know we're not going to answer the why today - but that - Claudia was really expressing where my head is to make sure that whatever we come up with with regard to criteria we have some basis even at the low end of my spectrum if it's criteria that we agree to ourselves. That's my least desirable but that its an option for this group.
Thanks.

Thomas Rickert: Thanks, Chuck. And a very brief comment before I move on to Alan. I'm not trying to defend the model that I've put out there. You know, it's not my model in terms of something that I want to go see through. It's just the best that I could come up with. And those who are making suggestions or are missing something in this table that I produced I think I would like to ask them to come up with alternative solutions that we could put in front of the group.

Alan, can I ask you to - number one, respond to Kiran and Jim's question in the chat. They have asked you to elaborate a little bit more and explain the three dimensions that you - that you mentioned in the chat during your earlier intervention. And then you had a question for Claudia or a comment to what Claudia said. Please.

Alan Greenberg: I think they're all the same. Let me try to elaborate. I agree 100% I think with everything Claudia said, at least everything I understood her to be saying. When I said three dimensions, you know, we've been putting up Excel spreadsheets. Excel spreadsheets are two dimensions. So we've been looking at the intersection of two things and saying here's the result.

And I think that's the flaw in what we're doing. I believe we cannot do that. The three dimensions I was talking about one of them is simply the differentiation between the various groups we're looking at and I support what

you did, Thomas, of having IOC, Red Cross, INGOs and IGOs as the four categories.

And that's one of the dimensions. The third dimension - and I'll go back to the second - is the kind of protection you're looking for. Are we looking for a trademark claims-like protection? That is, someone gets a warning but they can register? Are we looking for absolute blocking of exact matches?

Are we looking for absolute blocking of, you know, strings contained in? And there's other variations too. So I think the answer to the second level - the answers are going to be different depending on which kind of protection we're looking at. And I think Mary said something similar to that.

The second dimension that I listed is - are the criteria. And those criteria are not necessarily going to be you're on a list, it might be. But I believe that it should also be something more substantive than that in many of the cases, many of the dimensions. Again, if we're just looking for claims type thing we don't have to be as rigorous.

But if we are going to give substantive strong protection such as absolute blocking then I believe the criteria are going to have to be - to answer that question why, why do you deserve it? Why do you need it? Why should we grant it? Why should we, to some extent, break the Internet model that we've been using to have exceptions in these particular cases?

So I agree completely with Claudia. We need a - we need to know why. It can't just be, you know, you met the nice - the easy lists. And I agree with Chuck that it will be nice if we had completely objective lists that we could go to. I don't think the world has built them for us yet.

So I think we're going to - I believe, again, for the stronger protections, the easier protections are - the looser protections are easier. But the stronger protections, I believe, we're going to end up having to build subjective criteria

and a process to evaluate them. I'm not sure if that answers - addresses Claudia's question and Kiran and Jim's but if not I'll try again. Thank you.

Thomas Rickert: Thanks, Alan. Kiran, Jim.

Jim Bikoff: I was just going to say - that's helpful. I wanted to just say that I think Mary's suggestion and your suggestion, Thomas, are definitely a step in the right direction. I think that what it looks like to us is that you've got IGOs, IOC and RCRC which have something in common that the INGOs don't have and that's why how you define it may be fine because I think using the separate criteria is something we could certainly live with.

But the objection I think of the INGOs to the suggestion we made over the - I guess it was Friday that the protection be beyond ordinary trademark laws - I think that that differentiates the INGOs from the other groups. And I think that the others are all covered either by treaty or national laws and that they have the same international scope, primary mission and justification to some sort of protection, I believe.

But I think when we get into the trademark laws that's where I think there's some separation. So, I mean, there may be a way to group them or there may be a way - or maybe we just handle them separately. We could go either way I think.

Thomas Rickert: Okay, that's very helpful, Jim. And just to refresh your memory I had sent out this Excel sheet. And you will note and hopefully, Alan, this will please you, we can use that and have the three dimensions in it. Meaning that we have already in there four sections for the four categories that you mentioned. That was one of the dimensions.

Then we have the various protection mechanisms and we can easily attach additional criteria to them. And as regard to your second pillar we can also talk about or include more qualification criteria if we wanted to.

So my proposal would be that for the remainder of this call we go through the spreadsheet. Let's use the qualification criteria that I have put out, combine them with what Mary and Jim have suggested. And we'll put that out to the list again so that you can comment on that.

But those qualification criteria would then be the Stage 1, if you wish, qualification criteria that would generally open the door bearing in mind that we might attach additional hurdles to the specific instances when protections should be granted.

Now looking at the spreadsheet and maybe, Berry, you can go to the top level protections first. Thank you for this. What you see here is that we have in Lines 8-11, the four categories. We then have the qualification criteria. And I've only put in those qualification criteria that have been tagged decisive by the respective organizations. So that would be the six (chair) of the Paris Convention.

And since I've been asking for the presence of two qualification criteria cumulatively the second criterion for IGOs would be mission serving the global public interest.

For the INGOs that would be the inclusion in the ECOSOC list plus the global public interest for the IOC. It would be the Nairobi Treaty plus national laws plus mission serving the global public interest. And for the RCRC it would be the Paris Convention plus mission serving the global public interest.

We would then need to discuss - and again this is not carved in stone. But I've put in there what the organizations have requested to be protected. That doesn't mean that the group should use that as a basis for actually granting these protections but actually the request has been made for IGOs to reflect direct matches of the - exact matches of the names and acronyms in all UN languages.

For the INGOs we have, again, direct matches plus the acronyms in the six UN languages. For the IOC we have direct match of Olympic and Olympiad in the six UN languages without - and two additional - and you might need to refresh my memory on that. And no request for the protection of acronyms.

And for the RCRC it's a little bit more complicated. I'm not going to read that all out but that would include the designation of the national components, for example, so that would be a bigger group or bigger list in size.

Alan, do you have a question?

Alan Greenberg: Not really a question but a statement. I would really like to put on the table, before we discuss this level of detail, whether the group believes we need top level protections.

In the first round with almost 2000 applications we didn't find any hits. I don't believe the future rounds are going to get so cheap that people will capriciously put in applications for things on typo-squatting. Maybe they will.

But I would believe that the existing objection process, or a new one that we may have to formulate for the future rounds, be used to protect at the top level. It's a process that takes - has proven so far to take years to go through the process, or at least a year plus.

There are all sorts of mechanisms by which inappropriate use can be stopped and appropriate use can be allowed. And I don't believe we need first level protections at this kind of level. And first level protections implicitly are complete blocking. Thank you.

Thomas Rickert: Thanks, Alan. Claudia.

Claudia MacMaster Tamarit: Hi, Alan. I'd just like to actually say I don't know if all organizations will be asking only for a complete blocking on the top level. You're right that there are objection mechanisms at the top level but, for example, if you're a trademark owning INGO submitting a legal rights objection will cost you \$10,000 and then all of the legal fees.

It could you put you at a significant disadvantage when you're a nonprofit that's publicly funded and doesn't have the sort of budget that a corporate private trademark owner does to be able to lodge those kind of complaints.

So even though there are some objections - and I don't know if they can be useful to all of the organizations that we're talking about but at least for those who have trademark protection, yeah, sure they might be able to submit an LRO but that's a very expensive procedure that can mean for an INGO that they are not going to be able to even raise the hand because it's just so cost prohibitive.

And in that case maybe the kind of protection we could consider would be, for example, you know, a reducing of the fees or waiving of the fees for the provider that handles LROs or other objections in recognition of a nonprofit not being in that sort of economic situation to be able to put on a \$10,000 plus legal fee objection in the same way that a normal corporate trademark owner could.

So just to say, Alan, I don't know if it's just all blocking at the top level. Sure some organizations would really, really (invoke) that but maybe we can also consider other - maybe it's not a protection mechanism but other ways of recognizing the importance of allowing an international nonprofit to have pre-functioning and protection its reputation at the top level.

Thomas Rickert: Thanks, Claudia. Chuck. Chuck, I guess you're on mute.

Chuck Gomes: I was, sorry. Okay I'm probably going to say some of the same things Claudia and direct them - some questions to Alan because protections at the top level don't have to just involve blocking. I mean, we have some there right now and Claudia was just referring to them - the legal rights protection mechanisms or any of the other objection mechanisms are not blocking mechanisms.

But, Alan, I'm kind of guessing that maybe what you meant is we don't need blocking at the top level. Is that possibly what you were saying?

Alan Greenberg: Can I respond?

((Crosstalk))

Thomas Rickert: Please do, you're next in the queue anyway.

Alan Greenberg: Yes exactly. Sorry. Any time we've been talking about first level protections from the initial board decision on an interim basis on down we've been talking about if it's in the list you can't get it.

If we're talking about making an objection process available cheaper for this category of users or free or, as I said, completely change adding a new objection process with reasonable, you know, or nonexistent fees to make sure that no one gets a TLD delegated that will impact these kinds of organizations in a negative way.

And all of these objection processes are judged by human beings who are supposedly skilled at this kind of decision. I support that 100%. I haven't heard those kind of discussions until now and I'm completely supportive of them. And I think this kind of matrix is a lot simpler if we're talking about that kind of protection rather than blocking. So I'm 100% in agreement with both you and Claudia. I think.

So, yes, I was talking about blocking type protection not making an objection process more amenable to the organizations we're talking about.

Thomas Rickert: Thank you, Alan. Jim, Kiran.

Jim Bikoff: Yeah, I think while we're, you know, happy to talk about top level for the next round, which we - it may be several years off so I think we may have a lot of time - I just want to say that to some of these groups - although some of them aren't present on this call - I think they would take the position that we don't know what's going to happen in another round.

We don't know what the prices are going to be. We don't know whether there will entities that will try to take advantage of the organizations that have protection built in by law.

And so I would just say that without, you know, making any commitment one way or the other I think it's a topic that can be discussed but I wouldn't want to say necessarily that blocking would be inappropriate at the top level for names that have legal protection.

Thomas Rickert: Okay. Thank you for that. And if you look carefully what you find there in Column 8 it says, "Protection for Exact Matches." And then it has modified reserve names list with an asterisk Number 1. That would be, you know, I put in two options one of which would be the modified reserve names list and the second one would be the legal rights objection.

And with respect to the legal rights objection, for example, one recommendation could be that certain organizations could be using the objections with financial support as do the governments. And you will note that the program for governments to have easier access to the objection mechanism.

And one might even say that for IGOs, for example, being governmental organizations that they could use the GAC and use GAC advice to try to prevent third party registrations.

But let's get back to the modified reserve names list and what you - if you look at the legend - and I'm sure that's not legible - but what I put there is basic parameters for this modified reserve names list. And that would be designations would be included in the list upon application with ICANN after eligibility of the organization has been verified by ICANN or an appropriate third party.

That means that you have to become active to be on the list. So it's not per se and it's not blocking because what I then said is, you know, the protected organization can apply for a string on the list so they themselves can get access to the name if they wanted to.

And it also says third parties can apply for a string on the list. They are deemed an eligible party when legitimate use is either evidenced or ICANN - evidenced to ICANN or with the public interest commitment. You know, this is the new thingy that they put into Specification 11 of the Registry Agreement.

By which legitimate use is bindingly agreed upon. In case of violations of the public interest commitment the RRDRP could be used or ICANN could be entitled to terminate the Registry Agreement.

So what you find in there, and I tried to be balanced there because I anticipated some of the criticism that we heard now is that we would have an exemption mechanism in here. And it wouldn't even be a level playing field because the organizations that are entitled to top level protections would not, per se, prevail over a third party if this third party can provide evidence that they have a legitimate use.

So for example if Olympic Paint was asking for the TLD and they were specifying that they would only use it for their purposes then the remaining question would be how do we know whether you will actually abide by your promise? And for that we could use the public interest commitment. So if you don't play by the rules then ICANN can take away the registry from you again.

Same would be for noncommercial use, maybe, of certain designations or acronyms of IGOs. So I had at least hoped that I would have addressed the concerns in here.

And the last point that I mentioned in there is that in cases of contention sets a protected organization of a contention set between the protected organization and an eligible third party ICANN standard contention procedures would be applied - would apply.

So what do you say to that? Any feedback? Alan.

Alan Greenberg: With respect to that very last one I suspect - although I haven't thought about it a lot - that it would probably be better to not say the standard contention rules apply but for these kinds of organizations that meet whatever the criteria is we use something closer to the community ones as they get precedence as opposed to having...

((Crosstalk))

Thomas Rickert: But apart from...

Alan Greenberg: ...as opposed to having to buy out the other guy.

Thomas Rickert: Okay. Well that can be tweaked. But apart from that you will see that I was not proposing strict blocking. And is this something that would be more or less in line with your thinking?

Alan Greenberg: That's why I'm not cursing you.

Thomas Rickert: Thanks for this. You know, with - is there general agreement in the group that this description of a modified reserve names list is something that you could potentially agree with? Because, again, it doesn't have (strict) blocking in it, it has exemption procedures in it, it does not suppress legitimate third party use of the designations where permitted by law.

So you can comment at a later stage. Think about it for a while but that's basically what I've put in there. We then...

((Crosstalk))

Alan Greenberg: It's Alan. You did reference the currently voluntary public interest commitments. I will hope that in a future round we do something a little bit stronger than that. And I'm presuming that kind of thing will be there. Thank you.

Thomas Rickert: Yes, Alan, I was just using an analogy of tools that we have in order to make it easier for us to understand what a potential vehicle for certain things could be. So it doesn't have to be a strict public interest commitment; it can also be something, you know, sort of requirements as you would have for communities at the moment.

What I was trying to say is that we need something that can either be challenged with an existing or new policy or that can be enforced by ICANN Compliance. And I think that is needed in this case because as you know - and we had a lot of discussion surrounding that - for certain designations certain types of users would be permitted.

But whether the use is actually permitted can only be determined after we see the combination of a string with the content and services published there

under. And for that, you know, in order to provide a link for that I thought this link could be provided by instituting some contractual requirements for the applicant of a TLD to play with.

So in case of, for example, DotEco if somebody promises not to step on the toes of this organization or maybe even give them some domain names that they can use under the string - under the TLD - that might satisfy the concerns and that could be put into a contract. Okay so please give this more thought.

We then have the requests, at the top level again, for protection for similar strings. And for that, as you will have seen, I have not put in anything new because we have the string similarity review. Although as we've seen from yesterday's report that for some of your - some of you potentially the results were not satisfactory because only two results were positive in the string similarity review so that might not cover too much.

But anyway it's the tool that is there. And again the legal rights objection which also protects against similar strings. And we have the string similarity objection (round) as well, sorry, which I have not included here but which should be added.

Chuck, please.

Chuck Gomes: Yes, Thomas. I think one of the disappointments I had with regard to the posting of the contention sets is they really haven't yet posted the results of string similarity review because all they did is post contention sets.

So for example if there are some strings that they judge to be confusingly similar to existing TLDs or ccTLDs or whatever they haven't told us because you don't necessarily have to be in a contention set to be judged confusingly similar. So we don't know yet what the results are for the string similarity review except to the extent that they affect contention sets.

Thomas Rickert: Thanks, Chuck. Alan.

Alan Greenberg: That's an interesting comment. That isn't the way I read the posting. My understanding was the string similarity review was only done on things that failed the automated test. So the string similarity review might allow some of the ones shown to be confusingly similar to go forward. But I didn't...

Chuck Gomes: What do you mean by automated...

((Crosstalk))

Alan Greenberg: ...think it was the super set.

Chuck Gomes: What do you mean by automated test?

Alan Greenberg: Well there was a mechanical test to judge...

Chuck Gomes: Yeah, but that's not determined. That's the algorithm. That's not determined. There was a string similarity review panel that looks. And one of the decisions they have to make is whether or not a string, regardless of whether there's any contention, should be disallowed because they judge it to be confusingly similar to...

((Crosstalk))

Alan Greenberg: And the list does have four of those at the very beginning. It has hotels and HOTEIS.

Chuck Gomes: Those are contention sets.

Alan Greenberg: No, contention set - it's a contention set because they are confusingly similar.

Chuck Gomes: Right. But what about a string, Alan, a singular string where there's no other string in the round that is similar to it but it is judged to be confusingly similar to DotCom?

Alan Greenberg: Okay I thought that list was inclusive of it but maybe not. I mean, I personally thought hotel and hotels would be, from a user's perspective, very confusingly similar.

Thomas Rickert: Alan and Chuck...

Alan Greenberg: We're off topic.

Thomas Rickert: Alan and Chuck, can I ask you for patience and maybe take this offline?

Alan Greenberg: Yes.

Thomas Rickert: I think this is most interesting and I have to admit that I read the report in a different way as well. I thought it was the conclusive list of the results of the string similarity review panel. But we will double check. And Berry was kind enough to post the link in the chat so all of the others that haven't read it can click on that link and read it.

But I ask you to do this after our call so that you're fully focused for the remainder of our call on our topic. So we will check that again but I think you get the idea, though, that I thought, hearing what the group has said, that in terms of proactive mechanisms we should not invent anything new but that string similarity and the objections would be sufficient ground to tackle similar strings at the top level.

And I see Chuck confirming this. Thank you for this. Then the second area at the top level would be the curative way. And for that I, again, have looked at what is already out there.

And we have TDDRP, RRDRP - you could go to could and you could go to ICANN Compliance if something were completely wrong with a string that has been delegated and that is being used in a way that does not please the specific organization.

I'm not going to elaborate on this further. I hope that you're all familiar with TDDRP and RRDRP. If not please get back to me offline and I'm more than happy to discuss this.

And for similar strings I think we don't have anything that would be applicable there. And I also don't think that there is a need for that unless you, as a group, tell me that we should focus on that more.

And with this I'd like to give you the opportunity to ask questions if there are any regarding the top level spreadsheet that we just discussed. And if not then I'd like you to propose your amendments or suggestions on the list or during next week's call.

Which allows us to go to the second level protection. Again you find in the Column Number 2 the four categories of organizations. We, again, find the qualification criteria that might be subject to a change depending on our - on the outcome of our discussion.

Then we have the requested protections which, again, is not identical with the protections that I propose to grant or that, you know, so this is just what has been asked for by the respective organization.

So what you find in here and I need - yeah, thank you very much, Berry. We have the request for direct match names by IGOs with in all UN languages and also the acronyms in the six UN languages. For the INGOs that would be the same.

For the IOC Berry has rectified already the list of strings that should go in there. Again acronym protection was not requested at the second level. And then for the Red Cross and Red Crescent we have the designations mentioned in the list which is a little bit more comprehensive, as you know.

Then for protections at the - for exact match protection I have chosen to make the list a little bit more comprehensive by not only discussing preventive and curative mechanisms but also to look at the launch or pre-launch phase because we spoke about opening up the existing RPMs to all beneficiaries of this program.

And if that were the case then actually everybody could use the trademark claims or the trademark clearinghouse and participate in the sunrise service and also in the trademark claims service.

So during the sunrise phase we would have the (unintelligible) sunrise service. And if you look the asterisk Number 2 let me guide you through the proposal that I made there or that I absorbed from what you were saying.

It is recommended that all protected parties can have their protected designations into the (TNCH). That was - that's I think what got broad support.

The protected party can either - can register during the sunrise phase. Third party registrations are not possible during the sunrise phase. So there were proposals that specifically came from the IGOs and others who said that, you know, that no other organization should be able to get access to second level exact matches and that they could hardly think of legitimate use of a domain name such as unitedpostalunion.web.

And I think that there's some sense in that. So for the exact match names - I'm not talking about the acronyms now - one might consider - or I put it up for the group to discuss - that during sunrise or the modification of the sunrise

phase one might actually make the eligible parties prevailing for their exact match names. Any comments on that?

Okay you can give it more thought and get back to me and raise your hand or write in the chat as we move on.

Then protection for similar strings that have been registered during the sunrise or prelaunch phase, you know, once they can get used you can use the URS or the UDRP. And we - the explanation Number 4 actually only states that we have discussed that the URS and UDRP are open for all protected parties.

Then let's move on to the next phase which would be the phase during general availability. And again we have the split between preventive and curative mechanisms. So first we have to look at exact match protections in a preventive way.

And this is where the ICH comes into play, that's a provisional name for this new animal which is the analogy of the trademark clearinghouse. You will remember that we discussed the idea of having a central repository for certain designations so that would be the Identifier Clearing House.

And looking at the legend the basic parameters for that would be to have the central repository of designations and protected parties so at least what would go in there is the string and the organization that has applied for that string to be included in the central repository.

It can be used upon application only so there would be no (unintelligible) so no requirement for ICANN to watch certain updates, treaties, being adopted or signed or new laws being made or new organizations added to the ECOSOC list. That would be up to the respective organization.

Then all create requests will be checked against the ICH. So whenever a second level domain name shall be created that will be pinged against the database. Whenever an exact match name is applied for the registration will be put on hold for inspection. I think that's an EPP would be pending create.

And if the protected party has initiated the registration request the registration will be completed. If third party has initiated the registration request it has to evidence the legitimacy of - sorry, the legitimacy of the registration, i.e. by providing an approval letter from the protected organization.

But we can also think of other mechanisms to prove legitimacy. I know that there have been some requests for approval letters by the respective organizations that have rights in the designations while others said that it should be some independent bodies in order to avoid something which I think Avri Doria was the first person to call a licensing scheme or the risk of a licensing scheme.

And then once the legitimacy is evidenced the registration will be completed and a notice will be sent to the protected organization to enable the organization to take curative action.

So, again, the idea would be not to grant protection at the second level per se under the ICH type model but whenever somebody comes in and evidences legitimate use that party can use the name more or less without delay after the registration request having been vetted. And then the organizations in question could take curative measures.

Is this something that you like or do you have instant objections to that? Alan.

Alan Greenberg: Can you elaborate more on the process that would follow from a registration request being, quote, put on hold and under evaluation? Past recommendations for things like that have involved payment of significant fees and multiple months in delay. Can you give a little bit more elaboration of

what you're talking about because I think that will determine whether this is something that is acceptable to some groups or not.

Thomas Rickert: Well to be quite honest I don't know in great detail because all I know is that the groups sort of liked the idea of giving - of having the central repository and also they liked the idea of giving special treatment to registration requests that are exact matches to what's in the - what's in the clearinghouse.

There are multiple ways of dealing with that but I think the first thing for us to consider would be whether we insist on approval letters by the respective organizations in which case the procedure would be sort of light.

But to be quite honest after having spoken to all of you for quite some time I think there might be substantive objection against that and that I think that broader acceptance might be for a recommendation where these checks are being done by an independent third party.

And then certainly one could think of, you know, either providing an approval letter or in another way providing evidence of legitimate use. Now that I see Jim and Kiran's hand up for the case of the IOC, for example, that could be the legal exemptions where legitimate use is provided so that can, you know, it might be relatively easy to assess cases where exemptions are put into the law.

It will be more difficult for those cases where you can only determine the legitimacy after having seen the combination of the string and content or services. And for that I think one might use something like an extra registration agreement whereby the registrant promises to only use a certain designation for certain purposes.

And should that registrant not play by the rules then the domain name can be taken away easily from that respective registrant. But that's just, you know,

thinking out loudly. I think these are exactly the details that we need to put in our thinking as we move along.

Jim or Kiran.

Jim Bikoff: I was just going to say that the way we viewed the exception procedure - we do believe there should be an exception procedure on all - for all groups because there are some grandfathered rights, there are some legitimate rights that could be asserted. So I think there ought to be an exception procedure.

And the way we have proposed it in the past would be a two-pronged approach. And it would require, you know, many of these can be disposed of by a consent. This is not a licensing scheme at all. And if it were misused there could be penalties put in.

But it would be simply a request for a consent. And if the consent was granted it would have to be granted within a particular time period. And then if the consent was not granted there would be a mechanism for the termination by a neutral party as to whether the use was legitimate and should be allowed.

I think that's fair to everybody and I think it would take away a lot of the possible issues of abuse that could be - prevent somebody from getting a registration on the second level for something where it's unquestionably a legitimate use.

Thomas Rickert: Thanks, Jim. That's very helpful. And we can certainly put that out for discussion, this two-pronged approach. Thanks for reminding us about this. Alan, please.

Alan Greenberg: Yeah, I think this is one of those things where the devil is in the details and it's easy to get agreement in principle and then have it flatly refused because the implementation is not acceptable.

You know, and I can agree with most of what Jim just said but, you know, whether that timeframe is we have to give you two months to respond as opposed to two days makes all the difference in some of these cases. So it's easy to say, yeah, that probably could work but whether it is acceptable or not depends on the details.

And I'll just add one more comment that Claudia and I have traded in some private notes of we may want different rules for different TLDs. There may be some TLDs which would be exempt from these kind of things because of the nature of those TLDs.

And I think we want to allow that concept to be built in that a registry could ask for a global exemption under some terms and conditions. Thank you.

Jim Bikoff: Can I just reply to Alan, Thomas?

Thomas Rickert: Please do.

Jim Bikoff: I just wanted to say, Alan, I think in the ICANN process there have been a lot of things created, a lot of mechanism created for different types of issues. And I don't think would be any more difficult than any of the others that have been created. I think it would just require whoever is going to do this to come up with what would be considered to be equitable time limits.

And if a consent is not granted in a particular time then it would automatically go to some type of neutral; it could be an ombudsman, it could be a panel, it could be whatever. But, I mean, there are similar apparatus that they've come up with for different issues within this process and I think this could be one of

them that could be developed, although we haven't really gone through the details yet.

Thomas Rickert: Thanks again, Jim. Alan.

((Crosstalk))

Alan Greenberg: Thomas, if I may respond? I don't disagree at all except I've sat through and been part of some of those discussions to yield some of these processes and, you know, I've got a lot of scars and so do some others. And some of us think that some of the answers that came out of it are not acceptable.

So, yes, all of those things could be - could be worked - could work out fine, you know, but once you toss in a little thing like ICANN says pretty much any dispute like this has to be self funded you are now potentially charging a fee that could be a hundredfold of what the registration for a year would be or things like that and that changes the nature of it.

So, yes, as I said when I started off, it's something which we could agree to in principle; the devil is in the details. And we're not going to try to work those out today.

Thomas Rickert: Sure. And, Alan, rest assured that we will get to more details as we move along. But I think the purpose of this exercise is to see whether and whom we're losing on our way. And this is why I'm doing all these tests with the group to see what, you know, not consensus but what at least is supported by the majority of the participants of the various cause or at least doesn't have substantial objection.

And as you all know it's not yet the time to say yes and no and you can always say no. But I would like to learn from you guys when you see that actually there's - we're moving to a direction that you can't support then we should know and then either we have to accept that we will never reach

agreement with certain groups that we are still on the path where consensus is at least not completely unrealistic.

But I take good note of the point you made, Alan, that we might need different approaches for different types of TLDs. And I think that using an exemption mechanism, as, for example, we do have for exclusive use TLDs, which can also ask for an exemption from the registry code of conduct, you know, that's something that we should provisionally, at least, put into the process. And I haven't seen any objection to this idea. So I'll - I put that into the scheme.

Now we've been talking about this ICH idea for a moment. And this was just to introduce the general idea so we would have this mechanism, this ICH mechanism for exact match - exact matches of the organization's names.

And then for the acronyms you see there is a difference there. And this is because some of you have claimed that if we give special treatment to all acronyms that this might result in over-breadth.

And this is why I think there might be some support for the notion of using something which might be equivalent to the trademark claims notice but it should be on a permanent basis where an IGO, in this case, would receive a notification if somebody had registered their acronym at the second level. And then it would be up for them to take action against that.

But there would not be a per se prevention or holding up the train for registrations of acronyms. And I will continue to move to the next cell. And I trust you will raise your hands or make yourself heard if you want to comment on that. And if you don't want to comment on that I take that you are not completely against this notion at first sight.

For INGOs it would be basically the same; for the IOC also the ICH for exact match names. And it would not be applicable for acronyms since no

protection was being asked for. And then again same treatment for RCRC for exact matches.

For similar strings I think in a preventive way but please do correct me if I'm wrong - I think the only personal organization that was asking for protection - preventive protection at the second level was the RCRC where Stéphane has put in writing as well as presenting the idea of string similarity reviews at the second level which would change the current industry approach substantially.

And this is why, for the purpose of, you know, including something that might find as broad support as possible, I did not pick up the idea in this sheet. So we would not have any preventive protections for similar strings. But, again, for the curative part of it we would have URS and UDRP because these mechanisms would then be open to the organizations in question so that in a curative manner they could protect themselves against abuse.

Is that something where you have instant feedback? And I see that Alan has commented. Okay so it's about potential difficulties of making a claims notice permanent. But I think that's the best idea that we can come up with other than not granting any protections.

You know, certainly we could ask the respective groups to accept not to get any protections for their acronyms at the second level and refer them to monitoring services in order to avoid that additional burden for registrars of using a service on a permanent basis. Can I get some views on that? What do you think? Should we leave in there or should we take it out?

Mary Wong: Hey, Thomas, this is Mary. Just to say to everyone that I have to jump off. I've arrived at the (unintelligible) I need to stop at for the winter storm heading our way tonight. So I will put these - the chart and the discussion to our group. I think that we'll need to discuss that quite significantly. And we'll get back to all of you on the list. Thanks.

Thomas Rickert: Thanks so much, Mary. Take care. Alan is next.

Alan Greenberg: Yeah, thank you. I wasn't saying this is going to be an insurmountable problem, just alerting people to the existence for those who are not following the other parallel discussions on trademark protections that's the current state of the game.

But there's also a proposal on the table to have what could be renewable and therefore implicitly permanent claims implemented which if that were to be done clearly this problem would have to be addressed. I was just alerting people to the issue, not saying it's a show stopper; it may or may not be. Thank you.

Thomas Rickert: Thanks, Alan. And I apologize for misrepresenting your statement. I've heard from various contracted parties that they would not so much dislike the idea of using or offering service on a permanent basis. But since the cost was a big unknown they wouldn't go fast as offering it.

But you will have noted that some applicants have actually chosen to use mechanisms of that type on a permanent basis already. Greg, please.

Greg Shatan: Thank you, Thomas. I would certainly support keeping this in the mix. I think that it's a valuable type of protection. Still concerned with kind of the cost issues for INGOs especially going up against - I just think it's harder for INGOs to dedicate, you know, an amount of their funds to this sort of thing when especially the ones that are not, you know, cash rich and maybe there aren't any that are, but many that are quite, you know, modest in that regard.

I don't know if there is possibly a way to offer, you know, different pricing or support for the reactions that one must take in that regard. It's just, you know, a possible thought. And certainly - but I certainly wouldn't write it out. I'm not sure it's the only protection. But I certainly think it is one of the steps that we need to keep on our radar screen. Thanks.

Thomas Rickert: Thanks, Greg. Any more comments overall suggestions with respect to the spreadsheet? Okay in which case I would like to discuss the next steps with you.

And that would, number one, be whether we want to treat the qualification criteria and that's the point that we discussed earlier so we will discuss these on the list. And I rely on your active participation on that because we shouldn't lose time.

The second point that I think needs to be worked on is actually looking at the URS and the UDRP and at least putting together some broad bullet points as to what needs to be tweaked in order to open them up.

Before we started the recording of this call I had a quick chat with David Maher who said that this might be a little bit too much of the task. And so the question is whether there are people in this group that are willing to work on this. So far David and Claudia have agreed to look at that.

But I think that we should make progress on that because in fact this is the point so far where we have least controversy. So most of you do think, if not all of you do think that URS and UDRP and trademark clearinghouse should be opened up for all potential beneficiaries of this PDP. So we should not lose time and work on the specification of the - of the recommendations that this group might make rather sooner than later.

Chuck, please.

Chuck Gomes: Yeah, another approach we could take, because I think David makes a good point, I'm not sure it's this group's task to actually modify the UDRP. But we could make a recommendation that a group be formed in the broader community, not just this group, that would have a task to do that if that's the way we wanted to go.

And we might be able to make that recommendation earlier than we do our final recommendations if there was agreement for that. But that's just - I just throw that out.

Thomas Rickert: Yeah, I think we certainly have to ask for agreement in that case because, as you well know, I have made all tests that I did conditional to ultimately coming to a package of recommendations that people could say yes or no to. So I think that - in that sense the buy in to opening up the existing and future RPMs was actually not to be seen in isolation but as part of a bigger package.

But we can certainly do the tests for that individually. And thanks for that very helpful suggestion. Alan.

Alan Greenberg: Thank you. Just a couple of quick comments. And I'm not disagreeing, I'm just, again, a bit of history. The URS currently does allow international treaties to be used in the URS. There are issues of whether international organizations can be subject to the decisions of certain types of dispute mechanisms and that's a legal issue that needs to be looked at.

But if - Chuck was around at the time and he may remember better than I - but I believe in the 2006 timeframe when there was discussion of a UDRP for IGOs I believe staff went as far as essentially marking up a UDRP policy to apply to IGOs instead. I don't think it was a modification, I think it was a separate one.

And it - the decision was made to shelve it at that point. But I believe it did go so far as actually writing the, you know, writing the policy. So we may want to go back into history to try to find that. Thank you.

Thomas Rickert: Thanks. David.

David Maher: Yeah, that was known as WIPO 2 I think or maybe it was UDRP 2.

Alan Greenberg: Yeah, it was the out - it was one of the outcomes of WIPO 2 several years down the road.

David Maher: Yeah, and it went nowhere for a variety of reasons. I don't recall that it actually got to the point of redrafting but I'll take a look at my archives; I might be able to find something.

Thomas Rickert: Thanks, David. That's very helpful. So for all of you please do consider whether you would support the proposal made by Chuck. And, Berry, maybe you can note of that and put that out on the list whether we should make a recommendation in isolation on the opening up of the existing and future RPMs. I think that would be helpful and would at least be a sign of life of this group that we're making progress.

Also what I think needs to be done now is actually the various participants of this working group and their respective groups going through the sheet and potentially adding additional, let's say, Tier 2 parameters or qualification criteria to the protection mechanisms that you find there.

Unless you all say that you find this proposal that I've summarized so balanced that you wouldn't ask for additional criteria in the light of legitimate use being given sufficient space although I wouldn't be as optimistic as going that far.

So in case you actually do think that we would need additional requirements to be - to get access to the protection mechanisms provided there please do consider what those should be. And in an ideal world I would see many, many hands up now of people volunteering to take the lead on that. Okay so please do give it some thought. And we should further discuss this.

Also what I think needs some more definition is an exemption mechanism. We briefly touched upon this but I think it would be helpful for us to include in our report at a later stage what this might look like.

So do we have a volunteer for taking the first attempt or making a first attempt to sketch a procedure for an exemption mechanism? It doesn't have to be long just so that we put more flesh to the bones to see whether devils are that might be lurking in the details. I think this is a very shy community today so no volunteer for that too.

And there would be more mechanisms that we could further specify. And instead of asking you for all those individually let me encourage you to maybe come up with suggestions and write something down. You can - you know where to reach me, just send me an email and I'm more than happy to discuss this.

And in response to Chuck's note in the chat I know that you're all very busy. Nonetheless I think we do need to make progress with this. And, you know, I hope that you found this little exercise helpful. We're working on the report in parallel. Staff has been starting to write that up.

And we're now seeing the work plan here which we will be able to fill with life now since we do know that General Counsel response is due next week. So I propose that we further discuss the various options that we started discussing today during next week's call.

And once we have the - a chance to digest what's in the General Counsel response I think we will then see clearer as to what the next steps would be. You know, my hope would be that we can come to a close and put out a report in the very near future.

And I really do hope that our working group participants will do their best to come back with feedback in a very timely manner so that we have something to propose very soon.

And with that we're even a little early. I think that I, at least, do not have anything to add for today's call. Do you have more comments or questions?

Berry Cobb: Thomas, this is Berry.

Thomas Rickert: Seeing none and hearing none. Berry, please.

Berry Cobb: Just to remind the working group that our meeting will be two hours earlier next week.

Thomas Rickert: Yes so that will be the - we'll be starting at 1700 hours UTC. And with that I'd like to thank you all for your patience. I did too much talking today but I hope that I didn't bore you too much with all the details in the spreadsheet. But I think it was useful or I hope you found it useful to have everything in one place and see what the potential approach is for the various stages and categories and options would be.

And I hope that we will fill that with more detail and actually come up with a meaningful proposal in the very near future. Thank you and have a great day. Bye-bye.

Jim Bikoff: Thomas?

David Maher: Bye-bye.

Thomas Rickert: Yes, Jim.

Jim Bikoff: I was just going to say - and maybe we've lost some people but we could - I'm really not anxious to commit time but we could look at this exception

mechanism and try maybe to flush out some details on time limits and procedures.

It's hard for me to commit because we've got a lot of - we've some litigation we're working on now that's taking up a lot of time. But we could try to do something. It might not be very long but maybe we could put in some flesh on the bones from the top level proposal that was made by the IOC RC group.

Thomas Rickert: That would be excellent. It doesn't have to be a long text but...

Jim Bikoff: Okay.

Thomas Rickert: ...I think we should try to fill the gaps, you know, put in some missing information so that we can get a clearer picture of what we're trying to achieve.

Jim Bikoff: Okay.

Thomas Rickert: Thank you so much for this.

Jim Bikoff: Okay.

Thomas Rickert: And have a great day, everybody. Thank you.

Jim Bikoff: Okay thanks.

Thomas Rickert: Bye-bye.

Jim Bikoff: Bye.

END