

Transcript
GAC/GNSO issues related to International Olympic Committee (IOC) and Red Cross (RC) names discussion group teleconference
11 July 2012 at 18:00 UTC

Note: The following is the output of transcribing from an audio recording of the GAC/GNSO issues related to International Olympic Committee (IOC) and Red Cross (RC) names discussion group teleconference held on Wednesday 11 July 2012 at 1800 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/gns0/gns0-gac-ioc-20120711-en.mp3> On page:

<http://gns0.icann.org/calendar/#jul>

Attendees

Jeff Neuman - Registry SG group leader
Lanre Ajayi - Nominating Committee Appointee
Thomas Rickert - Nominating Committee Appointee
Chuck Gomes - RySG
Stephane Hankins - International Committee of the Red Cross
Kiran Malancharuvil – IPC
Mary Wong – NCUC
Avri Doria – NCSG
Debra Hughes - NCSG
Gregory Shatan – IPC
Alan Greenberg – ALAC
Jim Bikoff – IPC
Zahid Jamil – CBUC
J. Scott Evans - IPC
David Heasley - IPC
Osvaldo Novoa - ISPCP

ICANN Staff
Margie Milam
Berry Cobb
Nathalie Peregrine

Apologies:
Wolfgang Kleinwachter
Brian Peck

Coordinator: The conference is now being recorded. If you have any objections you may disconnect. You may begin when ready.

Nathalie Peregrine: Thank you very much. And good morning, good afternoon, good evening. This is the IOC call on the 11th of July, 2012. On the call today we have Alan Greenberg, Lanre Ajayi, Kiran Malancharuvil, Jeff Neuman, Zahid Jamil, Jim Bikoff, Greg Sutton, Avri Doria, Thomas Rickert and Charles Gomes. David Heasley will be joining late today.

From staff we have Margie Milam, Berry Cobb and myself, Nathalie Peregrine. I have an apology from Brian Peck. I'd like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you, Jeff.

Jeff Neuman: Thank you very much. Everyone, welcome to the call. I know it seems like we just never - well we did just meet a couple weeks ago in Prague. And I assume everyone had a good safe trip home that was there.

This subject on the Olympic Committee Red Cross (unintelligible) got some level of discussion in a number of different venues at the meeting. So I thought the first thing we need to do is just kind of go over what happened and then I want to thank - I'm hoping Thomas is on the call. I saw he's on Adobe. Thomas, you're on? Well hopefully he'll join. I know he's on Adobe so hopefully he'll join very quickly. But I'd like to actually go through his email and if he's on he can go - he can explain and we can react to that.

I had a set agenda the last time at 8:00 am in the morning in Prague and we - it seemed like we were having some fruitful discussions that were actually away from that agenda but we can go back to that if, forever whatever reason, we get a little slow.

So at the meeting there were a number of discussions on the Olympic Committee Red Cross topic. There was an interesting discussion - we were asked to present a status report to the GAC and the GAC had asked us the state of affairs between the preliminary issue report that was out at the time - or it's still out for comment - the defensive registration work that was underway at the request of the Board and of course our working group.

The answer I had given the GAC was that it was a little confusing as to what was going on and how to put all the pieces together because there were these three separate, that is it, three separate work streams and each of them having some level of overlap.

And - but I did give them the status of our group; told them that we were working on the second level protections, we were discussing it in the group. And somehow by the next day or two days later when the GAC met with the Board they got the message that it was a little complicated due to the work streams.

And I read the transcripts back but I don't think they got the message that we were actually working on the second level protections with respect to their proposal from September of 2011.

So that confusion, I think, and it wasn't until afterwards that I was able to read the transcripts because the room was packed and I couldn't get into the actual document at the Board. That confusion kind of got permeated into some discussions at the Council level at the Council meeting.

And Zahid who's on the call now had raised the issue of how the GAC feels like we haven't been responsive or the GNSO community itself hasn't been responsive to their requests.

But, you know, I tried to reassure the Council that we were still working on it and encourage the participation of additional people to make sure that we

have representatives because there was certain other people that came to the mic and said well, you know, why haven't the Olympic Committee and Red Cross justify what they're asking for to which I responded that they presented materials to us and whether you agree with it or not they've been responsive to what we've asked them to give.

And if they have any extra information that they really wanted to see they should let us know and I'm sure the IOC and the Red Cross will do their best to get us that information if it was information that they had.

So where I see ourselves now is we still (unintelligible) prepare some response to the GAC proposal of September 2011. And I have committed our group - and I'm hoping you all will help me - to get a final response to the Council and - by the Toronto meeting. Again I'm not preordaining what that final response is; there's a number of different avenues that that response can take.

There could be support for the GAC proposal. It could be non support. It could be some mixture. It could be - used to (work) for a PDP. There's a whole bunch of different avenues that we can go down. And - which is a good segue into what Thomas has prepared for this call. Thomas, have you joined us yet?

Thomas Rickert: Can you say that again, Jeff? Sorry.

((Crosstalk))

Jeff Neuman: Well, yes, I was just making sure you were on the line.

Thomas Rickert: I am.

((Crosstalk))

Jeff Neuman: What I'd like to do is after asking if there's any questions on what happened in Prague, after we do that I'd love to turn it over to you to go over your email. So is there any questions on what I just covered?

Zahid Jamil: Jeff, this is Zahid. Can I get in the queue?

Jeff Neuman: Yes, sure, Zahid, sure.

Zahid Jamil: Okay I know I've not been on these calls as was noticed on the Council. I was just wondering what is our charter? And if - I don't want to have necessarily waste the time of the group on it but if someone could email that to me, maybe someone from staff or somebody else just so I'm clear as to what our parameters are that would be helpful. And I won't be sort of floundering. Thank you.

Jeff Neuman: No that's okay, Zahid. And actually it's a pretty easy answer to that. There is no charter to our group. We were informally set up by the Council to provide advice to the Council on how we should respond to the GAC proposals of September 2011 which they followed up with an FAQ document. That's pretty much it.

So we were just tasked to provide advice to the Council on that issue. So we're not looking at the other issues raised by the IGOs in this group. And we're not looking at the defensive registration paper that was put out by ICANN staff at the Board's request. And some may argue that, you know, we shouldn't be looking at it in isolation but at this point that's kind of the mandate of our group so I hope that helps.

Zahid Jamil: Thank you. Heather's letter basically is our interest and that's what we have to provide advice on. So I think I understand that correctly.

Jeff Neuman: Yes. Okay? Let me go to Kiran - or I don't know if it's Jim but Kiran or Jim?

Jim Bikoff: Jeff, it's Jim Bikoff. I was going to respond to Thomas but I guess that's premature because he didn't speak yet.

Jeff Neuman: Yes, okay. I'll make sure you get back into the queue after our comments - after Thomas is done. Let me go to Avri.

Avri Doria: Hi, thanks. It's Avri Doria. The question I've got - it's funny - I thought I understood what we were up to until you explained to Zahid what we were up to.

Because if all we are up to is how to advise the Council on how they should reply to the letter then it seems that all of the issues that you're saying don't pertain actually do pertain because if this group felt that the reply - the proper reply to the GAC's letter was to present, you know, the answers to some of those other issues that would seem an appropriate thing for advice.

So if there's no charter actually limiting us to just the subject mentioned in the letter but rather to what it is an appropriate reply I'm not sure I understand why, for example, we couldn't have a reply that said, you know, dear GAC, it's interesting but we think the issue has to include other organizations; that it can't be decided without them. That should be a valid answer for us to recommend. Thank you.

Jeff Neuman: Yes, no - and, Avri, I think you do understand what I said and that can be - that absolutely can be one - that is a potential response Zahid could give.

Avri Doria: Oh okay.

Jeff Neuman: Absolutely. So what I don't want to do in this group is get into the substance of the defensive registration paper or the substance of the issue report on IGOs, right? So but it certainly could be from our group is, you know, we've looked at these issues as the IOC and the Red Cross.

And, you know, we've come out with our thoughts on the top level and with respect to the second level we don't want to consider that in isolation without considering all these other things. That could very well be a response. I'm not saying that that should be the response but it could be. So I think you do get it, Avri. I probably didn't say it very clearly the first time.

Alan.

Alan Greenberg: Thank you. Just one proviso on that. If we were to do that it would be implicitly saying we are not recommending any change for the first round. And I think we would have to make that part explicitly clear and justify why we were deciding that the - we weren't addressing the level of urgency which they were implying by looking at it for the first round.

So it's certainly a valid answer but I think we would have to cover that view of it at the same time. Thank you.

Jeff Neuman: Yes, that may or may not necessarily be the case, Alan, because I think it is possible although we all kind of, you know, look at the PDP process as taking an extremely long time. I think Avri brought up the comments in Prague that, you know, it is possible you can do a quicker PDP on some of this or a quicker analysis on this stuff.

And given - we don't know exactly the timing of the first new gTLD signing an agreement.

Alan Greenberg: Jeff. Jeff.

Jeff Neuman: It may or may not...

Alan Greenberg: Jeff, with all due respect this is not going to be a simple slam-dunk PDP.

Jeff Neuman: Okay. Fair enough. All right let me turn it over to Thomas to go over his email proposal. And then I know that some people had responses so those can, you know, and Jim's got a question and I know Avri responded to Thomas's email. And so did Steve - I'm not sure if Steve's on. But, Thomas, the floor is yours. Why don't you - and I think - I believe - yes, it's been displayed on the Adobe.

Thomas Rickert: Thank you, Jeff. And thanks for giving me the opportunity to show you through my ideas - the summary of my thoughts. First of all I am fully committed to finishing this work by Toronto.

But I think that I would even go a little bit further not only committing the drafting team or the discussion group, as it is now called, to come up with an answer to the GNSO Council before Toronto but actually putting the GNSO Council into a position where the GNSO Council can deliver a response to the GAC by Toronto.

This is ultimately driven by the idea that - or the intention that I do see that there are issues for the two organizations that we're now discussing but also for other organizations. And that I think that the earlier we come back with a response the more time and flexibility there is for the organization to reach out to the new registries.

I also think that it would be wise for - to recommend to the GNSO Council not only to say yes or no to their request for an answer which I'm not indicating that any one of you would just say yes or no to the protection but that actually we give some more information and some ratio on why we suggest what we might suggest if you follow my suggestion.

The starting point for me is to look at what policy framework there is at the moment. And prior to the GNSO recommendations for new gTLDs there has been extensive work on reserve names. And I have included the link to the final report of the reserve names working group in my email for those who are

interested in taking a deep dive to actually look at what has been discussed there.

And interestingly there was no special protection granted in the GNSO recommendations for let's say IGOs and other rights holders. Nonetheless the paper also clearly indicates that this topic has been discussed because a dissenting opinion or minority view has even been explicitly mentioned in this final report. So the GNSO has been dealing with the subject matter. Not identical but almost identical questions have already been raised.

What are we discussing? We're talking about protections at the second level for identical strings. And there is no GNSO policy granting special protections for the two organizations or for other IGOs for example.

Taking that as the basis or the starting point of our talk for me it would be relevant, you know, what should the GNSO make its position reconsider? And basically there are two scenarios in which I could think of amending or considering to amend existing GNSO policy.

The first one of which would be that the situation has changed since the original policy recommendations have been made. And the second one is that new threats have emerged that require the GNSO to reconsider its policy.

With regards to the legal basis, at least to my knowledge, nothing has changed in terms of the protection of the designations that we're discussing. And to me also when you haven't received any evidence that alludes to or indicates that there are new threats that haven't been known when the original GNSO policy was made.

So there is no special protection at the moment. There were some threats. And I would, you know, given the information that we got from the IOC and

RCRC there are no new threats so we have known threats, a known legal framework and existing policy.

And this policy - or the policy response by the GNSO at the time was - or by ICANN as such was to provide for rights protection mechanisms and dispute resolution mechanisms to address these concerns and these threats.

And to me I think that at the moment no policy response is required. But actually from an economic solution might need to be found because the two organizations in question will or do say that they will suffer from new registries and new name spaces being opened and their names potentially being abused.

But this situation would not be different for any other rights holders except for the fact that, you know, that it might be easier for them to overcome the financial and administrative hurdles.

So I think that at the moment given the policy background there is existing policy; that shouldn't be changed for the first round. I think we need to take a close look at whether the proposed or new rights - rights protection mechanism and the dispute resolution mechanisms provide an adequate response to the existing threat.

And it may well be that these are sufficient so that even in the second and subsequent rounds no changes need to be made. It may also be that we see that the RPMs and DRMs do not adequately respond or help respond to the threats that we see. And then we might need to reconsider.

I think that this will come up during the evaluation of the new gTLD program that's going to take place. And I think during the evaluation we'll see whether there are threats that are not adequately responded to for all rights holders and we will also see whether there are special threats for the IOC RCRC that then might need special treatment.

So in essence I think that at the moment there shouldn't be any policy response. But that wouldn't necessarily mean that we need these organizations twisting in the wind. I think that there can be help because we do know that beyond the mandatory RPMs new registries are free to add additional rights protection mechanisms.

And I know that many of them will do so and maybe these will also help overcome the - or address the threats that these organizations are exposed to. And also the registries will all have their own reserve names list. And it might be worthwhile recommending to new registries to include these designations on their individual lists on a voluntary basis.

We might also consider to ask staff to discuss what's the potential for - what the contract was for the RPMs and DRMs whether there can be any financial assistance in order to keep the cost burden low. So I think that's in essence what I've been thinking of.

Again this was driven by the intention to come up with recommendations or proposed response for the GNSO Council as soon as we can in order to enable ICANN as well as IOC RCRC to reach out to contractors or to individual registries to make sure that the designations are protected.

But again in my view there shouldn't a policy response for the first round at least. Thank you.

Jeff Neuman: Okay. Thanks you, Thomas. And I see already one person in the queue. If anyone else wants to get in the queue and you're on Adobe please raise your hand. If not just - I'll take an oral queue. Is there anyone that wants to get in after Jim?

Debra Hughes: Hi, this is Debbie. I'm not in Adobe.

Jeff Neuman: Oh okay, hold on. So I heard Debbie. Sorry, Debbie and who is the second one?

Zahid Jamil: Zahid. Zahid.

Jeff Neuman: Okay. Okay Jim.

Jim Bikoff: Yes, Jeff. Well first of all I just want to respond to some of Thomas's comments. I think that, you know, the facts when the IGO were discussed in the GNSO report those facts were not - these are not new facts; they were obviously there at the time. But they weren't - these two entities were not considered as part of that study.

The showing of the uniqueness of these groups rights were set forth in filings with ICANN over the last few years. And they're available. And they show that, at least for the IOC, that these protections under national laws are not trademark protections; they're protections of words. They're not similar to the IGO protections which rely on trademark protection under the Paris Convention. These are national laws that forbid the use of the words without authorization. So it is different.

And the GAC, I think, came to the conclusion that these parties were unique and that we're only considering - they're only considering at this point protection for these entities, the IGOs will be considered separately through this PDP that has been suggested.

So I think, for the first point, I think we need to look at the law. ICANN is a US corporation subject to US law. The law in the US under the Olympic and Amateur Sports Act gives the exclusive rights for these two words to the committees. And there is no - it's not trademark protection; it is simply giving them the right in these words against any other use without permission.

So for the top level in the second - I mean, second level the identical matches would be covered by existing laws. So anybody putting one of these words on - in a domain name would be violating national laws in many countries by doing that.

Going to similar strings the rights are more in trademark protection because they talk about the law in the US and UK and other laws talk about simulation of words tending to cause confusion or mistake for similar strings. So that would be more similar to trademark protection.

And I think, you know, if people would look at the statutes that are cited and read them they'll see that these are laws that are present now, current, active and would be violated through the registration of domain names containing these identical matches.

ICANN is subject to US law under the Affirmation of Commitments. And, you know, it would be a violation of law for them to permit people to register identical matches.

Jeff Neuman: Okay.

Jim Bikoff: So I think the question is not so much financial assistance; the question is whether we're going to have names registered which contain, in our case, Olympic and Olympiad, which will be violative of laws in the United States, the UK and many other countries.

Jeff Neuman: Thanks, Jim. I have in the queue Debbie, Zahid and then Chuck so, Debbie.

Debra Hughes: Hi. This is Debbie Hughes for the record. Just wanted to comment on a couple things just to make sure that we're all clear from the Red Cross Red Crescent Movement perspective. As it relates to the work of the reserve names group the Red Cross Red Crescent Movement is not an IGO thus the

protections for those designations would not have even been contemplated in that work.

The second thing that I would mention is that just so that we're all clear the Red Cross designations and the protections provided to them in the Geneva Conventions are for the designations that have been established by the Geneva Conventions and later articles and they're associated with the purpose of those words.

The organization has the right to use them as well but the sole purpose of the protection is not to identify the words Red Cross with any part of the movement. It is to provide protection to those words to allow the safe entry and movement of personnel who are trying to do the work.

And the reason I start there is because if you are making an analysis that is similar to a trademark analysis where you're talking about why did the Red Cross request this or why did the American Red Cross say this or the other it's not about the organization's request.

It was the request of the government and the notification that movement partners like the American Red Cross, the IFRC and the ICRC were trying to explain to ICANN that the obligation to protect the designations for the Red Cross Red Crescent Movement are not related to the organizations, you know, desire to protect a trademark.

It was about the organization's requirement under the Geneva Conventions to do all things possible to protect the exclusive right to use those terms for the purposes outlined in the Geneva Conventions. Yes, obviously the organizations are also identified by those terms.

But the primary purpose of these terms and the reason the GAC intervened and the reason we have written and continue to write to the Board is to explain to them that under the Articles of Incorporation those terms must be

prevented from registration in the first instance. Rights protection mechanisms after the fact are not sufficient because they should not have been allowed in the first instance.

Speaking more specifically about the rights protection mechanisms the designations are not protected in many instances by trademarks. We have not received full clarity whether or not the treaties would be honored by the providers or through either - or any or all of the rights protection mechanisms so of course that's problematic.

And moreover from a practical perspective relying on the rights protection mechanisms to right a wrong that should never have been - happened in the first place is not real helpful and also very, very slow when you're talking about the types of offences that I've explained to this group and to ICANN.

So without further ado I'll just let it go onto the rest of the queue. And if anybody has any questions I'd be more than happy to answer them. Thanks.

Jeff Neuman: Okay thank you, Debbie. Then we go to Zahid then I'll start back on the Adobe queue so Zahid.

Zahid Jamil: Hi, thanks Jeff. I just want to say actually, I mean, having read the email that Thomas has put together, first of all, you know, it looks like he really spent some time trying to figure this out. And I appreciate the legal methodology and all the work gone into that.

I want to make a couple of quick points first about what's just been said. I think it's important for us to realize this is not a private right that is being protected, which is different from trademarks and others. And it has been clarified to us just now by a couple people on the call that this is a very distinct right from IGOs and therefore enjoy the special status.

Coming more now to Thomas's email, you know, it has three limbs basically if I read it correctly. First is that there's a - has the situation changed? My response to that one is no, it's just that the situation was never contemplated to dealt with and therefore we didn't have a holistic solution.

Being a member of the IRT, STI, whatever on the Council, no one ever raised this issue or even was looking at this issue or had any idea that you had into these (unintelligible) that had this kind of special protection. At least I don't remember it.

The second point that he made was, well is this a new threat? And if there's no - if this is not a new threat then why are we dealing with it? The answer is this is not a new threat, it's a threat that has not been dealt with within the applicant guidebook or under the rights protection mechanism.

And the third limb, if I understand it correctly, is that we already have rights protection mechanisms so these entities can go ahead and use those. So a couple of responses on that one; the rights protection mechanisms did not contemplate a coverage for these rights. First of all, let's look at the URS.

The URS specifically states that it's only for trademark purposes as we just heard. These entities do not use trademarks, that that's not the basis of that claim. So it wouldn't be possible for them to file a URS application. So the argument, which is I think the crux of the whole thing, that existing right protection mechanisms that have been proposed in the new gTLDs process would be sufficient doesn't actually work for these entities.

Secondly I'm looking at the trademark clearinghouse. I can say that in the trademark clearinghouse when I look at it it does say - again if it's a trademark clearinghouse; it's supposed to apply to trademarks. But it does say, you know, word marks protected by statute or treaty so maybe we can get it in there.

But it's quite clear that the three right protection mechanisms proposed that we all worked on do not apply to this. So maybe we need a clarification within the trademark clearinghouse that these rights would go in. We need to amend the URS to make sure that the URS applies to these and also in the post-delegation process.

But I think it's important for us to note that those are mechanisms devised for ex post facto situations, after the fact situations, because they apply to private rights. And that's why it's okay to say well if it happens we'll give you something that'll help you afterwards and protect you and give you a remedy.

Here we're dealing with a totally different nature of right. And the argument made by both the previous speakers was that basically this should never have happened as far as they're concerned.

Now we know that ICANN has a reserve list. The same logic can apply to them as well. And this is what I wanted to say. Thank you.

Jeff Neuman: Thanks, Zahid. Okay I'm going to (unintelligible) and by the way there's some really good discussion on the chat and so it's good that we preserve this discussion for the record because I think there's some good back and forth on there. I'm trying to keep up with reading the chat and listen to this; a little difficult. but let me go to Chuck.

Chuck Gomes: Thanks, Jeff. And thanks for the good discussion by everyone. I want to reiterate what - a question I asked on the list several days ago. And that was in response to Debbie's post to the argument that there's a basis in law for protection here. And the same argument was made for the IOC on this call a little bit ago.

If that's the case then we already have a mechanism for dealing with this. Registries and registrars are required to follow law. And if in fact it can be substantiated - and I'm not questioning the accuracy of anyone else's

argument in this regard but I think it's our responsibility to confirm - if there is protection based in law that registries and registrars have to follow then we need go no further.

And it just needs to be emphasized and pointed out that that's the case and there's - the protection ended at the second level as well as the first level would already be required. So my suggestion is let's find out; let's have general counsel's office answer that question. And then we really need go no further unless the answer comes back that it's not clear.

So I'm not trying to stop any of the other discussion but I do believe one action item that should come out of our call today is a request to general counsel to substantiate whether or not in the case of the IOC and the RCRC there is clear evidence of statutes that require registries and registrars to protect those names. And if that's the case then at least with regard to the GAC's request the problem is solved.

Jeff Neuman: Thanks, Chuck. I'm going to go to Greg and then I'll put myself in the queue. Greg.

Greg Shatan: Hi, this is Greg Shatan. I guess I'm probably echoing some of what's been said already. But, you know, having served on the reserve names working group and having just, you know, gone over the report I really don't think there's a basis for claiming that that, you know, there's some sort of precedent or stop-all that came out of that.

The primary focus really was on trying to unreserve as many names as possible in many ways. But, you know, more to the point what, you know, is referred to - the IGOs are only referred to a few times in the final report. And most cases it's with regard to giving IGOs as well as governmental agencies the ability - whether or not to give them the ability to stop geographical or geopolitical names from being secured or whether those should be reserved.

And there's only one other - two other references that don't fit into that category. One is a minority position by Mike Palage where he discusses the fact that, you know, kind of bemoans the fact that there isn't protection for IGOs and considers that they, you know, implicitly that there should be.

And the last reference is in the tasks regarding recommendation section where under the section on geographic and geopolitical names one of the tasks - I don't know whether it was ever carried out - was to consult with WIPO experts regarding geographic and geopolitical names and IGO names.

And in any case, you know, I really don't think there was any, you know, significant consideration given to either the situation here or even really to the wider IGO question. There were, you know, many, you know, a lot of things that occupied our time on that committee; one and two-letter names and ICANN and IANA words and phrases and IDNs but this was not really one of them.

Maybe other people have other recollections but based both on my recollections and looking at the report it's really not something we dealt with, you know, even as much as glancingly.

I guess I would also say that, you know, with regard to the first leg of Thomas's letter or email, you know, it was stated at the very beginning of the call that really our charter isn't as narrowly stated as at the beginning. So while it - so I really don't see kind of anything, you know, that's kind of two of the three limbs, as was said, to the letter. So I don't really think there's - those two limbs really bear much weight. Thank you.

Jeff Neuman: Okay thanks, Greg. The comment - I wanted to just say a comment on something that Chuck said at the very least on the legal basis. And maybe Jim and Debbie - or Debbie can weigh in after I bring this up.

But I don't think their argument is that the law requires registries and registrars to reserve them. I think what they're saying is they're afforded special protection under the law for the use of those names or I should say against using those names in a way that's not authorized by those organizations. And I'm generalizing.

So to my - and so I'm not sure how effective it's going to be. We can ask ICANN's general counsel but I don't think they're going to do any - or have any kind of opinion on whether the law requires registries or registrars to reserve them. I wanted to raise that.

And the other comment that I wanted to make was one that was made at the eight o'clock meeting in Prague which was in Thomas's email he says that well the Red Cross and - or the Olympic Committee present all of these - all of the evidence relates to not exact matches but it relates to similar or marks continuing.

And I think what came up out of that last meeting was well perhaps one of the reasons is that the Olympic Committee and the Red Cross were forced to register all of their names exact matches in every single TLD and therefore you're not finding search reports because they have them all registered to themselves.

So I wanted to know maybe if the Olympic Committee or Red Cross wanted to expand on that because I know that came up in Prague. So maybe - I know there's some other people in the queue so let me go to Alan and then if anyone from the Olympic Committee or Red Cross want to get back in.

Alan Greenberg: Okay thank you. One comment on the proposal and then two questions. On the proposal the statement that there are no new threats since a few years ago when we last looked at this - one could say that perhaps there are no new threats but the volume and occurrences certainly are different.

The world's a nastier place than it was in terms of the Internet than it was five, six years ago. And I think that colors it somewhat. I'm not saying that's a definitive issue but it certainly changes the overall environment.

Two things that I raised on the mailing list - and I'd really like to get some definitive answers because either they're issues or they're not and if they're not then we can put them to sleep.

One is the issue of - I understand the Red Cross, for instance has trademarked some of their terms in the US and therefore they can use the UDRP and in the future the URS should it ever exist.

But I guess I'd like to know to what extent there are jurisdictions or situations where the existing rights protection mechanisms are not adequate because they don't apply. And we've equated their rights to trademarks but my understanding is if they're not true trademarks the UDRP does not apply.

And the second one is one I sent out more recently in response to Chuck's question on if the law says you can't use these is that not sufficient. And my question is - and as an example in the US does the US protect Red Cross? Or does it protect all the various marks in the various languages that are protected in various places?

So is the Red Crescent? Is Croix-Rouge protected in the US? Because that really becomes a crucial difference between what's being requested and what might be true under the current law. Thank you.

Jeff Neuman: Thanks, Alan. Next is Jim or Kiran.

Jim Bikoff: Jeff, are you going - me?

Jeff Neuman: Yes. Greg, you're just - was your hand leftover?

Greg Shatan: Yes, sorry about that. I'll take it down.

Jeff Neuman: Yes, okay, yes, Jim.

Jim Bikoff: Okay well let me just try to respond to Alan. The Amateur Sports Act in the United States confers to the International Olympic Committee the exclusive right to use the words Olympic and Olympiad.

Now that's been interpreted by our United States Supreme Court in a case called San Francisco Arts versus Olympic Committee that the language indicates that Congress intended to grant the Olympic Committee exclusive use of the word - there's no trademark language here - exclusive use of the word Olympic and Olympiad without regard to whether use of the word tends to cause confusion.

And they turned down an argument that the rights conferred to the Olympics are trademark rights. So these are not trademark rights; these are protection of words. They're basically giving the Committee the rights in those words without - against use without authorization.

So I think that, you know, to some extent I hope that answers Alan's question. And as far as whether we could use some of the rights protection mechanisms we're looking at that. We think we may be able to use those but we don't think we should have to use those.

Jeff Neuman: Okay thanks, Jim. Zahid then Alan.

Zahid Jamil: Thanks - thanks, Jeff. I just wanted to respond and ponder Chuck's comment that, look, if this is something that's illegal under the law then basically registries are, you know, they have to comply with this anyway. So we don't necessarily have to do something; it's something they can do on a self-executing basis so you can just go, you know, to the registries.

I'm not sure to what extent that would be practical and how, you know, the kind of harm that is caused up to the point that actually that is enforced on a self-enforcement basis or having to do things on the ground, one.

Two, if the argument is that it's illegal and therefore we don't need to worry about it there's a whole lot of things that basically we have that we ensure through policy that registries do - UDRP being one - protection of trademarks or something which is in trademark legislation and international convention.

That's precisely why the protection is there. But we don't say for trademark protection that, look, then, you know, if it's illegal in a country the registries can deal with this directly. We don't need to have some sort of a policy or anything else within ICANN.

So I'm still thinking about this. And I don't think that that would solve the problem. And I just wanted to make that one comment. Thank you.

Jeff Neuman: Thanks, Zahid. Alan.

Alan Greenberg: Yes, no I think actually Jim's answers don't address the questions I was asking. I wasn't questioning whether IOC or Olympic and Olympiad were trademarks; I know they're not. And Red Cross may be trademarked in some countries but their protection is not granted because they are trademarks.

My question is does that in fact preclude use of the rights protection mechanisms that we have? Because Thomas's statement makes the claim that the existing rights protections mechanisms are sufficient. And I'm asking: Are they indeed sufficient given that these are not trademarks in the general case? That was one question.

The second one was I understand that in the US Olympiad maybe protected - the word - but the question is does that implicitly protect it in other languages or the other forms that the GAC has asked us to protect the translations of

Red Cross, Red Crescent, you know, and all the other variations? And those are the questions I was asking. Thank you.

Jim Bikoff: I'll try to answer both of those. First of all I think that we could - and I think I've said this before but I'll say it again. I think that we may have access to some of the rights protection mechanisms even though we're not talking about trademarks here.

We have not fully explored that yet and obviously with all of the new gTLDs they have not - we have not yet examined all of their provisions on how they're going to, you know, how they're going to protect rights.

As far as the URS trademark clearinghouse there are possibilities there but we don't - we're not sure yet whether they will all apply.

Alan Greenberg: Yes, I will say when we crafted the URS it explicitly says trademark.

Jim Bikoff: Right.

Alan Greenberg: Now...

Jim Bikoff: The main - it may not...

((Crosstalk))

Jim Bikoff: The other question about translations is there is a provision in the statute under Section 225.06 which prohibits any use of any trademark, trade name, sign, symbol, insignia, falsely representing association with the International Olympic Committee. So I think that whether - if it's a translation of French and it's Olympic I think that would be violative under that statute.

Jeff Neuman: Okay.

Debra Hughes: Hi, Jeff. This is Debbie. Hi, can I respond to Alan?

Jeff Neuman: Yes, sure.

Debra Hughes: Okay. Okay so as related to your first question we're still gathering our information but we've only found to date registration for the words Red Cross as a trademark in the United States. And as we suspected we don't think we'll find much more. But the concern is that the other designations would not be able to rely upon the rights protection mechanisms that are limited to trademarks.

And then to your second question the Geneva Conventions state that it's - the designation Red Cross or Geneva Cross or any sign or designation constituting an imitation thereof, whatever the object of use, an irrespective of the date of its adoption, shall be prohibited at all time.

So it's the words Red Cross and Geneva Cross and then other designations that are established by the movement are protected in each jurisdiction where there is a national society. I hope that helps.

Alan Greenberg: Yes, that certainly does. Thank you.

Debra Hughes: Thank you.

Jeff Neuman: Okay thanks, Alan and Debbie. Anyone else want to get in the queue on this?

Stéphane Hankins: Stéphane Hankins. I'd like to say a word maybe in a minute when possible. RCRC, Stéphane.

Jeff Neuman: Yes, Hi, Stéphane. Okay anyone else? Anyone after Stéphane? Okay, Stéphane, go ahead.

Stéphane Hankins: Okay thanks. I'm sorry, I'm going to repeat a few points but I still - I wanted to say a few things in complement to what Debbie has said.

First of all to the question as to whether, you know, the threat has increased or has changed or is different than before I think we need to look at it from a different perspective. I mean, we're looking at the global public interest in the reservation and the protection of these names from registration.

And the global public interest is very clear in - under the international treaties concerned. And, you know, this is clearly at the source of, you know, what the GAC was and is requesting.

We're facing here a question of implementation, of clear commitments undertaken under the international law that (unintelligible) for the international community as a whole which under the Articles of Incorporation of ICANN, as has been said, also commits ICANN to respect.

So I just want to mention this. You know, the reason these designations are reserved and protected is clear. The threat, you know, we've made the case, you know, that it is real and that in certain circumstances in crises we see this happening. But I think, you know, that reflecting on whether the threat is greater today or not is a bit of a curious consideration as far as I'm concerned.

With regards to the question of, you know, the adequacy of existing rights protection mechanisms or the proposal that indeed, you know, there could be some form of raise of the costs involved in actioning those again, you know, it's very clear that, you know, that, you know, we cannot - we want the issue to be dealt with in advance; it should be enshrined within the processes, laws and agreements of ICANN in advance so that, you know, the issue doesn't - is not a constant issue.

These are absolute prohibitions binding upon all states and which have been, you know, which are either directly implantable within the legal orders of countries or from which, you know, implementing legislation has been adopted and is clear in repressing abuse.

So I think, you know, on that point, you know, it's - international law is - I'm not going into the discussion as to whether international law is immediately applicable within domestic jurisdiction. I mean, this is not the place. But in any case in countries where international law applies directly there is a requirement for domestic legislation to provide for the penalty in case of misuse.

But we're clearly in a situation where, you know, the legislation protects the designation - international law protects the designations generally; that means in every language. And then domestic laws whether it's US law for the English designations or French, Belgium and Swiss law for the French designations comes in and includes, you know, a penalty for misuse, misrepresentation of the designations concerned.

So there's been sort of a - the few points. And just to conclude maybe, you know, what we hope for and what we have enshrined in the documents that we've submitted is really, you know, that we - that the protections be fully integrated within the mechanisms of ICANN in advance of having, you know, potentially to approach registrars and registries if required.

But, you know, we - the international protection requires this to be enshrined in the system and implemented in the system. Thank you very much.

Jeff Neuman: Thanks - thank you, Stéphane. I want to see if Thomas wants back into the queue. Thomas, after - sorry to put you on the spot but after everything that you've heard today are you still - has your position changed? Are you still advocating this position?

Thomas Rickert: Well first of all I think it's very helpful that we have a good and controversial discussion about this. Just to maybe clarify two or three points, the nature of the protections is well understood. I think that you are - or it is correct saying that there might be issues with the existing or the proposed RPMs and DRMs.

Maybe I should have made it more clear in my conclusion that - when saying that, you know, we should look at helping the organizations when implementing RPMs and DRMs that would not only be on the cost side but also to make sure that the RPMs and DRMs are actually applicable.

I know that there are some trademarks and trades for the organizations but certainly one would need to look at that more closely to ensure that the RPMs and DRMs are used.

I'm not sure I can - I would follow the argument that the situation has that much changed because original policy recommendations have been made in the light or specifically in the light of opening domain space.

So those who were involved in the policymaking at the time knew that there would be numerous new gTLDs coming. So I think in that sense and also I read in the chat that at least the Red Cross was represented in those discussions. I'm not sure whether the situation has that much changed.

Nonetheless what I wrote down was a proposal of how to (unintelligible) how we could deduct a suggestion to the Council based on existing policy and the process that led to existing policy. So, you know, we don't need to follow this line of argumentation.

I think in essence I would stick to my suggestion that we need to learn during the first round whether there is actually, you know, whether, you know, I should start the other way around. I think we should make sure that the RPMs and DRMs would be applicable to the - to organizations.

We should be working with recommendations to the registries to incorporate the names or include the names on their reserved names list that they individually use. And by doing so would the target market set the new gTLDs address.

I think that it can be made sure that all the languages in question are covered and that we take a close look at whether this is sufficient. And if it turns out not to be sufficient then a different response or policy response would be needed.

Jeff Neuman: Okay thanks, Stéphane - I'm sorry, thanks, Thomas. I think - so we're getting towards the end of the call. I think right now - okay let me let Greg get in the last word and then I'll kind of sum up where I think we are. Greg.

Greg Shatan: I guess I would just say - well first reiterate that I don't think there's any precedential value on this point for - from the reserve name working group. I think that extends to the issues of other IGOs as well.

Secondly I think that the idea of kind of seeing whether things work for these organizations or even for other organizations is kind of like, you know, putting a match to a fabric and seeing whether it burns. And the second time you - you know that it either burns or it doesn't. But I don't think I'm - would want to be the person wearing that fabric - testing it at that time.

So - and I think especially given that the rights protection mechanisms that we're talking about are at best poor fits for the, you know, at least the non-trademark arguments and non-trademark words that are here.

And I think that if I were a defendant in that regard or if I were looking at the trademark clearinghouse and trying to get something taken out of the trademark clearinghouse I would argue that they aren't trademarks and

shouldn't be - shouldn't fit into any of the kind of trademark related aspects of this.

So I think there's really not much protection here. You know, and I think that's, you know, that's kind of why we don't, you know, there's no really reason to kind of wait and see. Thank you.

Jeff Neuman: Okay thanks, Greg. All right so look we've had a lot of calls on this subject; we've had a lot of back and forth on - from the Olympic Committee and the Red Cross on justifications and their rationale. And we've certainly had a lot of back and forth on the different sides.

One comment - and let me just throw it out there for discussion on the list - it sounds like most of us on the call agree with the notion that the Olympic Committee and the - that we should ensure or that we should make sure - recommend back to the GNSO that the IOC and the Red Cross should have the same protections that current trademark owners have with respect to the clearinghouse, the sunrise and claim service whether or not they're actually considered trademarks.

It sounded like a couple people made that statement. I didn't hear anyone disagree with that notion. Again not giving them - I'm not saying anything about extra protections but really just to make sure they're covered under the existing protection. It seems like we sort of have an agreement on that notion.

With respect - and again we'll put that out on the list so I don't want to make any conclusions. But with respect to the others what I really need - and I know the registries explained their position in Prague. And Avri and Mary talked about the noncommercial thoughts - I don't think it was an official position at the time.

But what I really need to make then the next couple calls useful is every group to - or every person to come back, you know, with what their group's

(opinions) are on this issue and to see if there's any kind of hope for some sort of compromised position or consensus position that we can get to.

It may not - there may not be one but, you know, we at least have to try. I think the calls have been very useful but it sounds like the information is getting repetitive. And if someone disagrees please let me know.

So let me go to - I don't know if, Greg, your hand is still up or is that new?

Greg Shatan: It's actually a small new hand. I would just say that, you know, with regard to the discussion of whether other IGOs are markedly different, you know, looking at just quickly - obviously this is only a quick survey - that where - at least in the US Patent and Trademark office where IGO names are in the record they're in the record under 6 (ter) of the Paris Convention which is not a trademark protection to begin with.

So, you know, these may be sui generis but they may not be the only sui generis organizations, if you will. I think there's a lot more - this may just be the tip of the iceberg. But I don't want to use that to slow down the ship. If anything it means that there, you know, should be a wider net to be cast. Sorry to be mixing my metaphors so grotesquely.

Jeff Neuman: Okay.

Greg Shatan: Thank you.

Jeff Neuman: Thanks, Greg. I'm going to go quickly to Chuck and then Alan then wrap it up - or I guess Alan.

Chuck Gomes: Thanks, Jeff. I like your suggestion. I think, though, one thing that would help facilitate that for those of us that are going to go back to our group would be if we had a brief summary of the different ideas that we've tossed around with

regard to how we - what we could recommend to the Council regarding a response to the GAC on these two organizational issues.

I mean, we've got Thomas's suggestion, we've got Avri's suggestion that we definitely need to do a PDP. There are lots of others. And they're not all mutually exclusive. But it would sure help me in going back to the Registries if I had a quick summary of that.

And maybe staff could take a first crack and then we could run it by the list to see if we missed anything. And then within no more than a week we could take these things back to our group and then for our next call hopefully start having some feedback.

Jeff Neuman: Okay. Let me - since you've asked the question. Margie, does this sound like something that we can get started on?

Margie Milam: Yes. This is Margie. We could do that. Are you talking about primarily what was discussed today? I mean, that would be a fairly simple thing to...

Chuck Gomes: It doesn't have to be limited to today but any ideas on the last few weeks that have been proposed as possible responses it would be best if we had it inclusive as possible. But I wouldn't spend too much time on it, Margie, because you can put a straw man out there and the rest of us can add to it before we finalize it.

Jeff Neuman: Yes, I think the Registries had mentioned some things on the - or Chuck had presented the Registries' thoughts in the Prague eight o'clock meeting. I know Avri and Mary went into the Noncommercial thinking. Again I don't think it was a position but it was certainly discussions that took place.

And then Thomas's position, Chuck's other position on the law and the things that were discussed today.

Margie Milam: Okay - okay so we'll - so the idea is that we would look back at some of the transcripts in Prague to see if there was anything also because that seemed like we had (unintelligible) discussions in Prague.

Jeff Neuman: Yes.

Margie Milam: Yes.

Jeff Neuman: Okay? Alan.

Alan Greenberg: Thank you. With regard to feedback from communities I know in the past when ALAC has talked about this the answers tended to be different for the IOC and Red Cross. And to what extent is the group willing to separate the two or is that something we just have to resolve ourselves and keep them together?

Jeff Neuman: Yes, I think we talked about it in Prague. There's no requirement that we deal with them together. So we can deal with them separately. That was - when I initially presented the options that was one of the options that we could do was to treat them separately. That an email, Margie, we can also include that email as well of the different questions and different options.

Alan Greenberg: Okay thank you.

Margie Milam: Sure.

Jeff Neuman: Okay thank you everyone, for staying a few extra minutes, I appreciate it. And I look forward to talking to you all in two weeks.

Chuck Gomes: Thanks, Jeff.

END