

Transcript
GAC/GNSO issues related to International Olympic Committee (IOC) and Red Cross (RC) names discussion group teleconference
25 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 25 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/gnso/gnso-gac-ioc-20120725-en.mp3>

Attendees

Jeff Neuman - Registry SG group leader
Lanre Ajayi - Nominating Committee Appointee
Chuck Gomes - RySG
Stephane Hankins - International Committee of the Red Cross
Kiran Malancharuvil – IPC
Gregory Shatan – IPC
Alan Greenberg – ALAC
Jim Bikoff – IPC
David Heasley – IPC

Zahid Jamil – CBUC
J. Scott Evans - IPC
Osvaldo Novoa - ISPCP

ICANN Staff
Margie Milam
Brian Peck
Berry Cobb
Nathalie Peregrine

Apologies:
Wolfgang Kleinwachter - NCUC
Avri Doria – NCSG
Debra Hughes - NCSG
Mary Wong – NCUC
Thomas Rickert - Nominating Committee Appointee

Coordinator: ...all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Nathalie Peregrine: Thank you very much, (Kelly). Good morning, good afternoon, good evening. This is the IOC call on the 25th of July, 2012. On the call today we have Kirin Malancharuvil, Stéphane Hankins, Jim Bikoff, Chuck Gomes, (David Weasley), Alan Greenberg, Jeff Neuman and Greg Shatan. And Mary Wong has notified us that she will join for the second half of the call.

We have apologies from Avri Doria, Thomas Rickert, Debra Hughes and Wolfgang Kleinwachter. From staff we have Brian Peck, Margie Milam, Berry Cobb and myself, Nathalie Peregrine.

I would like to remind all participants to please state your names before speaking for transcription purposes. Thank you very much and over you, Jeff.

Jeff Neuman: Thank you, Nathalie. This is Jeff Neuman, Chair of this drafting team. And welcome everyone. I know it's a smaller attendance than usual but I appreciate the dialogue that's gone on the list for the past - well since the last meeting.

Just to kind of clarify there were a couple of things that we just discussed before we started the recording so I'm just going to repeat them so that it's recorded for others that listen to the call.

There's a document that's displaying right now up on Adobe. That document is - or was prepared by Brian and ICANN staff. It basically takes the email that Chuck had sent back to the list, about a week or so ago with the different options that are available and then adds to it the response or comments made by Stéphane from the Red Cross Red Crescent and also some comments from the NCSG and I believe maybe some other comments in there as well.

That document will be sent around after the call. We apologize for not sending it around before the call but we just prepared it for this call.

So on the agenda today really I'd just like to kind of discuss this document, discuss the options, come to clear agreement that these are the options and then really encourage - and I know Avri sent some comments from - sorry, Avri sent some comments. I'm not sure they were formal from the NCSG but it seemed like a strong leaning as to where the NCSG was heading.

I know Chuck had some comments from the Registries that we'll discuss. And hopefully, Greg, you have some comments from the IPC and of course Jim and Stéphane - you obviously have some comments as well. So does anybody have some question on what we're going to talk about today?

Jim Bikoff: Jeff, it's Jim Bikoff.

Jeff Neuman: Yes.

Jim Bikoff: I just wanted to say that I've been away for a while and we're in the midst of putting together a comment to send in. Probably get something in this week.

Jeff Neuman: Okay thanks, Jim. This is not by any means closed or anything. I know there was some confusion; at least I saw some tweets and some other social media that said that we're sort of confusing the preliminary issue report on the international organizations with this and so there were some tweets as - only - this is yesterday - only two days left to comment on whether the IOC/RCRC protections are in place and that was a little misleading.

And part of the confusion that exists between the different efforts that are underway right now by the community and the Council especially between this effort, the effort on international organizations and the whole notion of defensive registrations.

There was a discussion last week with the Council on these three different things and what to do with defensive registrations. No real conclusions reached. And I know ICANN staff is - after the comment period closes - will be working on a final issue report on defensive registrations for the Council to - I'm sorry, not on defensive registrations - on protections of international organizations for the Council to consider at its - I assume by its next meeting in September. The Council does not meet in August or at least is not scheduled to meet.

Margie, does that sound right? Brian?

Brian Peck: Yes.

Jeff Neuman: Okay. All right so let's - any other comments before we kind of dive in here?

Jim Bikoff: Jeff, Jim Bikoff again. I just wanted to reiterate something that came up before about the IGO issue and that is that there appeared to be a feeling that the Reserve Name Working Group had discussed this all previously and that this had all been considered before the introduction of the gTLDs.

And obviously, it's our position, that this was never addressed by the GNSO before. And I think if one looks at the report you'll see that it's very clear that the IOC and RC issues were not really the subject of any discussion until the GAC submitted its recommendations.

Jeff Neuman: Thanks, Jim. And actually I think that comment, Brian, may go under - because I believe that came up in conjunction with talking about Thomas's proposal even though the rationale is not on this two-pager here. That point really came up in discussing Thomas's because his rationale for not moving forward with any protections at this point was that the group had already considered it.

And if it comes up again later in the NCSG comments maybe we can make a note of your thoughts for the record. Greg.

Greg Shatan: Hi, it's Greg Shatan. And just to reiterate what I said on our last call I served on the Reserve Names Working Group and also reviewed the report recently in response to the comments from the last meeting. And there's - I have to agree with Jim, based both on my recollection and on my review, there is no basis for saying that this issue was already brought up and discussed.

Jim Bikoff: Thank you.

Jeff Neuman: Yes, thanks, Greg. And I think we discussed this kind of at length at the last meeting and so, you know, to the extent any rationales expressed in this document for why we wouldn't do anything and that rationale includes the notion that some believe this was already considered we certainly need to consider the other - or need to put in here the other side which is that you and others on the Reserve Names Working Group do not believe this issue was actually considered.

So I don't see any rationale in this document but to the extent that any rationale is expressed we need to make that point.

Brian Peck: Yes, I think, Jeff, just to reiterate, I mean, the purpose of the document was mainly - and my understanding from our last call and the request from Chuck and others was just to kind of briefly summarize what, if any, the possible options or approaches that had been discussed within the group so far as a tool that then everyone can go back to their specific groups and kind of get some feedback on what if any options they prefer.

So there wasn't - you're right, I mean, this is kind of more the option - the objective is there was more to summarize the various approaches so that could help, you know, people going back to get feedback rather than, you know, more comprehensive, you know, including rationale and so forth.

Jeff Neuman: Yes, okay. Thanks, Brian. And that's the way I understood it as well. So - but - so we work, you know, even though we provide this cheat sheet or whatever we're calling it, you know, I'm hoping that when people go back to their stakeholder groups they also are able to convey the rationale behind each of these options whether they agree with it or not. I'm hoping that they actually would convey the rationale.

Okay so in starting with the beginning just - so to go over it because I want everyone - or at least on this call - to say, yes, I think this captures the discussions. And ultimately I want everyone on this call to go back to their groups, as Brian was talking about, and get - as to whether they agree with this stuff or not or which one they agree with.

So all the approaches below relate to the exact matches of the marks even though there's - was a lot of discussion of containing the marks from the Red Cross Red Crescent and even the Olympic Committee. What we're talking about here - what the GAC proposal really talks about is exact matches.

And we're only talking at this point about the first round and we're only talking about second level names; only the - we've already talked about the top level. I think the second point may deviate a little bit from the GAC recommendations. The GAC recommendations I think, in rereading them - I reread them yesterday - they actually intended that a reply from (here) on out whether it's just this first round or a subsequent one.

But I think in this group there was enough feedback from enough people to just say look we want to do this in the first round only and we're not talking about subsequent rounds. So does anyone want to comment on those assumptions? Okay.

Greg, I see your hand raised but I think that's from previous?

Greg Shatan: Well, I mean, I would speak to this and say that while there's no reason not to revisit things after the first round I wouldn't say that this should necessarily be, you know, self acquiring recommendations. Thank you.

Jeff Neuman: Yes, thanks, Greg. And I think when your group comes back - when the IPC comes back you should probably make those comments. I think right now the easiest approach for us would be to just assume until the first round and then we'll submit comments because I know there's disagreement, you know, Alan doesn't have his hand raised but I know Alan's made the point on many occasions that the ALAC at least is only considering its position for this first round.

And in his words before, at least from the time at the top level, you know, if we're talking about permanent then all bets are off. So, Alan, did I accurately summarize your - what you've previously said?

Alan Greenberg: I'm not 100% sure that's an ALAC position; it's certainly been my position for the - with regard to the top level because in my mind and certainly in the minds of many ALAC people - and we haven't taken a formal position - it is that at the second level - at the top level it's not clear any new protections are necessary at all. And in fact we've just said that with regard to the IGO preliminary issue report.

Jeff Neuman: Okay.

Alan Greenberg: At the second level the situation is a little different. And our position has changed a little bit since the - since we did the first set of discussions. And I'll go into that as - when the time comes.

Jeff Neuman: Okay.

Jim Bikoff: Jeff, this is Jim Bikoff. I don't have Adobe so I can't raise my hand today. But I just wanted to say that if we're going to premise protection on the fact that

these words are protected by law in different countries, either by treaty or by statute, then I think to some extent, you know, I think that the GAC position ought to be looked at because there's no difference between this round and other rounds if the words are legally protected. If they're legally protected they should be protected in all rounds and at all levels.

Jeff Neuman: Yes, Jim, thanks for that. And of course I know the Red Cross feels the same way. And I think the approach and the Red Cross position is below. And maybe we can kind of indicate that.

I think the - what we're trying to do is go with the - I don't want to say least common denominator because that makes it sounds like a - it's sort of derogatory in meaning. But essentially everyone agrees that what we're talking about should apply in this coming round. But then we have disagreement from people in the group as to whether it should apply also to subsequent rounds.

Now we have the common denominators and everyone agrees it should be in this round. And I think we should make sure that whatever position we come out with reflects those groups and organizations that believe that this shouldn't just be a - this round thing - but should be more permanent. Alan...

Alan Greenberg: Yes.

((Crosstalk))

Alan Greenberg: Yes, no that's a new hand. I think we have to be realistic that we do have another PDP which is likely to start. And we have the more general request from the Board on second level protections in the general case.

I cannot imagine - and maybe I just have a lack of imagination - that we could go into a second round without having come to some conclusion on those two. And since the Red Cross and IOC are implicitly included in both of those

groupings there will be another kick at the can before we go into a second round.

The GAC would not - I think would not allow otherwise nor would the IP holders, given that the Board has asked for further investigation I don't think it could be just blatantly ignored. So there's not a lot of difference between saying it's for all rounds unless it's changed or for the first round only at this point.

That's not a legal position but it's a very - it's my pragmatic one though I think.

Jeff Neuman: Right. No and I understand that. So, okay, let's move on then to the Red Cross position is documented there. It's certainly well known, made on a number of occasions that they don't believe it should just be limited to the exact matches and that it should reflect the law, in their view, that it should be any - it's not working - I'm trying to actually paraphrase. But essentially it should apply to all of the designations as well as those containing those designations in multiple languages.

So the Red Cross position goes beyond what the governments have proposed. And I think that should be noted. But again just to try to obtain some sort of consensus on the approaches we're limiting our options with respect to the exact matches.

I think it would - in talking about it with other councilors it would go beyond our scope as a drafting team to talk about additional variations of those marks. And certainly that could be considered, as Alan was saying, in a full PDP.

So with respect to the drafting team we're sticking to the parameters of the GAC proposal. And I don't mean that to sound like we don't understand the Red Cross Red Crescent position or that we're not sympathetic to it we just - we're kind of dealing with this in the parameters that were set for them.

Alan Greenberg: Jeff, it's Alan. I know that's what the Red Cross has said but is it in that - is it in these three paragraphs of their position? I don't see the contained within mentioned there. I may be blind.

Jeff Neuman: Yes, I kind of - you might not say that in this document - well, yes, confusingly similar strings in that second paragraph in bold.

Brian Peck: Alan, it's bolded.

Alan Greenberg: Oh okay, okay.

Jim Bikoff: Jeff, can I say something?

Jeff Neuman: Sure.

Jim Bikoff: This is Jim Bikoff. I just want to say that just so nobody misinterprets it we would also like to have similar strings protected. We think that we're entitled to that. However when we made - when we submitted our last note on this we noted that you were taking the position that we're only going to consider the GAC proposal which dealt with exact matches.

But certainly if you look at the laws in the different countries they go beyond exact matches and they protect also combinations and simulations of words which tend to cause confusion or mistake, etcetera. So that we certainly favor the broadest protection including similar strings but if we're only talking about exact matches then, you know, we're responding to that I think it was the last phone conference or the one before.

Alan Greenberg: Jeff, it's Alan. For the record I don't read confusingly similar as contained within. I mean, confusingly similar...

((Crosstalk))

Alan Greenberg: ...is replacing a CS by an X or flipping letters around or something.

Jeff Neuman: Right - I think you're right. I think it was my bad kind of paraphrasing trying to summarize it but I think you're correct. I think confusingly similar is not just limited to containing the mark but is also typos and other types of things that you would normally see trademark or unfair competition law. So I think you're right.

Stéphane Hankins: Yes, excuse me. This is Stéphane Hankins. I'm afraid I also cannot raise my hand on the machine. But I also want to underline, I mean, we - our position is not, you know, we don't want to undermine the conversation which is based on the GAC proposal. We understand, you know, the terms of their proposal.

We're also aware of the complexities of addressing, you know, the issue of confusingly similar strings at the second level. But again it is the case indeed, you know, that the requirements of the international treaties we've been referring to, the Geneva Conventions, are very clear in, you know, once again in, you know, prohibiting what is called under international law imitations.

So, you know, I think we can base the discussion indeed on this but I - it is also for the record that, you know, we have quite consistently reminded, you know, that - if feasible or if at all feasible - you know, similar strings should also be addressed.

I mean, this is our position. But of course, you know, the principle of the protection based on identical strings is, you know, is - you know, a significant step in itself. So, you know, I think that's how I would put it. Thank you.

Jeff Neuman: Okay thank you, Stéphane. So I think your position is noted in here. And I just want to go on then to the other notes that are also put in here. And again this document is a fluid document so if you think after the call you want to add

some comments to it - I know Brian will add some things based on this call so just let us know.

The other notes that are in here is that we've only included the approaches that have been proposed or implied in our discussions within this group. There's certainly other approaches that may have been proposed with respect to IGOs or others but were not part of the discussions that we've had.

And some of the approaches are not exclusive so it's possible, for example, to go with number - I'm not saying this is preferred so don't take this the wrong way. But in theory you could do Number 1 and you could do Number 4; they could both be implemented at the same - they both have some similarities to it.

Okay so with all of that said these are the options that they've gleaned from - and some comments from some groups that have replied. So the first option - and we've discussed this before - is that you could just maintain a status quo, not provide any new protections for the RCRC, IOC names so that means no changes to the registry agreements. And that can - like I said that could be coupled with Number 4 which means, you know, you could do the evaluation to see whether the protections carry - after you delegate for the first round.

And you could also encourage the Olympic Committee and Red Cross use existing rights protection mechanisms. And then encourage - in 4b it says, "Encourage the IOC and RCRC to use existing RPMs (unintelligible) lowering the cost for each of the organizations." So I don't see 1 and 4 being mutually exclusive. And I think that they could actually work together.

The NCSG, at least according to Avri's email, said there's overwhelming support amongst responses so far that they've had - they haven't done a poll so - she believes that the NCSG will come in line with Number 1.

Does anyone want to add some views on this or just prefer to go back - or doesn't have enough input from their groups? Okay, Greg.

Greg Shatan: I would just say that we don't have enough input from the IPC yet to, you know, put a shoulder behind any one position or to, you know, suggest any modifications to a particular position yet. Hope to have that shortly.

Jeff Neuman: Okay, thanks, Greg. And actually if I can ask do people that submitted these questions - even though this document is fairly new these approaches have been out there. Greg, do you have any idea as to when you think the IPC will be able to come up with a more definitive opinion or at least gather their thoughts together so that we know which way you all are leaning?

Greg Shatan: I can't give a definitive response to that. I will try to put heads together to get a response as soon as reasonably possible. You know, summertime is always a pain with these things but I understand we need to keep moving forward and I do want to move forward.

Jeff Neuman: Okay, yes, I mean, our goal is essentially to get to a document by - that's put out well before the Toronto meeting so hopefully a document put out in September so that we can put it out for some comments, you know, at least a 21-day comment period if possible to - for the Council to at least be able to have a meaningful discussion on it in Toronto. So if we all can work towards that that would be fantastic.

Okay on Option 2 - and obviously Option 2 has got a number of different subsets and possibilities. And, Brian, there's one question I have on Number 2, which is interesting. So I'll read the option then just give you my initial comment which - so Number 2 is that we could develop recommendations to respond to the GAC's proposal by suggesting and extending protection for all of the names whether they're RCRC and IOC, all the RCRC but not IOC, all RCRC names but only a subset of IOC or subset of both of those.

The one option that's not on here, Brian, and not that I think this is likely but it could be all the IOC names and no RCRC names. Right...

Brian Peck: Okay.

Jeff Neuman: ...that's not an option. Again I don't think that's likely but, you know, it technically is an option.

Brian Peck: Sure.

((Crosstalk))

Chuck Gomes: Jeff - Jeff, this is Chuck. And that's probably my fault not Brian's because I put those sub categories in there. And the reason I didn't is I didn't recall that being mentioned in the group. I have no problem though with that being added.

Jeff Neuman: Yes, I think that was in the initial questions that I sent out as to the options.

Chuck Gomes: Oh okay, good, good. And I didn't go back and cross check it with that. That's why I wanted people to comment on what I did to make sure I didn't leave anything out or to make sure I didn't mischaracterize anything.

Jeff Neuman: Yes, no thank you Chuck. And completely appreciate the work you've done. And I think the same comment would apply to Number 3 as well. But let's - Greg then Alan so Greg - or is that left over?

Alan Greenberg: I think it was left over.

Jeff Neuman: Okay, Alan.

Alan Greenberg: Yes, two things. Number 1, I'd like a definition of all because I'm not sure if it's all - being the list the GAC gave us - or all being the superset that was produced later. And...

Chuck Gomes: Alan, this is Chuck. Go up to the three bullets at the top, as proposed by the GAC.

Alan Greenberg: Okay.

Chuck Gomes: That was - when I was doing this thing instead of repeating that over and over again that's why I put it up at the top.

Alan Greenberg: Okay but the GAC - the GAC proposal, if I remember correctly, used terminology saying this is a representative list which implied it wasn't the definitive list.

Chuck Gomes: And what I intended there whether - and we can decide whether that's right or not - was that - and this is Chuck - that they - the specific list that they provided.

Alan Greenberg: Okay. And my second question is for the Red Cross and - because in their comment afterwards it says Option 2 but without specifying which subset. And I assume some subsets are better than others.

Stéphane Hankins: Yes, well - and I understand that - this is Stéphane Hankins, RCRC. I understand that we are talking on the basis of the list which is in the current moratorium. So, I mean, we, you know, we're working on this basis. And, you know, our position would be that all those 26 designations be covered.

Alan Greenberg: Okay so you're saying 2a, b or c but not d.

Stéphane Hankins: You know, I have - I'm very sorry, I have to admit I don't have it before me because...

Alan Greenberg: D says a subset of Red Cross names.

Jeff Neuman: Yes, I think - so this is Jeff. I believe it's all Red Cross names but he's not commenting on what we should do with the Olympics. I think he's...

((Crosstalk))

Alan Greenberg: ...but 2d - 2d as in dog says a subset of Red Cross names.

Jeff Neuman: Right...

((Crosstalk))

Alan Greenberg: ...they are not supporting that.

Jeff Neuman: Yes. So I think that's...

((Crosstalk))

Stéphane Hankins: ...the names that are there are the ones, you know, this is the minimum that we had initially argued for.

Chuck Gomes: This is Chuck. And I think part of the confusion on this is is that some of the responses I think were to Brian's original list and not my modified one and the original list didn't break it down the way I did.

Alan Greenberg: Okay.

Brian Peck: Yes, Chuck, that's a good point. This is Brian. And a question for you, Stéphane, is, you know, as Chuck pointed out I think your response - to the (unintelligible) list was just to - you know, so was just whether to implement

recommendation - or, you know, to adopt a recommendation that implements the GAC proposal.

The way that Chuck broke it out is just providing, you know, extended protections for, again, either all the names of both organizations or one or the other, some subsets. But then there's the other proposal of protecting those names, extending protection but allowing for an exception procedure for allowing names to be defined in, you know, names that are defined in certain circumstances.

So would you be able to say that, you know, the position of the Red Cross, you know, the RCRC, would be - that that could also be a possible option or is it just protection of names without any exceptions or do you need to go back and...

Stéphane Hankins: I think at this stage - and, you know, we're basing, you know, our position on the moratorium list as it is now. But, I mean, you know, you have seen, you know, our previous submissions which, you know, clarify that under international law it should be also, you know, translations and so on.

So, I mean, we, you know, to facilitate the process we - I think the basis of our position would be all of the Red Cross and Red Crescent designations which are covered to date in the moratorium. I don't know whether I've answered your question but since I don't have the document before me I may have misunderstood.

Brian Peck: Okay. No that's all right. I understand. It's probably difficult without the document. I guess the question is - and you can certainly obviously go back and talk about it is whether you would support - whether the RCRC would support a position where you would protect - provide extended protections for the Red Cross Red Crescent names but would allow for exceptions or for an exception procedure for allowing certain names to be defined in defined circumstances.

((Crosstalk))

Stéphane Hankins: ...a procedure for the names to be released, is that what you mean?

Brian Peck: Yes. If you remember, you know, in past discussions in this group there's been - one of the proposals is that you would provide special protections for, you know, the RCRC and IOC names but you would also have an exception procedure.

((Crosstalk))

Stéphane Hankins: You know, as we have outlined before, I mean, it is the case, you know, I've mentioned this on many occasions and I'm sorry to repeat but, you know, the persons that are - organizations that are entitled to use the designations are finite under international law. I mean, it's the medical services of armed forces as well as the respective components of the movement.

But of course, you know, if there was some kind of mechanism which would, you know, involve the Red Cross and Red Crescent in any release procedure, I mean, we - of course we would not oppose that.

Jim Bikoff: Jeff, it's Jim Bikoff. We would not oppose it either. In fact we I think had recorded our preference for taking that approach.

Jeff Neuman: Okay so what we're talking about - we're talking about Number 3 right now. We kind of jumped ahead because that is essentially what Number 3 is, which is "...to develop recommendations to respond to the GAC proposal by suggesting extending protection for the following - for the following provided that there's an exception process for allowing names to be defined (circumstances)." So I think that's what Option 3 is. Chuck.

Chuck Gomes: Yes, just - yes, no I think you're correct on that, Jeff. I have a question for Stéphane. I'm not clear on what he's referring to when he's talking about the moratorium.

Stéphane Hankins: This is - it's in the Guidebook, yes, it's this...

((Crosstalk))

Chuck Gomes: Oh okay. So you're referring to what's in the Guidebook at the top level?

Stéphane Hankins: Yes, I mean, that's - it's for the top level obviously that it...

((Crosstalk))

Chuck Gomes: No, no that's okay. Don't worry about the level.

((Crosstalk))

Stéphane Hankins: That is indeed what, you know, we - I had understood at least, you know, which was the basis for our discussion.

Chuck Gomes: You have answered my question. I just wanted to make sure I was understanding what you meant by the moratorium list and now I know. Thank you.

Stéphane Hankins: Yes, thank you.

Jeff Neuman: Alan, is your hand new or old?

Alan Greenberg: No, no sorry that should be down.

Jeff Neuman: Okay, Chuck, did you have another comment?

Chuck Gomes: No, no I'll put it down.

Jeff Neuman: Okay. Okay so the fourth option that we have on here was Thomas's proposal which is basically the wait and see approach; nothing new now but encourage the IOC and the RCRC to use existing RPMs either by absorbing the full cost or having some mechanism for lowering the cost for each organization to utilize the RPMs.

Yes, unfortunately my comment on this one is that there's no - I don't think we have any influence over the clearinghouse pricing or the URS pricing or any of that to be honest. So I'm not sure how realistic we can recommend A or B. It's not really necessarily within our purview.

But, you know, I just want to get other people's thoughts. The - Avri has said that there's not - there's little support amongst the responses they've gotten so far but I don't know if you guys have heard anything else.

Jim Bikoff: Jeff, it's Jim Bikoff. This option of Thomas's is very much like Number 1.

Jeff Neuman: Yes, it is. It's very much like Number 1 except possibly with the option of - to the extent we could - and I don't know if we can but basically getting WIPO or whoever is providing dispute resolution services to lower the cost, get the clearinghouse to lower the cost with respect to you all. I don't think we can affect that. But, I mean, yes, it's basically Number 1 but just trying to work out something from an economic perspective.

Jim Bikoff: I think the cost issue is unrealistic, frankly, I mean, to go back to organizations and try to get lower costs. I think it sort of misses the point; the point being that these organizations have rights and law that should be enforced and that's really what both organizations have been asking for.

Jeff Neuman: Okay and, Brian, we should reflect that in the - we can reflect that comment from Jim in Number 4.

Brian Peck: Sure although, I mean, if I may make a suggestion? And I'm totally open to how ever you want - you think it's best to proceed. I mean, Jim, you mentioned that you're going to be submitting a comment on this in a little bit.

I think, you know, for the record, if you will, it's probably better if we get written responses and then incorporate it as we receive it (written) or, I mean, it's up to you but just wanted to get it straight and it's accurate and we have something in writing that, you know, these are the positions or at least thoughts of the various groups.

Jim Bikoff: Okay.

Jeff Neuman: Yes, thanks, Brian. And, Jim, thanks for - yes that would definitely help us so we're not paraphrasing. Okay anything else on Number 4?

Alan Greenberg: Jeff, my hand's up; it's Alan. This is a real hand.

Jeff Neuman: Oh I'm sorry, Alan. Sorry.

((Crosstalk))

Alan Greenberg: I find Number 4 rather curious for a couple of reasons. The first half of both sentences, "Encourage the IOC and RCRC to use existing RPMs," I find is either paternalistic or worse. I mean, to the extent that the existing rights protection mechanisms apply - and it's not clear to what extent they do apply universally - I presume these organizations are already using them as well as any other legal, you know, techniques they have at their disposal.

And, you know, to encourage them to do it I find, as I said, somewhat inappropriate. The second half I think is out of ICANN's purview. The - all of these protection mechanisms are either operated on a cost recovery basis or perhaps profit basis for some of the external bodies.

And the only way we can lower prices is either ICANN subsidize, which I can't see happening, or we tell them to raise the prices for regular IP rights holders so that these folks can get a better price. And I can't see our communities accepting that either.

So without some mechanism I find it rather curious for us to be recommending something that we don't know - that we know we can't implement.

Jeff Neuman: Yes, I think those are fair comments, Alan, so I think those should be noted as well if you could submit a comment on that. The other thing that I thought was supposed to be in the (encourage) language I thought Thomas's proposal was actually, "Encourage the registries and registrars..." oh sorry, "Encourage the registries..." - the new TLDs - "...to implement additional mechanisms to protect these..."

((Crosstalk))

Alan Greenberg: That was there.

Jeff Neuman: I think maybe it's - and, Brian, if you can go back to the Thomas proposal?

Brian Peck: Sure.

Jeff Neuman: I think that aspect was there.

Brian Peck: Yes, I'm looking at it right now. Yes there is - there is that third element of saying encouraging registries to, you know, establish voluntary agreements with the organizations. So I'll include that in that before sending this out.

Chuck Gomes: This is Chuck. I'll take responsibility for missing that.

Alan Greenberg: Yes, given 2000 new registries I'm not sure that's doing any favors to these organizations.

Jim Bikoff: I agree.

Alan Greenberg: That's an off the record personal remark.

Jeff Neuman: Okay so all right let's go onto Number 5 then. Number 5 was, "Consider possible additional protections for the RCRC/IOC as part of the broader PDP on protection of means for international organizations. So that's basically putting it off and considering is part of the full PDP process.

Assuming that happens, which it's hard to come out on Number 5 until we know for sure that there's going to be a PDP that's initiated...

Chuck Gomes: Jeff, this is Chuck. Sorry, my hand wouldn't go - is taking a while to get up. I'm having some connectivity problems. The - isn't that referring to the IGO PDP if it happens?

Alan Greenberg: But it's only an issue report right now.

Jeff Neuman: That's correct.

Chuck Gomes: I understand but it's specifically referring to that correct?

Jeff Neuman: Yes except it's called IGO but it's really all international organizations.

Alan Greenberg: Jeff, if you add the word 'initiative' after PDP it's applicable.

Jeff Neuman: Sorry, what was the word again?

Alan Greenberg: Initiative.

Jeff Neuman: ...PDP initiative...

Alan Greenberg: Or proposal.

Jeff Neuman: So what you're saying...

((Crosstalk))

Alan Greenberg: If the GNSO votes not to do a PDP they've addressed the issue.

Jeff Neuman: Right, right. That's correct. I'm actually a little bit surprised about the NCSG comments on this because - well I would have loved for Avri to be on here because I thought their whole approach was we should consider all this as part of the broader PDP. And I thought that that's what they were strongly pushing for so it surprises me to see the NCSG comments that there's little support for this.

The whole reason they brought the PDP - or one of their reasons they brought the full PDP motion and why Mary brought it is - I don't know if Mary is on yet - it was basically to consider all these things under one full PDP as opposed to just a drafting team. So (unintelligible) I'm a little surprised by that.

Lanre.

Lanre Ajayi: Yes, one of the easiest ways about given RCRC/IOC with special privileges is about setting precedent. And I think if we take this into (unintelligible) as part of the PDP that will possibly eliminate that argument. I don't know why she not pick this option. Be easier if the PDP is on the table. And it's going to consider (unintelligible) organizations (unintelligible) RCRC and IOC. So why are we not adopting this option?

I've listened to the points being raised in respect of the advance of time that it will take to complete the PDP. But I think if we focus on it we'll be able to get it done very quickly. So (my) suggestion that we pay more attention to this Option 5.

Jeff Neuman: Yes, I think - I think you kind of summarized why people haven't supported this option which is that they think it'll take too long or they think it's a question of implementation as opposed to policy. So I hear what you're saying and frankly that surprises me that the Non Commercials have not supported that since that was their goal and main position.

Let me go to Greg and then Alan.

Greg Shatan: Hi, it's Greg. I guess I would say that, you know, this fifth position is interesting. And I would think it makes sense in not necessarily to look at it as being an exclusive position but rather in combination with the position that a decision could be made under one of the other points for the first round.

Because clearly I tend to doubt that a PDP is going to move along quickly enough to have a real effect on the first round although it could eventually. So I don't think it's mutually exclusive to say that this could be - that a decision could be made now and could also be revisited as part of the PDP.

I am wary about the idea that throwing it into the PDP is kind of a - almost like a pocket veto that by putting it into the PDP we've essentially sandbagged the discussion of it for now. And that, you know, it'll be many, many months or years before it sees the light of day again.

So I think that it makes more sense to consider this as kind of a second phase proposal as opposed to the only phase proposal. Thank you.

Jeff Neuman: Thanks, Greg. Let me go - Margie, you want to ask something and then I'll go back to Chuck.

Margie Milam: Sure. Yes, this is Margie. I wanted to respond on the timing of the PDP because as you may recall we published the preliminary issue report, we're just about closing the public comment forum any second - Brian can tell us what that date is...

Brian Peck: Tomorrow.

Margie Milam: ..and then we're - yes - and then we're publishing the final issue report in September. So on timing wise we've already taken out a lot of the time that's typically associated with the PDP. That's already passed now. And now, you know, if the Council acts quickly they could launch the PDP, you know, January or before Toronto at which point, you know, they would convene a working group which I presume would be all of you that are on the phone right now.

And they're going, you know, you've already done a lot of the work to, you know, an analysis that might actually speed up the process. But you're right in the sense that ultimately we need to get consensus in order to get, you know, initial report and a final report to the GNSO Council. And consensus building, you know, needs to take place as part of the PDP or part of some drafting team effort.

So just, you know, just keep that in mind that you're not starting from zero; you're starting in the middle of the process that we've already started.

Jeff Neuman: Thanks, Margie. Just a clarification so you don't think that you guys can get out the final issue report before September - like in August?

Margie Milam: We'll certainly try. I don't - I mean, it's really Brian as to how many comments do we have and, you know, how long it takes us to update. But, you know, we're certainly, you know, trying to get it out sooner than that.

Jeff Neuman: Okay.

Brian Peck: Yes, I mean, Jeff, I think, I mean, I think our goal would be to get it by the end of August. But I think, you know, as Margie points out it's kind of - I mean, in the comments we received so far there's quite a bit of substantive new issues that have been raised that we would need to address in any final issue report.

And so, again, our goal is to have it by the end of August but, you know, with the caveat of depending obviously, you know, with the internal process of clearing it and addressing all the issues that have been raised which have been several in the comments we received so far.

Jeff Neuman: Okay thanks. All right, Alan.

Alan Greenberg: Yes, again, I'll reiterate partly what Margie said but try to put some reality into this. The last realistic, you know, significant PDP - the one which was moderately controversial was the post-expiration domain name recovery one that I chaired.

That one took two years from the time the charter for the working group was approved until the final report came out. And it's now been over a year that it's taken for the Board to approve it, for the GNSO to approve it, the Board to approve it and the implementation to be done and it's not implemented yet.

So that's three plus years for something that may be comparable in size or may have been simpler, it's not clear, but certainly wasn't much more complex than the one we're talking about. And it's three years running and it's not done yet. We're going to have new gTLDs deployed in less than three years unless the world comes to an end. So I think we have to be realistic about this.

Jeff Neuman: Thanks, Alan. Okay any other thoughts on this option?

Stéphane Hankins: This is Stéphane Hankins. Yes I - as, you know, we've written in a number of our previous papers aside from the fact that - we hear that your PDPs are an extremely complex process, they take a lot of time, etcetera and that they might amount to sandbagging the process.

I mean, there's two - I would have two consideration - one of them of course is, you know, we can't underestimate the question - the complexity of the question that is - that would be put to the staff. I mean, it's clear that, you know, considering that the diversity of organizations (unintelligible).

But from the Red Cross Red Crescent perspective as we've written a number of times, you know, in many ways it doesn't - the thematic that is being proposed, you know, how, you know, the criteria would be defined for organizations does - just does not fit the rationale for the protection of the designations of the Red Cross Red Crescent.

You know, again these are not protected because the designations that - these are the components of the International Red Cross Red Crescent movement can use, they are lent to us, they don't belong to us. They are the designations of, you know, protective emblems of, you know, medical services in armed conflict. That's what the rationale is.

So, you know, the very notion that this would be examined through the prism of, you know, the criteria of any organization which is entitled to actually - to use the designation just doesn't fit. And, you know, again, I mean, I heard the decision or the comment or the conclusion earlier that, you know, this only applies to the first round.

I mean, we - basically, you know, these are protected designations. They - the protection is firm, it is in hard letter international law and domestic laws implementing that international law. And the protection should be awarded and implemented as, you know, immediately, you know, not, you know,

following a one, two or three-year reflection which it doesn't even quite fit, as I said, you know, the - what underlines the protection.

((Crosstalk))

Jeff Neuman: Stéphane, I think that's a good segue into Option 6 and I'll tell you why in a second. The Option 6 is let's get a legal analysis done on the means. And I know the original option said, you know, (council) (unintelligible) and the suggestion that should be an international law firm or consortium of legal scholars.

And then the Red Cross you all submitted comments as to who - you know, what they need to be familiar with. You know, there's just a debate going on as to whether the law applies to the use of the names or the delegation of the names.

I'm going to play devil's advocate the law may protect the Red Cross from anyone else using the names but the law may not address anyone delegating those names. So the law may not be applicable to a registry or a registrar that does nothing but the mere function of registering a domain name. The law may only apply to the use.

And I don't know what the law is and that has to be researched and that was I think part of the rationale behind Chuck's recommendation that this be done. So...

Jim Bikoff: Jeff...

Jeff Neuman: ...I think that's - still - so I understand what you're saying. And if you, you know, if you were to apply similar...

((Crosstalk))

Stéphane Hankins: On the substance of what you said I can respond that I - I mean, the protections of course, you know, are binding upon, you know, on (unintelligible). But I - we can come to Option 6 and, you know, the notion that indeed we hear that, you know, there's concern as to whether, you know, the protections, you know, by their extent, etcetera. So we can come to Option 6.

I mean, I did write in the paper that I sent, you know, we - if there are such concerns then, you know, they do need to be addressed; this we understand. But, you know, as far as we're concerned, you know, the law is actually very clear and, you know, it's understood and, you know, legislations do cover it pretty extensively so, you know, it doesn't require three-year research.

Jim Bikoff: Jeff, this is Jim Bikoff. I just want to say that both these groups have already submitted to ICANN a list of all of the statutes - treaties and statutes that apply. And anyone looking on the ICANN site can access them so that, you know, if somebody wants to verify those protections they're there; they've been submitted already.

The work of coming up with the statutes and the citations has been done. And I agree with Stéphane, it shouldn't take that long for somebody to access those specific treaties and statutes and confirm that this protection is in fact in place.

Jeff Neuman: Yes, I think - I think, Jim, I think there's a subtlety in my comment which is not that the law isn't out there and you can't easily find it. That's a law on the use of the names as opposed to - or the designations - as opposed to what a registry or registrar does.

Now registries and registrars acting merely as registries and registrars have historically been held - at least in the US and in Belgium and a number of other countries where it's been tested - have been - I don't want to say immune but pretty close to immune from liability for merely performing their

function as a registry or registrar. You know, that's a whole line of cases starting with Panavision and - I know, Jim, I know you know this well.

So it's a different question as to what is applicable to a registry and registrar. So the name may be protected against anyone using it but the name may not be protected in terms of a registry or registrar actually allowing it to be registered.

Jim Bikoff: But if that registrar attempts to either sell it or to transfer it then they are violating the law.

Jeff Neuman: It depends what you mean by selling, Jim.

((Crosstalk))

Jim Bikoff: Well if it's put up on an auction site or if it is sold to somebody - if there's trafficking - the word trafficking is in the ACPA and it's been interpreted in case law.

Jeff Neuman: Sure. But I guess not to play devil's advocate if - me as a registry if all I'm doing is allowing names to be registered on a first come first serve basis and Olympic is one of those names that gets registered on a first come first serve basis you would not necessarily have an action against me as the registry but you would have an action against the entity that ultimately ended up registering it.

And so that's the research that needs to be done. I don't think there's too much of a dispute as to what protections there are for the use of the name...

((Crosstalk))

Jim Bikoff: You'd have to do that research by country.

Jeff Neuman: Right.

Jim Bikoff: So you'd have to basically research that in every country.

Alan Greenberg: Yes, and it sounds like - Jeff, although you're saying registries may be immune registrars may not be so...

Jeff Neuman: Well that's true. But again we're not talking about - we're talking about new TLD registries and putting them on a reserved list. So the question is if a registry allows a name to be registered through the normal registration process without directly profiting off of how someone ends up using it - using the language of the Panavision cases a registry acting merely as a registry has traditionally, in most countries that have considered this issue, has been held to be immune from...

Alan Greenberg: Yes.

((Crosstalk))

Jeff Neuman: ...against just use. But again that's the type of research that needs to be confirmed and done. I'm not sure we're necessarily talking about extensive legal research as to the treaties and - because I think you're right, that might be easier to ascertain since that's out there and you guys have written about it fairly well.

Alan Greenberg: Yes, Jeff...

((Crosstalk))

Alan Greenberg: ...it's Alan. All I was saying is the situation may be different for registries than registrars.

Jeff Neuman: Correct. But the new TLD...

((Crosstalk))

Alan Greenberg: The trafficking term might well apply to registrars even if...

((Crosstalk))

Jeff Neuman: Well no it hasn't - it has not applied to a registrar (unintelligible) a registrar.

Alan Greenberg: Okay.

Jeff Neuman: But again we're talking here about whether to put these names on a reserved list and amending the registry agreements. That's the narrow scope that we're talking about at this point. Let me go to Chuck.

Alan Greenberg: Noted.

Jeff Neuman: Let me go to Chuck.

Chuck Gomes: Well, Jeff, you really covered - I'm just reinforcing what you're saying. We have to go further than just investigating the law. We have to get a solid reading on the application of the law to registries and registrars. And you said it better so I'll just leave it at that.

Jeff Neuman: Yes. Okay any other comments? So I think, Chuck, that's something that you discussed with the Registries Stakeholder Group and I think that's something you'll have to put in writing back to this particular suggestion.

Chuck Gomes: And I just sent something in terms of the feedback that I received from the Registries in a call we had today and then one after meeting comment that was received. I will continue to do that but basically where the Registries are at this point in time as far as the majority of support it appears to be for

Option 3a. And there was one member who supports Option 5. So that's just verbal input. I did send that in writing to the list just a few minute ago.

Jeff Neuman: Yes, thanks, Chuck. Greg.

Greg Shatan: It's Greg. I just - in terms of Option 6 I'm concerned kind of with the precedent that this would set. Now obviously I, you know, have not been in every working group or discussion drafting team but this is the first time I've seen kind of this idea of essentially farming out or seeking a specific legal opinion.

And I'm concerned with kind of the precedent and the slippery slope that this might put us on or, you know, every time that a particular position is taken is it going to require some sort of independent legal opinion? For instance there are those that assert that, you know, thick Whois is at odds with the European EU data protection regimes; started by those who would like to see as little Whois as possible as far as I can tell.

You know, should that be subject to some sort of third party legal opinion? And, you know, as we know there are at least three sides to every legal issue. And, you know, depending upon who's hiring you and there could obviously be an objective side as well but the idea that everything that involves a legal basis is now going to be subject to seeking a legal opinion from some corner would seem to kind of put us in a - put ICANN operationally in a very strange place.

Jeff Neuman: Yes, thanks, Greg. And if I could take off my chair hat for a second and just - and I rarely do this. But my gut as a registry for a different reason but, I mean, the same thing I don't want precedent set either because from my perspective if it's the ICANN General Counsel, let's say, that issues an opinion frankly that's irrelevant to me as a registry.

I don't care if the general counsel thinks that the law requires a registry or registrar to do something. I have my own strong feelings as to what I think a

registry or registrar has to do under the law. And, you know, ICANN General Counsel or even a law firm that they retain issuing an opinion is not - A, not something I want to see because I don't want it to have precedential value over my actions. I have my own law firms and I have my own thoughts and frankly we have our own case law that we follow.

So, I mean, I'm concerned, again, just not the chair hat here but from a registry perspective I don't want to see a legal opinion from ICANN on whether they believe registry or registrar have certain obligations. But that's - and I discussed - and Chuck knows - I discussed that this morning from my own viewpoint in the - during the Registries meeting that we had earlier. So I share some of your concerns.

Okay putting my chair hat back on. Is there any other comments on that Number 6 is asking for? And I know the Registries will submit comments on that. But I want to be clear that we've covered all of the potential options and to which everyone understands this document. Please submit comments to it and it will be updated.

And if you could take this back to your groups I think it will help you solicit additional feedback.

Chuck Gomes: Jeff, this is Chuck. I assume an updated version since some edits have been made during the meeting or maybe even after a few days and people have submitted their written submission would be sent to all of us, is that correct?

((Crosstalk))

Brian Peck: Yes, let me - I have a question because I think obviously there were quite a few people who weren't on the call this - today - so haven't had a chance to see this document. So if I may suggest sending this out now as-is so that people can have, you know, that weren't on the call can have a chance to go

back to the groups and have the basic options that we've all agreed upon here this afternoon.

And then as you suggested, Chuck, over the next couple days, you know, maybe perhaps once, you know, between now and our next call two weeks from now maybe, you know, twice or every five days I can go ahead and update it and recirculate it. Would that be acceptable to everyone?

Jeff Neuman: Yes, Brian, so I think we should do that because we said we would submit it. But if you could do a strong note of caution when you send it out saying this is the document we discussed during our call. There are edits coming as a result of the discussion. And if - the sooner you can get that document out it would be great.

Brian Peck: Okay sure. I'll do that, you know, in the next hour or so and just with that caveat. And then as I say once we start getting comments every few days I'll circle around with some updates.

I have one quick question going back to Number - the one with regards to the PDP. Alan, you had mentioned about putting up a broader PDP initiative is that something that people on the call want to add to that - to that particular option or do we just leave it as-is?

Chuck Gomes: This is Chuck. I think it's okay to add that. I don't think it changes things significantly just maybe a slight bit of clarity.

Brian Peck: Sure.

Jeff Neuman: Yes.

Brian Peck: Okay well I'll just add that. But other than that, as I say, pretty going to leave this document as-is, you know, with that caveat and then update accordingly a few times before our next call.

Jeff Neuman: Okay. All right does anyone have any last questions? Okay thanks everyone for staying an extra 10 minutes, I appreciate it. And we'll talk to you in two weeks.

Chuck Gomes: Thanks, Jeff.

((Crosstalk))

Jeff Neuman: Thank you.

Brian Peck: Thank you.

END