

**Red Cross and IGO Protections Webinar to the GNSO Council
2 June 2016 at 15:00 UTC**

Operator: The recordings are started.

Nathalie Peregrine: Thank you very much, (Marshall). Good morning, good afternoon, good evening everybody and welcome to the webinar on Red Cross and IGO Protections on the 2nd of June 2016.

This call is now being recorded, and I'd like to hand this over to Mary Wong.
Thank you.

Mary Wong: Thank you, Nathalie. Hello everybody. This is Mary Wong from ICANN staff, and there's other staff members who are also present at this webinar for certainly the question-and-answer session. First let me apologize for the wordiness of the slides. Obviously we will not be reading each and every word on them, but the way we prepared these slides was so that you have a record, including of the text, of some of the recommendations that you may well be discussing.

And hopefully this will not take too long a time in presentation because I would imagine that the councilors who are present on the call today would probably want to spend some time discussing the alternatives and potential next steps for the council and the GNSO.

So essentially what we wanted to cover at you request on this webinar is to look at what the current status of the protections are. And on this slide you'll

see that there are actually two types of protections that are operative now. One is the so-called permanent protections, meaning these are the ones that have already been adopted and approved by the GNSO Council and the ICANN board.

I will say at this point that these adopted permanent protections are in implementation status, but we will not be looking at the implementation details today, although of course we and our colleagues in GDD, who are overseeing the implementation, would be happy to provide a briefing at the appropriate time on the implementation status of the permanent protections.

In addition, the other type of protections that are operative are the so-called interim or temporary protections for certain of the identifiers of the Red Cross and of the IGOs. And I'll talk a little bit about the distinction between the two of them. And of course that will then lead us to cover those remaining names and acronyms that we have inconsistent advice from the GAC as compared with the policy recommendations that were adopted by a previous GNSO Council about two years ago.

We won't spend too much time on the background unless anyone has questions. And of course I should also say here that please feel free to stop me at any time if you'd like some clarification or if you'd like to ask a question about a particular point in this presentation. And as I said earlier, we would leave some time for your discussion as to the options for next steps. In particular, should the GNSO Council decide to consider possibly amending your adopted policy recommendations, what would be the process for doing so.

So looking at the current status of both the permanent and the temporary, or interim, protections, we've summarized them on this slide. And what you see there in bold really are the specific identifiers that are protected either permanently or on an interim basis. And on the permanent side of the fence,

you see that essentially those are the names. So no acronyms of IGOs for example have been approved by either the council or the board.

Perhaps I should say at this point that these adopted recommendations did come from the one PDP that the GNSO conducted. That PDP also covered other types of organization, including the International Olympic Committee and nongovernmental organizations. But for obvious reasons those will not be covered today. We will just be focusing on the Red Cross and the IGOs.

So in terms of those names - and (James) I see that you've raised your hand. Please go ahead.

(James): Yes I'm sorry. What are the obvious reasons that we're not including them in this slide?

Mary Wong: Because the unresolved issues basically go to the Red Cross and the IGO acronyms, in short. I'm sorry I should have made that clearer, (James).

(James): Okay. Thank you.

Mary Wong: Thanks for the question and for allowing me clarify.

So as I mentioned earlier, in respect of these Red Cross names, Red Cross, Red Crescent, Red Crystal, Red Lion and Sun, and the applicable languages, as well as in terms of the IGO names, and these would be the ones that are on the list that the GAC provided to ICANN as you see three years ago. There is a link there that you can look at when distribute these slides.

As I mentioned earlier, these have moved to the implementation phase, so there is an implementation review team that includes members of the GNSO community. And that IRT is working with GDD staff to make sure that those implementations go ahead in accordance with the policy recommendations.

In terms of the temporary protections - I'm sorry, (James), please go ahead.
(James), I think you're still on mute.

Okay I see that you put your hand down. Please let me know if you'd like me to pause again. For now I'll move on. And talking about the interim protection...

Sorry, was that you, (James)?

(James): Yes I'm sorry. I was having trouble with the mute function. I don't mean to interrupt again but I note that (Phil) had a question in the chat, and I was hoping we could capture these as we went along rather than waiting till the end, if that's all right.

Mary Wong: Sure. Thank you, (Phil), and thanks, (James), for calling our attention to it. I'm not actually looking at the chat at this point, so that's good to know. Essentially what we're talking about here are the second level protections. In terms of some of the top level protections, those were in the applicant guidebook previously, and so we are not so much concerned with those that are either already reserved by way of the applicant guidebook or that were already adopted in terms of permanent protection.

And that would be true for example for the names that are on this slide that have been approved by the council and the board. Those would be at the top in the second level. And you'll note here that for the Red Cross that for example that there is going to be an exception procedure that will be developed as part of the implementation. So hopefully that answers your question, (Phil).

The distinction then between the permanent and the temporary protections really lies in the nature of the protection but also the type of names and/or acronyms. And so you see here that as part of the process where we had the inconsistent GAC advice and the GNSO policy work, the board took a

number of resolutions which culminated ultimately in interim protections for those names and acronyms that you see on this slide. I will come back to those because these really are the ones that remain to be reconciled, if at all.

This next slide shows the table that looks at the differences between the GAC advice and the GNSO recommendations. We put that in a tabular form here, and the next few slides actually put the same information in more textual form, either for those of you who prefer tables over text or vice versa, but also so that you can see the way that some of those recommendations or advice were phrased.

And as I mentioned earlier -- and I'm sorry to keep emphasizing this but it may be a good thing -- that we really are looking at the Red Cross and the IGOs. And in terms of what needs to be reconciled, we are looking for the Red Cross at the identifiers of the national Red Cross societies, as well as the names and acronyms of the related international Red Cross entities, such as ICRC, IFRC, which is the International Federation of the Red Cross, and so forth.

In terms of the IGOs, we are then looking at inconsistencies in GAC advice and GNSO policy recommendations, not for their names but for their acronyms. And again, those would be for those IGOs that are currently on the GAC list. So I'm just going to leave this slide up for a bit so that folks can take a look at it. And I'm happy to answer questions if you have them as well.

(James), please go ahead.

(James): Thanks, Mary. Can you hear me?

Mary Wong: Yes very clearly.

(James): Great thank you. First of all, thank you for this slide in particular. This is an incredibly complex issue, and I'm open to the possibility that I'm just not smart

enough to completely wrap my mind around it. So if we can pause here for just a moment. Can you highlight specifically the gaps or the differences between the GAC advice and the PDP recommendations that were adopted in 2013? Specifically, what are the deltas between these two columns? And I'm sure that I would get it if I kind of stared at this for an extended period of time, but I'm wondering if there's a simple way to articulate that in a couple of sentences, or if it's just too complicated.

Mary Wong: Thanks for the question, (James). I think that was the question that the staff were somewhat dreading because - and I should say now that even for those of us that have worked on this for a while, we do often, if not always, have to sort of take that step back and say, "What are we talking about, which identifier, what are the deltas or gaps," as you noted. So let me try.

Essentially I've already pointed out that what we need to reconcile with respect to the Red Cross are the national society names and some of the identifiers for the international movement, whereas for the IGOs it is the acronyms. The gaps in a simplified way relate to the type and duration of protection. And that's why we hope that this table is helpful.

For example, the GNSO's PDP recommendations talk about providing claims notification protection. And that obviously is a system that is already being used through the TMCH for trademarks for example. In terms of implementation details, we won't go into whether anything needs to be modified or added to, but essentially it is that claims notification process.

And what the GNSO has recommended is 90-day claims, whereas what the GAC has asked for is what they call permanent protection. And it's not clear for example what that would mean. It could potentially mean running a claims notification process but for the life of the TMCH or in perpetuity, meaning longer than 90 days potentially without a limited duration.

For the IGO acronyms, the GAC has provided advice that was summarized on this table. And here you do see that it is about a system of permanent claims. I apologize for the DC cops going past the office. At least they're not coming into the office, as far as we know.

So we're talking about permanent claims notice for the IGO acronyms. So even while the GAC and the GNSO may have spoken to the same type of mechanism, say for the IGO acronyms which would be a claims notice, we are talking about difference in duration, so 90 days versus permanent. And one potential issue that you might want to discuss also is whether the claims notice should go both ways, meaning should it be going both to the potential registrant as well as to the affected organization or just to the affected organization, for example.

(James), does that help?

(James): I think it helps in the difference is permanent versus 90 days. I guess I put a question in the chat here. When we say 90 days, and this was an adopted PDP in 2013, does that mean that this claim period expired sometime in February of 2014 or it hasn't started yet? When you say temporary or interim, have we just indefinitely extended the 90 days? And I'm sorry, (Carlos) has been waiting patiently. I'll stop (unintelligible).

Mary Wong: (James), I think that (Donna) has put up a response in the chat, so let me follow up what she said, which is that there is no claims period at the moment. The temporary reservations - or I'm sorry, let me take that a bit, interim protections that were passed by the board, as (Donna) noted, are by way of reservations through Specification 5 of the registry agreement. And those interim protections expressly stay in place until there is a reconciliation between the GAC and the GNSO's recommendations.

Before I move on to (Carlos), I'll put the additional note here that obviously when the PDP working group made its recommendations to the council

November 2013, that was when the new gTLDs under this current expansion round had just started to be launched. We are looking obviously at the issue still several years into that. So in terms of aligning timings, launch dates, et cetera, et cetera, that may well be an issue, but the short answer is that there is no claims periods. The temporary protections are reservations until there is a reconciliation.

And if I may then, can I move on to (Carlos)? Thank you for waiting, (Carlos).

(Carlos): Hello. Can you hear me, Mary?

Mary Wong: Very clearly, (Carlos). Thank you.

(Carlos): Thank you very much. And don't worry, (James). I'm much - I'm lost. I arrived late, six minutes into the call, and I have a very basic question, not as complicated as yours. I'm - my background is from the discussion of the two and three-letter codes in the use of country and territory names. And I'm just trying to understand it from that perspective.

I have three very specific questions to you, Mary. I think from the last few sentences you said that when we talk about protection, it's similar to when a name is reserved. Is that right? And I understood from your last explanation that what we are talking about here are temporary reservations of those names. Is that right?

Mary Wong: (Carlos), this is Mary. In terms of the temporary or interim protections, which are now in place, and I think that was what your question was directed to. So for example, those temporary protections currently extend to the national society names of the Red Cross and the IGO acronyms. Then you are correct. That is by way of reservations. So they are withheld from registration. And they are listed in a spreadsheet that is referenced by means of Specification 5 of the registry agreement.

(Carlos): Thank you. And this is fine for the first question. The second question, when you talk about the difference between the Red Cross and the IGO acronyms, do I understand right that in this first column on the left in the second paragraph you have four-letter acronyms? Is that what we mean by the Red Cross acronyms, these four-letter acronyms?

Mary Wong: (Carlos), this is Mary again and thanks for the question. So in terms just of the Red Cross, the acronyms that you see are indeed four letters, or they're comprised of four letters. So for example, the International Committee of the Red Cross will be ICRC, and the International Federal of the Red Cross/Red Crescent would be IFRC. And I believe the others would be -- I'm trying to remember -- I believe they may be the French versions in acronym form.

In terms of...

((Crosstalk))

Mary Wong: Sorry, go ahead please.

(Carlos): Sorry I'm having also trouble with the mute. In terms of these four-letter acronyms, they are not listed in any other list like the case of the country codes, which are based on an ISO list, or do these four-letter codes appear in a list of international organizations? That's - I'm not very clear what is the difference between the IGOs officially and these four ones. Or do these four acronyms appear in all standard lists of IGO acronyms?

Mary Wong: Thanks for that question too, (Carlos), because you did remind me that one of the fundamental distinctions that I should have made clear as well is the distinction between an organization like the Red Cross and those organizations that are called IGOs, or international governmental organizations.

Leaving aside questions as to the legal basis for the protection, which I understand is not your question and is something that we will get to later in this session, the organizational distinction is that the Red Cross is not an IGO and that it is not the type of intergovernmental organization that was formed by governments. And as such, if you look at the GAC advice and the various documents. The Red Cross advice is always categorized as advice about the Red Cross. And the IGO advice is categorized as advice about IGOs, because they are different.

And so in that respect, to come back to your question, for the acronyms of the Red Cross, you're correct, they would not appear in a similar list to the ISO 3166. They also do not appear on the GAC list of IGO names and acronyms because, as I mentioned, the Red Cross is not an IGO like the UN agencies would be.

So if I may conclude this response, and I notice a couple of comments by (Rubens) and others in the chat, those acronyms for the Red Cross you see on this slide, both the ones that were the subject of GAC advice and the ones that were considered by the GNSO PDP, those are the acronyms by which the international Red Cross is most commonly known and they are the acronyms that were the subject of GAC advice, for example.

(Carlos): Thank you. Thank you very much for these excellent explanations. So I repeat, they don't - they are not part of any official list for the reasons you expressed. And the last - the very last question, if you allow me please, when we talk about national Red Cross organizations, does it make a difference if the national organization uses the country code in the first or in the second level combined with the international four-letter code? I don't know if I make myself clear.

Like if I'm the Costa Rican Red Cross Federation, my previous name was `redcross.costarica` but now it should be possibly to have `costarica.redcross`. I

mean are we at that level of the discussion or that goes already too far?

Thank you.

Mary Wong: (Carlos), let me try to answer that, and I think I did understand what you were asking. Basically we are talking about the names of the Red Cross, so it wouldn't be about, you know, using the dot for example or even an acronym. I don't recall offhand the specific name of the Costa Rican Red Cross, but so for example there is the American Red Cross and there is the Australian Red Cross Society. So it is - we are talking about those official names of those national organizations at the second level.

(Carlos): Okay. Thank you very much. So it's the official names are protected. We are not talking about a TLD derived from this acronym, if I got it right, either at the first or the second level. Thank you.

Man: Dot-Red Cross...

Mary Wong: (Carlos), in terms of the top level reservations for the Red Cross, and if I may throw it in also for some names for the International Olympic Committee, those have already been affected and those were, to my understanding, in the applicant guidebook even prior to the application launch. So we are really talking here about the second level.

And in that respect, to go to what (Donna) and (Rubens) posted in the chat, thank you (Donna) for posting the current list of the temporary reservations for the national Red Cross society names and the IGO acronyms. And as (Rubens) noted, .redcross was blocked for the 2012 round, and currently for those names and acronyms under temporary reservation, basically no one can register them because there is no exception procedure. To the extent that those become permanently protected, there may well be an exception procedure that needs to be designed like the ones that we are now currently designing for those already adopted recommendations.

Thanks very much, (Carlos), and I appreciate the question. So hopefully looking at this table, and like I said, the next few slides basically put the same information in textual form, and all I want to do here is basically highlight that the main inconsistencies between the GNSO policy and the GAC advice for the Red Cross comes down to the international Red Cross movement and the related acronyms and the names acronyms of the national Red Cross societies. For the IGOs, the inconsistencies come down to essentially the IGO acronyms. And as (James) asked earlier, it is going to the nature as well as the duration of the protection.

So one of the last things I wanted to say about the actual names and acronyms that we are considering today is that with respect to the GAC's list of IGOs, I have a couple of notes here that this is not necessarily a permanently static list in that it can actually be reviewed. That was something that was specified when the list was sent to ICANN in March 2013. The IGOs that are on that list number 192 at the moment, and the criteria was also provided by the GAC. And you'll note that this essentially based on the .INT criteria, so I understand.

What I realized I did not put on this slide but perhaps I should, and I can add that before we send it, is the list of the Red Cross national society names and the international movement names and acronyms. Because those were also based on a list that the GAC sent to ICANN. So basically we have two lists from the GAC, one of the Red Cross identifiers and one of the IGO identifiers, which is the subject of this slide.

We have another slide here that without going into or cutting and pasting all the various GAC communiques that spoke to the issue. And we do have a link in the further information slide that can take you to a page on the GAC's Web site which lists all the different communiques that have touched on this issue.

The rationale essentially is what we have summarized on this slide. And this may be relevant in terms of your discussion as to how to proceed with one or both sets of recommendations.

In terms of the origin under international law treaties and in terms of the fact that the GAC considers the IGOs to be objectively different rights holder for example.

So in summary, for this part anyway I think I have already covered what the differences are. Which of the names and acronyms are the ones for which there are differences?

And I put a note here and I am very glad that (Phil) is on the call because if we are talking about say a claims notification process. So a claims notice goes to either the potential registrant and then post-registration to the affected organization or a claims notice just goes to the affected organization after a matching name has been registered.

In either case it would be up to the affected organization to take the necessary action which typically and I think we all know this from say the trademark context would be filing a UDRP or in the context of new gTLDs, URS or possibly taking national court action.

So one note that we have here and this goes to some of the work that (Phil's) working group is doing is whether or not if we go down the road of claims notice protection there needs to be some changes to Curative Rights Procedures that balance out and that actually supplement a claims notice process.

This next slide talks about the current status which I think everyone on the call already knows. You met with the Red Cross over a month ago and a few days ago the follow up letter that the council had been discussing to seek input from the board after some period of lack of interaction.

That was sent and so from the Council's perspective I would imagine that you are awaiting a response from the board to that letter. And when I got to the next slide I do have a note there that says that there is a meeting that has been scheduled between the GNSO and the board in Helsinki.

And I believe that the topic of Red Cross and IGO protections is on that agenda or currently tentatively on that agenda. So regardless of whether the board is able to respond between now and Helsinki it does look like there will be a chance to discuss this issue with the board.

The other note here on the slide just talks about some of the background acknowledgement and other awareness of what else is going on that may be related.

And two things here. I have already mentioned that there is a Curative Rights PDP that is co-chaired by (Phil). The work of which has been acknowledged both by the GAC as well as the board through the then gTLD program committee.

The other point that I think would be important to highlight at this point. Again as some of you but not all counselors are aware. There is a small group of representatives from the IGOs, the GAC chair and representatives from the board that have been working to try to develop and agree proposal to try to resolve this issue to be sent back to the GAC and the GNSO.

But as I noted here, although those discussions have been going on for a while no sign of proposal has been received by either organization.

At this point (James) you have your hand up.

(James): Thank you (Mary). In fact I was not aware that there was a group working on a proposal to attempt to bridge these two groups and the differences between these two policy recommendations. So thank you that is helpful.

I think probably in hindsight would have been a good inclusion in the letter that we sent on the 31st to ask for a status update on that effort.

But that said, perhaps we can go forward and see if we can get some clarity on where that group is and when they will expect to have that report or the proposal completed.

I actually had a question about the next slide, I believe it is Slide 11. So I will hold and I will let you go to (Phil).

(Mary): Thanks (James) and I think it is probably time (Phil) has his hand up because he may well have comments about this point. What I do want to note is that small group that was convened I want to say following the Los Angeles meeting.

So basically it was after the board had begun considering the GNSO's recommendations and noting inconsistencies with GAC advice.

That group however, is only focused on the IGO protection issue. And so the question of the Red Cross protections is not within the scope of that group which is basically trying to move the process along. But like I said, we have not seen a final proposal.

And so the extent that some of you may have not been aware that there was a process that has been going on for a while to try to help reconcile this issue. That is where it is. And (Phil) please.

(Phil) I don't think you can be heard. At least I can't hear you.

(Phil): Can you hear me now?

(Mary): Yes thank you.

(Phil): Okay sorry forgot the mute button. Anyway I just want to say briefly to make it clear what the working group on Curative Rights Process for IGOs which I co-chair along with (Peda Ringforth) is looking at and isn't looking at.

We are not looking at blocking mechanisms, claims notices or anything like that. We are looking at number one, do IGOs have standing to file a UDRP or URS regardless of whether they have trademarked their name and acronym.

And our preliminary conclusion is that they do so long as they have asserted their rights under Article 6ter of Paris Convention which is a separate international treaty that gives protection to national trademark regimes to IGOs.

So we have resolved that question. The other question I am looking at is whether their claim to sovereign immunity is a sufficient strength and breadth that we would be required to create a separate Curative Rights Process for them.

Because of the fact that those participants in the UDRP have a right to appeal either during the action or after the action to a court of mutual jurisdiction.

Our working group was held up for a very long time because we didn't have the legal expertise among ourselves to opine on that question with the help of (Mary) and other ICANN staff.

And some modest funding from ICANN we secured a legal expert, Professor Edward Swain at George Washington University in Washington, D.C.

We have seen the near final draft and we will have the final draft before Helsinki of that report. And basically what that legal analysis says is that there is no uniform international rule on IGO sovereign immunity whether or not an IGO would have immunity on that issue of an appeal in the UDRP context.

Would in fact be a question that would be addressed differently by different national courts. So there is no legal rule. It becomes a policy issue and we haven't reached final decision yet on a policy question.

And finally, I just want to point out that despite repeated outreach to the small IGO group they have essentially chosen not to participate to any significant extent in our working group and to put all their efforts into these discussions with the board.

So I hope that clarifies what our working group is and isn't looking at and where we are in our work. I would be happy to answer any questions on that if anyone has any.

(Mary): Thanks very much (Phil). (James) did you want to come back in at this point?

(James): Yes thanks (Mary). Can you hear me?

(Mary): Yes thank you.

(James): Hello? Okay great.

(Mary): We can hear you.

(James): First off, thank you (Phil) okay great. Just thanking (Phil) for that update because I think that is related and very critical.

So my question is really more about the top tier of Slide 11. And it is not a question but a comment or an observation here. I think that we as a council

should be cautious about establishing a default position that we are going to amend the PDP recommendations.

To my understanding that is a fairly significant process that has rarely if ever been employed. And I am concerned that if we – I mean it is good to know that this an option. It is good to know what that involves and how we would go about initiating that.

But I would hope that it would be unnecessary for us to go back to a PDP that was unanimously approved several years ago and start tinkering under the hood. I believe that sets a very negative example or precedent for future PDPs that may run into resistance from GAC or other ACs or SOs.

Or potentially even have a chilling effect on participation in future PDPs where participants might feel that their time and efforts are better spent lobbying the GAC or lobbying the board rather than working through the GNSO process.

So I wanted to put a marker down I think as our agreement within the bylaws is to manage this process.

I think that we should only consider amending or modifying the PDP in the event of clear and compelling evidence that the board and the GAC want us to do otherwise or the board would reject those recommendations. Or that we believe that the PDP all those years ago got something fundamentally wrong.

I will stop talking now but I think you kind of get where I am going with this. Is that it shouldn't be taken lightly. We should go into that with the recognition that it will have significant downstream repercussions. Thanks.

(Mary): Thanks very much (James). And I guess the only comment from the staff at this point is to note following your comment that as far as we know this

process for amending adopted policy which you can see on this slide has also has not been used.

And this was the subject of some discussion but by the previous council as you may recall that there as an exchange of letters and also some in-person discussion with the then (NGPC) by a predecessor council in 2014.

So the concerns that you noted were brought up then as well. So it may be helpful then there is going to be a meeting with the board in Helsinki. We just wanted to put on the slide the actual process.

And you will note also that if you are going to go down this route of considering amendments that that needs to be done before the board exercises final approval of the recommendations. And of course then there is a public comment period.

At this point I see that (Carlos) you have your hand up. Maybe I will go to you for your question or comment and leave this slide up for everyone to look at. (Carlos)?

(Carlos): Thank you (Mary). This is (Carlos) just to thank (Phil) for the comments and ask him the following question. Although the international Red Cross has not the same legal status (unintelligible) Paris Convention.

Isn't it possible to find a way to apply the same mechanisms for the IGOs? Are you going to deal with that or not at all in your group (Phil)? Thank you very much.

(Phil): Yes (Carlos), happy to answer. We are really on in our process. Our original charter asked us to look at IGOs and INGOs which are non-governmental organizations and we decided pretty early on in our working group that INGOs which I suppose the Red Cross would probably fall in that category needed no special consideration.

If they have trademarked their name and acronym they have a right to bring UDRP and there is no sovereign immunity question at all for them. So we don't even have to think about creating a separate CRP for them.

So that was the extent to which we dealt with international non-governmental organizations which would be the Red Cross would fall within that category. Because it is not created by treaty and between government.

(Mary): Thanks (Phil). Thanks (Carlos). I see that (Donna) has her hand up. May I just say that this is actually the end of the staff presentation? So, (Donna) and (James) perhaps I could hand the rest of the time over to you for any discussion that the counselors on the call may wish to have. (Donna) go ahead.

(Donna): Thanks (Mary). The presentation seemed really useful. So I just have two things that I want to suggest to some of our counselors whether we can – and (Mary) also for you whether we have done this before or whether this is something new that we could do.

I would really like a briefing on the GAC IGO board group. And what I mean by briefing is understand who is on that group. How many times they have met?

What are they said discussing? I just want some transparency around it because I don't know that I have seen – I have seen references. I think I have seen one letter that didn't really say much.

But just to get an understanding of what that group has been discussing would be really helpful. So I wonder whether it is something that council could request from the board if we haven't done so already.

And secondly, we know that – have we specifically asked the board why they have a preference for the GAC advice or the GNSO recommendations? Because I think originally the board tried to put, you know, tried to put pressure on the GNSO to change their recommendations.

But did they ever provide an explanation as to why they preferred the GAC advice over the GNSO recommendations? My concern is that they would prefer – they think it is a quicker mechanism to get the GNSO to change their recommendations rather than reject GAC advice and have to go through that process.

Now that is just an assumption on my part. But I would really like to understand whether the question has been asked before. If the board does actually have a preference for implementing the GAC advice over the GNSO recommendations and why that is. Thanks.

(Mary): (Donna) this is (Mary) again from staff. So with respect to your first point I noticed that in the chat (James) has agreed that that is a good idea.

So it may be timely in view of the upcoming meeting with the board for a specific request like that to go through the board so that you can either discuss that in Helsinki or have a sense from them as to when they can let you know.

What we can also do in staff is to bring it to the attention of the staff supporting the GAC for example. Because the GAC chair has been involved in some of those discussions as well.

With respect to your second point or question. I am trying to recollect the discussions that took place I think both with the GNSO community at the prior ICANN meeting as well as subsequently between (unintelligible) who is primarily leading this effort from the board and the council in late 2014.

I don't know that the board has expressly made clear its preference. My recollection is that the board felt that it was in a very difficult position and would like to see some reconciliation.

But I can also find some of the transcripts and letters to try and see if there has been any more specific references. I see that (Phil) you have your hand up and (James) like I mentioned earlier with some few minutes left maybe following (Phil's) intervention I can cross back to you and (Donna) to lead the rest of the call. (Phil)?

(Phil): Thank you and (Phil) here. I assume you can hear me. I just want to address two things. One there is this final bullet point question on Slide 11 which is a question I have never seen or had posed before.

Which is whether the Curative Rights PDP working group, the one I am co-chairing should be requested to consider curative protections for identifiers that are the protected via claims notification?

I guess you are talking about identifiers either full names or acronyms that are on that 2013 GAC list that somehow have not asserted their rights under Article 6ter Paris Convention.

I guess we have never been asked to look at that question. We can look at it but frankly all that is required to assert protection for an IGO name or acronym under that Paris Convention is a letter to WIPO.

It is not a high barrier. It is a very low speed bump. So I don't know that our group would be willing to say that you have standing if you haven't even made the effort to file a letter with WIPO asserting your rights. But we would look at it if we are asked to but we have never been asked to.

Second on the board process. It has been very non-transparent. We got word that there was a meeting last year in July and I think it was in Paris between

the board, the GAC and the IGOs. And that we would be given some update in our working group of where things stood by the fall.

And it is almost a year later and we still have no clear indication of where any of that stands other than we had vague promises of something being soon.

And, you know, finally the fact that the IGOs are engaged with the board and have essentially refused to engage with our working group which is looking at making sure they have rights under ICANN processes to, you know, protect themselves.

You know I can't prove anything but it certainly raises a suspicion that perhaps they think they can get a better deal from the board than they can from a PDP working group.

When and if the board comes out with anything on all that what I am going to be looking for personally is what is the legal basis? You know our working group held up our work for a very long time to get expert legal advice on the sovereign immunity issue and now we finally have it and can move forward to completion.

But I think it is very important not just to respect the GNSO policy development process but to respect the general rule that ICANN should provide means to protect recognized legal rights but has no basis for creating rights that don't exist in national or international also.

I will looking when we finally see whatever comes out from that board GAC IGO group to see what if there is a solid legal basis for whatever they come up with.

So thanks for letting me speak.

(Mary): Thanks very much (Phil). (James) we still have I think five minutes left. And in terms of where you and (Donna) and the rest of the council would like to see this discussion going. Would you like to take over?

(James): Yes thanks. I will bring it in for a landing. Thank you very much (Mary) and staff for putting this together. I think this has been helpful.

The queue is currently clear. So if there are any remaining questions either on this slide, the path forward or any questions held over from previous slides now is a great time while we have a few minutes left here at the end of our call.

But otherwise, I think that this has gone a long way for me to clarifying the issues. I was around – I say that with air quotes. I was on the council that voted for this. I think I had been on it for a matter of a couple of hours when the vote was taken on this issue.

And I think that that's probably about the extent of the experience that a lot of the folks on the current council have with this process. But it is good to see that we are consistent with the messages that were sent out at that time about the concerns about going back and amending PDP.

You know as far as the path forward it is I think hopefully we have captured some items here in the chat and in our discussion that we can take into our conversation with the board in Helsinki.

I think (Donna's) point about getting an update or briefing from that small group is exactly a specific item that we need. If you have any others that occur to you between now and the next few days please submit them to me or (Donna) or (Heather) and we will get those on the docket and get those captured.

The only other request I have and I will work with staff offline in the interim. The only other request I have is just we could even boil this down a little bit further into a cheat sheet or a scorecard that has some columns, you know, going down one side of what exactly the scope of the names that we are talking about.

What are the protections are currently? The temporary protections? What the current protections desires by the GAC would be and what the PDP calls for?

And if we could just have that sort of at a glance I think it will be helpful for us going into the Helsinki meeting as we discussed this issue with the board and potentially receive a briefing from that small group.

But I will take that as an action item offline for follow up. We have two minutes left. Any other parting thoughts from counselors? Thank you very much for carving out some time in your schedule for this issue. I think it is very important that we all get up to speed and get on the same page.

Okay with that we will just give you back two minutes of your time. And thanks again. And look for more traffic on the list on this issue.

(Mary): Thanks (James). Thanks everybody.

(Donna): Thanks (Mary).

Operator: Thank you very much. This concludes today's call. You may now stop the recording. Have a good remainder of your day.

END