

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 13 March 2013 at 19:00 UTC**

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<http://audio.icann.org/gnso/gnso-igo-ingo-20130313-en.mp3>

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

Attendees:

Lanre Ajayi - NCA
Jim Bikoff – IPC/IOC Mason Cole - GNSO Council vice chair - RrSG
Elizabeth Finberg – RySG
Chuck Gomes - RySG
Catherine Gribbin - Red Cross
Stephane Hankins - NCSG
David Heasley - IPC/IOC Debra Hughes – Red Cross
David Maher - RySG
Kiran Malancharuvil - IPC/IOC
Osvaldo Nova – ISPCP Christopher Rassi - Red Cross
Thomas Rickert – NCA –Working group chair
Greg Shatan - IPC
Claudia MacMaster Tamarit – ISO

Apologies:

Avri Doria – NCSG
Alan Greenberg - ALAC
Cintra Sooknanan - NPOC Mary Wong - NCUC
Guilaine Fournet – IEC Wolfgang Kleinwaechter – NCSG
Evan Lebovitch – ALAC

ICANN Staff:

Brian Peck
Berry Cobb
Glen de saint Géry

Coordinator: I just need to inform you that today's conference call is being recorded, if you have any objections you may disconnect your line at this time and you may begin.

Glen DeSaintgery: Thank you very much (Laurie), good morning, good afternoon, good evening everyone this is the IOT call on the 13th of March and on the call we have Lanre Ajayi, Christopher Rassi, Thomas Rickert, Stéphane Hankins, Chuck Gomes, Elizabeth Finberg, Claudia MacMaster Tamarit, Mason Cole, David Maher, Greg Shatan, Jim Bikoff and for staff we have Berry Cobb, Brian Peck and myself Glen DeSaintgery.

Have I left anybody off or has anybody joined the Adobe Connect room that is not on the call? I actually don't see anybody else in the...

David Heasley: David Heasley and (Kiran) are here too.

Glen DeSaintgery: Oh thank you very much, fine thank you Thomas, it's over to you but just may I remind people to say their name before speaking for transcript purposes, thank you.

Thomas Rickert: Thank you very much Glen my name is Thomas Rickert and I'm the Chair of this working group and I'd like to ask the group whether there are any updates to the statements of interest? Hearing and seeing none we can move to the next agenda item and that is (reveal) General Council (research) survey response.

And you will of seen that Brian has kindly passed on a document to the mailing which is response from General Council and we have reached out to General Council to see whether there's anybody there who could present their findings during today's call but unfortunately due to travel that is not possible which is why I've asked Brian Peck to show us through the document.

And as we do that our plan is that we try to understand what the reasoning behind the General Council response is and put our questions into the Adobe or to the mailing list or take them from the transcript and provide those to General Council's office. And during next week's call a representative from the General Council will be with us and will be able to discuss the questions and potentially the answers to those questions with us.

But first I'd like Brian to give us this overview and for the group please indicate, should you have any questions I'm sure that Brian would be more than happy to take questions as he talks. Thank you very much and over to you Brian.

Brian Peck:

Thanks Thomas, this is Brian Peck from ICANN staff and as Thomas mentioned, you know, we did circulate the report from the General Council summarizing the results of their survey research in response to the questions posed to them by the working group. So I think - I mean I think the scope of the research and the Executive Summary are pretty straightforward.

But what I'd like to do if it's okay with the group and as Thomas mentioned certainly I am willing to discuss or respond to questions to the extent I can and if not certainly we will have one - or the intention is and I think pretty certainly that we'll have someone from the General Council office available next Wednesday's call. But I'd like to highlight I think two aspects that I think are most relevant that come from this report that are - with regards to the work on the current considerations of the working group.

The first is in response to the question posed and that is whether ICANN is aware of any jurisdiction in which a statute, treaty or the applicable law prohibits either both of the assignment of ICANN at the top level or the registration by registry or registrar accredit by ICANN of a domain name at the second level of either a name or acronym of a IGO or of the Red Cross and/or IOC names.

And I think, you know, as the research has pointed out at least in the jurisdictions that were reviewed that, you know, there's - there is no treaty or national law that specifically prohibits the allowance of the registration of any of these organizations, names or acronyms, i.e. the top of second level with the exception of Brazil as noted in the research. And again that particular Brazilian statute is pertinent only to (VLC) and FIFA related names.

And it has come to our attention as well that there is some protective statutes in Mexico which I think they will update that particular aspect of the annex with some a summary of the jurisdictions reviewed. But again in answer to the question, you know, there is no specific - at least based on the research in the jurisdictions reviewed, there is no specific treaty or law that prohibits the allowance of the registration of a domain name again, either at the first or second level. Excuse me, the second level domain names is of course the first name of a - at the top level of a gTLD.

I think the other aspect we'd like - that the report highlights is with regard to the protections provided to both the (R) Red Cross/Red Cross and IOC organizations as well as IGOs in specific jurisdictions if that report kind of helps to, you know, better understand what is the nature of those protections.

And again, you know, as the report points out both in the summary and in the summary of the jurisdiction itself, you know, although there are not specific prohibitions of the amounts of the registration of such names and, you know, acronyms of these organizations, there are certainly laws that provide protections for these names and organizations at various levels that would at least, you know, perhaps cause or bring - or provide grounds to challenge such registrations by unauthorized third parties either at the top level or second level.

With regards to the IO - the IGO names I think its interesting to know as I said that many countries afford special protection for IGOs listed in (Article VI tier of the Peers Convention) but often there's a registration or notice of process

or membership limitation to reach each jurisdiction develops that list of IGOs that are recognized for protection.

So again I think there are - what this research does point out in terms of where there's available protections in specific jurisdictions there are certainly laws in several jurisdictions that provide a heightened level of protection for the names and acronyms of these organizations themselves, not specifically for domain names but certainly at the very least providing grounds for again challenges for the allowance of the registration of such names either at the top level or second level.

So I think again and as I say you go through the chart and you can see the specific statutes, you know, relevant to each jurisdiction in terms of the protection of both IOC/RC Red Cross protections and/or the IGO protections. So those are what I think - I think as I say, you know, not going into the re-reading what exactly is in the scope or the Executive Summary, I think those were two aspects that I thought would be important to highlight coming out of this report.

Thomas Rickert: Thanks very much Brian and before I open it up to the group for questions I'd like to add that while we have as a very general question whether General Council is aware of any laws providing protection to these four categories of organization and now General Council has looked at 11 jurisdictions in detail.

The reason for picking 11 of those - 11 jurisdictions was that they wanted to cover jurisdictions in all ICANN regions, so even though the number of jurisdictions that has been looked at might appear to be relatively (null) at first glance, I feel still it provides a good overview of the (either) protections, (schemes) in the various ICANN regions, I think that that's something for us to bear in mind when we discuss this.

Let me open up the floor for questions from the group and more specifically let me ask you whether you as working group participants think that this

answers your questions, is your - are your concerns responded to if this is a solid basis on which you can now proceed to discuss potential protections - who wants to go first? I see Chuck's hand up, please Chuck.

Chuck Gomes: Well since nobody else had raised their hand I thought I'd help out, this is Chuck...

Thomas Rickert: Thanks.

Chuck Gomes: Well I certainly didn't find the General Council's response definitive in any way and as a registry, you know, we need to rely on that. So one of the things that we had talked in the Registry Stakeholder Group when we suggested these questions was, you know, if in fact the law is very clear from an international point of view and multi-national point of view then this could be just a compliance matter.

Certainly from what I get out of this it's not that simple and so whereas I think the GAC believes that it's simpler and the organizations that we're talking about believe it's more clear cut, this certainly doesn't give me that definitive answer as being proposed by others, so that's my perception on this.

Thomas Rickert: Chuck a quick follow-up question, so that would mean that in the absence of this clear guidance that protections are in place that would prevent registries and registrars from allowing certain registrations to happen you would now regard this as a policy matter and not a compliance matter - is my understanding correct?

Chuck Gomes: Good question Thomas, essentially I think my answer's yes to that, let me state it a little differently though, even if the analysis by the General Council's office was definitive on these issues, we could - as you've heard me say before I think we could still develop policy to facilitate the registration process.

But one of the things the registries have wanted all along is to have something to hang our hat on that's outside of us. You know, in other words if there is clearly some legal protections then it's pretty easy then to give that as a rationale for developing policy. In this case because it's not very definitive that's not as good a thing to hang our hat on but there may be some things in this that we can use as guidelines as we consider whether to develop policy.

And as you'll hear from David Maher as well, you know, we're at a point where we will go back to the Registry Stakeholder Group as a whole and get direction from them in terms of the whole group's thinking on this.

Thomas Rickert: Okay thank you Chuck, maybe for those who haven't yet had the chance to go through the report in detail, General Council has made very clear that they're not going to provide legal advice to registries and registrars as to their liability risk and they leave it up to them to seek that legal advice, which sort of is an indication that they were not willing or able to respond to one of the aspects that we have explicitly asked for. The IOC is next, so either Jim, David or (Karen) please.

Jim Bikoff: It's Jim I just - two points, I think it's first of all understandable that they did not find specific information or guidelines in these statutes on domain names except as they said for Brazil. And of course they didn't - one of the jurisdictions that they did not look at was Greece where there is specific protection for domain names, so that's two.

But the other thing is that most of these statutes and treaties were passed at a time when the Internet didn't exist, so it's very natural that it doesn't include specific protections of domain names. But I think the General Council's opinion did one thing that I thought was very interesting and without giving an assessment of the likelihood of liability it did say that there was a risk of liability under all of these statutes. And that risk would depend on a number of factors and they outlined the factors within the opinion as they have duty of care, accessories to acts of (dilution) or infringement, etc.

So I mean there is - this is not clearly a - an opinion that says there is no liability and it doesn't say that there is liability, they don't want to make that call but they say there may be a liability. There is a potential for liability I would say a risk for liability and that risk could be defined by different guidelines that are set forth in perhaps others depending on the jurisdiction, so that's about it.

We went over the report very carefully, the information on Mexico which Brian referred to, it left out a statute of specific protection to the Olympic march which we have given to Brian and which I think will be included in the next revision on this opinion.

Thomas Rickert: Thanks very much Jim, I have one follow-up question for you though and that's maybe also a question that should be asked to General Council, you were talking about the general liability with - that are or might be involved with both the registration of certain designations pertaining to the four categories of organization.

When I read the report I thought that this particular aspect was not satisfactory to me because I guess what we were looking for when drafting the General Council request was to seek guidance whether there were any protections - legal statutory protections that would give the designations of the four categories of organizations a special level of protection that would separate them from rights - name rights owners or trademark owners.

What the risk describes in the General Council report to me don't seem to be any different from the general liability risk of registries that - registries and registrars face when their customers choose to register domain names that infringe upon third party's rights. So even though I agree in the report that it's written that there are liability risks but as it is written I haven't seen that and maybe you have and this is why I'm asking it to you and to the whole group is have I missed something?

Can we actually derive benefits for our answers that we're seeking from this? And to me it seems like in this particular aspect the answer is no because the liability risks do not in any way separate the four categories of organizations from any other rights, orders and associated risks for registries and registrars - Jim would you like to maybe follow-up on that now or later?

Jim Bikoff: Well I think that one of the things I was going to say is in the research reform they specifically referred to the IOC and Red Cross that are most likely to have special protections afforded based on prior research performed.

And then if you go into the jurisdictions there are comments in each section - well not in each section, there are comments in some of the sections which say things like the protection may extend to - specifically to domain names although they're not specifically enumerated, such as in South Africa these predictions could exist at the top and second level for domain names though not specifically enumerated.

So I mean it's not a very - I mean it doesn't give this type of information for every single country but I think it shows some countries where they believe that there could be a risk of liability. Another one being Germany where they say for either of these provisions while domain name registrations are not specifically identified, those who are on notice of the infringing use of a name or acronym at the top second level could be held liable.

Now I don't - it's not clear to me that that's directed specifically at registries and registrars but they're trying to answer the B part of the question I think, not the A part - they've said they're not going to discuss ICANN's potential liability.

Thomas Rickert: Now Jim I've - I was just, you know, the - you mentioned the report on Germany and I'm quite familiar with that (escape) of the court decisions in Germany with respect to registry and registrar liability and in - at least in that

jurisdiction, you know, the risk (describe) with the risk generally that are there generally for registries and registrars for any type of infringing registrations by customers of these organizations. But yes that's been very helpful though, Greg please.

Greg Shatan: A couple of comments, first - now you guys I wasn't terribly surprised at most of what the General Council's office came back with is my experience that, you know, laws are, you know, generally drafted, you know, fairly generally.

And without reference to kind of specific media or applications, one of the things that lawyers have to constantly deal with is, you know, what someone described as old wine in new bottles. I can remember reading articles when I was a law student about how, you know, things were, you know, IP law was changing. You know, it wasn't changing as quickly as the application of IP facts to it had to be and that really hasn't changed much. Occasionally you get laws that are written specifically to domain names like ACPA and other things.

But by and large, you know, we're stuck applying, you know, laws of general applicability if we're - that's kind of, you know, where that whole thing seems to have ended up. I think the issue of whether there are specific, you know, categorical imperative for the different organizations, I do think that, you know, fixture protection for IGOs and for states for that matter, you know, is different from - for, you know, brand owner protection. The liabilities, you know, may not be per se different but they're only so many forms of liability that you - that one can have.

The thing that I found the most - that I found missing from the General Council's paper more than anything else was any treatment that - of the issues of INGOs as a class. And there was - they dealt with IOC and RCRC and they dealt with IGOs as a class with, you know, pretty much (six tier) pretty much is, you know, tells most of the story there. But INGOs are not

states by definition, they're non-governmental so they can't be part of the (six tier) party.

And they're clearly not the IOC or the RCRC, so they seem to have just kind of been left by the side of the road during the bathroom break on the bus trip to getting this thing done. So it's - that's of concern to me, not that I necessarily felt they would of found anything earth shattering but it would have been nice to have the opinion deal with kind of four quarters and not three quarters of, you know, of the organizational kind of subsets that we've identified, thanks.

Thomas Rickert: Thanks Greg, as to where that piece might have been lost I think that's up to everybody's imagination and I think that you just - a way for us to find out is just ask and I'm sure that Brian will take a (wield) at that and ask General Council to add that piece of work to the provisional report, Chuck?

Chuck Gomes: Yes just to follow-up on what Greg said, I mean I notice the same thing. I mean there's nothing in there to provide any justification for protecting INGOs except for the Red Cross and the IOC.

And now but, you know, I kind of had the impression that we'd kind of come to that conclusion already in our discussions that we're not going to be able to base any policy from - regarding INGOs except for Red Cross and IOC on the basis of laws. I had kind of come to that conclusion anyway so it is missing from the report I agree, but I had already kind of come to the conclusion that we weren't - based on all of our discussions that international treaties or even multi-national laws weren't going to help us very much regard to INGOs, that's just my perception.

Thomas Rickert: Thanks Chuck, nonetheless we should answer follow-up question to General Council to see clarity whether - I have actually looked at that and did not share any findings with us or whether they were simple did omit that part of the work (quickly)...

Claudia MacMaster Tamarit: Thomas can I get in the queue - it's Claudia?

Thomas Rickert: Claudia certainly, you're in after Greg.

Claudia MacMaster Tamarit: Thank you.

Greg Shatan: Yes agree with what Chuck said and I didn't expect to find anything exciting but it would of at least nice to see somebody else's, you know, research that there was nothing special there when we had asked for it.

I think another thing that, you know, strikes me at least for common law countries, you know, the law of the statute is only the beginning, especially when we're talking about statutes that are written for, you know, general applicability though it's really the cases that define and expand and change and sometime mutate the law and so, you know, obviously there was - it doesn't seem like there was any, you know, looking at particular case law.

I found an interesting article, you know, maybe not entirely germane to our discussion - I did not write it, I just found it - I'll distribute it around. It was printed last - actually January 2011 so God knows what's happened in two years, an intellectual property magazine entitled New Trends in Cyber squatting Law, registrars may be held liable for contributory infringement. So it at least discusses the issue of registrar liability, it doesn't necessarily, you know, it doesn't discuss in the context of any of these particular subsets of organizations.

But, you know, it does point out that, you know, taking the general laws as a background some courts have found under certain factual circumstances registrar liability. So - and that's only in the US of course, I thing that might be interesting.

Thomas Rickert: So Greg before I move to Claudia but isn't that a confirmation set up the notion that I expressed earlier that certainly there are cases in which registries and registrars might face liability, but is this actually something that would be special to the four categories of organization? The reason why we are meeting every week and exchanging emails in-between our discussions is to see whether we can find any objective criteria that make these four categories of organization so unique that they deserve protection.

And possibly as we see now, protection beyond what's granted by law and therefore I think at least for me but you can certainly convince the other (wife) - or you don't have to convince me, but the rest of the group, I think that the general aspect of liability that are not special to these organizations don't help us come up with an objective demarcation, wouldn't you agree?

Greg Shatan: I would agree with that, I mean I think the way that I look at the questions posed to the General Council office in (jump) cases, you know, two points which is - or two parts which is, you know, what liability is there for registrars and registries and also for ICANN which they, you know, explicitly decline to express a view on.

And secondly, you know, if there is liability in general or can be, you know, or even if there's not how does that apply, you know, specifically to the subsets. So I think there's, you know, obviously registrant liability as a whole, you know, as a whole separate issue we didn't need to get into but I just thought it was interesting to see at least case law on registrar liability before getting into the question whether there's anything specific. But there isn't anything, you know, clearly it all depends on what cases what, you know, parties were involved.

So whether the Academy of Motion Picture Arts and Sciences which is involved in one of these cases is a non-governmental organization, they - the other people who host the (answer) I have no opinion on that but they are one of the plaintiffs in one of these cases.

Thomas Rickert: Thanks Greg and if you can maybe you can share the thoughts of this article with the group on the mailing list.

Greg Shatan: Sure.

Thomas Rickert: Claudia's next please.

Claudia MacMaster Tamarit: Hi Thomas, Claudia - I also understood a lot of the description from the General Council's letter to mean there is - it's not clear that there is sort of a if I can call it strict liability just for the registration of particular names and acronyms of some of these organizations.

That being said, I was also disheartened that INGOs excluding the IOC/Red Cross were not included in particular for INGOs. For example have famous marks and they might have well over 100 trademark registrant for example and can look to particular treaties as well to show that they have if you want a heightened protection over just one national trademark registration.

That again being said, I think that all of this - this discussion that basically says, well if there isn't a strict liability, if there isn't even on national level and then question mark if one nation should be the basis for any kind of a policy decision that is going to affect the entire world's use of the Internet. That being said I think we need to then really focus on objective criteria and the idea of there being a sort of non-discriminatory public interest policy reason for granting special protections if at all.

Otherwise it's going to be up to - we would leave it up to particular countries to decide how liability should fall.

Thomas Rickert: Thank you very much Claudia, any further comments? And certainly you can come in later with comments or questions, for the time being my question to the group would be, what do we make out of that?

Clearly the INGO part is missing and we should ask whether General Council had given this any thought. I have heard a couple of times that the response in general does not come as a surprise to certain participants of this working group. And so are we happy with the answer as it is, despite the fact - despite the aspect of INGO? Is there wish by the group for the General Council to put further work into that and look at additional affects? And if so, if the group chose to ask for additional work being put into that what is the expectation?

So let me rephrase that question, does anybody of you apart from the INGO aspect wish for the General Council to conduct additional work on this? And you can come in later and ask for that but for the moment let me just state that there are no requests for additional work. I (now ask)...

Claudia MacMaster Tamarit: Thomas this is Claudia.

Thomas Rickert: Claudia, please.

Claudia MacMaster Tamarit: I'd like to say that we don't have that much time so I don't know if we would be requesting the General Council to come back in the meantime and wait for us as a working group to submit a recommendation. That being said, I think its work that absolutely has to be done and any recommendation that this working group makes should note that that work is still missing.

Thomas Rickert: Agreed Claudia and that said we're going to ask for the INGO part of the work anyway and that should be added to the current report. But, you know, my question in more general terms whether the group is satisfied with the answer as it stands, whether even though the outcome was predicted by some of us if there are whether that's a solid basis for us to proceed on.

My impression was that at least part of the working group have waited for (serious response) from General Council to be able to continue the work on the subject and, you know, if you ask for my personal opinion as Chair, I think

we should move on bearing in mind these responses. We should also have a brief discussion with a representative from General Council during next week's call.

But in order to save time, you know, knowing that the outcome might not be different or substantially different from what we know now, we should not further wait for as General Council to put substantial results into the (text side). And seeing no objection to that, I think we should keep that as an interim result, nonetheless I still need an answer to my question from the group what we make out of that.

I'm sure that some of you have eagerly awaited the results from General Council to then make a determination as to how to move on, I'd be interested in hearing how you amalgamate the response that we now have into your thinking. I'm sure that some of you have given this some thought because this response has been eagerly awaited and we've asked for it in the first place and I'm sure that you wanted to make some good views of the outcome.

Claudia MacMaster Tamarit: Hi Thomas this is Claudia, can I get in the queue.

Thomas Rickert: Yes please, I have David first and then it's going to be your turn - David please - David we can't hear you.

David Maher: Sorry yes, I just wanted to say I don't think it changes anything and that's really all I can say about it.

Thomas Rickert: Thanks David, I now have Claudia and then Glen.

Claudia MacMaster Tamarit: Hi Thomas I'd actually like to echo that statement as well and say that at least from our perspective ISO's perspective the Coun- the General Council's view or rather report doesn't change our position. We still strongly hold fast to the idea that any special protections are going to have to be

based on the worldwide public interest and Internet user's interest in protecting the names of international organizations.

Thomas Rickert: Thank you Claudia, Greg.

Greg Shatan: This will be one of those times where I agree with David and also with Claudia I think it doesn't change anything. To some extent I feel like the mountain has labored and brought forth a mouse, obviously a lot of work going into it but, you know, the - and I would like to see the, you know, what the exact amount of work go into the INGO piece as well but I'm not expecting any revelations there either, thanks.

Thomas Rickert: Thanks Greg and that's our further comments on this one, I think we can move to the third item and you will remember that we have originally discussed this last week and that some of you said that they will only be able to make a final determination as regards the qualification criteria when they have looked at the various protections and the mechanism that we're discussing, i.e., top level protections versus second level protections.

And then the protections during sunrise during general availability protection for identical names for exact match acronyms or similar strings. Now I have encouraged the group multiple times as you know to come up with proposals for these additional qualification criteria or admission criteria and some thoughts on that have been exchanged and define the current status of the discussion and document that Berry just brought up.

And I think during this week's call we should not spend too much time on that, but since there have been some developments I know that Avri has been proposing some proposals, so have Jim, (Karen) and David - I wanted to give them opportunity to the group to further discuss this and I have omitted Mary you have also made a proposal and then certainly the - I have a contribution for Chuck or many others in the group. So would anybody like to comment on that or make additional proposals with respect to these criteria?

Berry Cobb: Thomas this is Berry.

Thomas Rickert: Berry please.

Berry Cobb: Just to inform the working group, what you see before you in this Version 6 of the Qualification Criteria History for lack of a better word, so over the (wolf) this past week the IOC Group had put forward a version that basically combined Model Alpha and Bravo from a previous version and so that's what you see at the top of this list right here is that version.

And then I'd also like to point out that Model Charlie did exist in our previous version which was kind of offered up back on the list by Mary on 6 March. And I think for the most part if the working group agrees that Model Charlie is really just a different version of what is listed up in Alpha and Bravo just kind of in a simpler form. So if there are no objections I'll probably migrate the Charlie model down to our history timeline because I do believe everything that it represents is captured in what I'm calling Alpha/Bravo now.

And then Model Delta is what Avri had posted onto the list last week as well, just so - trying to keep everything corralled together, thank you.

Thomas Rickert: Thanks Berry, I'd certainly be okay with eliminating one of those models and putting them into the history part of the document - any objections to that? Hearing and seeing none, I suggest Berry that you proceed as you propose.

And then certainly we should all bear in mind that these general criteria are deemed to be sort of the starting point to be able to fence in a relatively small group of organizations that would be eligible for regis- for protections but there might be additional hurdles to actually get access to protections and the wish of the group was - or at least parts of the group was that the additional hurdles and their height should depend on the impact of the protection mechanism.

So the broader the protection and the broadest form was called (locking) the (hush) of the criteria should ultimately be. So in case there are no additional remarks on this one I suggest that we (leave) the subject and move to the protection matrix (portion).

Berry Cobb: Thomas this is Berry, just one quick comment about this, I - as I've tried to gather and corralling all the different proposals here for the qualification criteria, you know, I still think that there are some divergent views about what this overall model may look like.

I'm just curious if the working group would agree or if it would benefit that, you know, when we boil down what the proposal may or may not look like, will it benefit to actually take a representative sample of IGO and INGO organizations to understand which ones would qualify and which ones wouldn't. Or is it - is it already clear to the working group what omissions of certain organizations may look like? I'm basically kind of use - or use case testing what the model looks like and what it may or may not produce.

Thomas Rickert: Any views on that?

Claudia MacMaster Tamarit: Hi Thomas this is Claudia, can I get in the queue?

Thomas Rickert: It's your turn actually.

Claudia MacMaster Tamarit: Okay thank you, just to say yes I think that we would really appreciate that I think for some case testing to occur, particularly when it comes to - and I apologize, my phone has been coming in and off - in and out, so I'm not sure I've been able to follow clearly the last 15 minutes.

But when it comes to ideas of multi-national or multi-lateral protection, I think it's important for us to have a more clear idea of what that exactly means and in particular if that's meant to bar multi-national trademark holders for

example who are INGOs but don't - are not particularly referenced in a treaty or something like this.

Thomas Rickert: And do you have an idea as to what organization you want to see reflected? Maybe you don't have to say now but maybe you can come up with some suggestions for Berry to work on.

Claudia MacMaster Tamarit: Well I think that we can look at - definitely look at some of the well established INGOs from the general consultative status list for example wouldn't be a bad idea to start with. Or INGOs that has - have been around so to speak for several decades that might have several member states and have quite well recognized international scope might be - start in terms of making sure that we aren't writing criteria to only include two INGOs.

Thomas Rickert: Berry is that complete enough for you to work on?

Berry Cobb: Yes this is Berry, I'll definitely - I think for kind of a informal start I will definitely use the organizations that we conducted the domain registration evaluation - those are more or less higher profile organizations.

Then I'll start to browse to maybe a little bit of the (six tier) list and then the (Echo stock list) and just kind of pull representative samples. I'll send that out to the mailing list to see if that representative sample is in the ball park or not and we can modify accordingly. And then once we finalize that list then maybe we can throw it into a spreadsheet or some sort of table format that gives the thumbs up or thumbs down as to how they would traverse the qualification for criteria that's proposed.

Claudia MacMaster Tamarit: Berry can I just reply real quick?

Thomas Rickert: (Quickly).

Claudia MacMaster Tamarit: Also I think in that list that you're referring to, I think that the only INGOs that were included weren't they the IOC and the Red Cross - were there any others?

Berry Cobb: This is Berry, you're probably right but I'm not an expert on which organizations follow which class. So that's why I would definitely also want to include pulling samples from (six tier) and from the Ecosoft list as well.

Claudia MacMaster Tamarit: Okay just to add definitely feel free to look at my organizations of the ISO itself, we've been around for well over 50 years and have over 160 member states. We have published some 20,000 almost international standards and has such standing that I think a lot of people confuse us in fact with IGO. But we are an INGO and I would - we are also on the General Consultative Status List, so if you'd like to take a look at, you know, our organization or other organizations like ours, please do feel free to include them.

Berry Cobb: Will do, thank you.

Thomas Rickert: Thanks Claudia that's very helpful, I have Chuck now. Chuck we can't hear you, maybe you're on mute.

Chuck Gomes: I was, going back to General Council's response, in the IGO category there were quite a few of the jurisdictions surveyed, there were references to the (six tier) list. In light of that it seems like it would be very helpful - and this isn't a request for the General Council's office but something that would be helpful - maybe staff can help us with this or someone else that's more expert on it than I am.

It would be helpful to have a comparison of the (six tier) list of organizations to the GAC suggested criteria of those that qualify under the dot-I-N-T list. And for that matter if it's applicable - I don't even know if it's applicable, the Ecosoft list or any other list that we're considering because that was a fairly

common thread - not always, but the (six tier) list with regard to IGLs was referred to several times in the organizations surveyed. So getting that kind of information I think could be useful to us as we work further on criteria.

Thomas Rickert: Chuck I think that's an excellent suggestion and I'm not sure who would be able to conduct that comparison but maybe Berry and Brian you can take (a hold) of that and see whether (yes definitely wants us) to do that exercise.

Brian Peck: I should take a look and see.

Thomas Rickert: Great, thank you Brian. Unless there are further comments on this quality - Qualification Criteria Proposal, I think we can now move to the protection matrix.

Berry Cobb: Well Thomas this is Berry, I think from last week we left off at the second level of matrix.

Thomas Rickert: Yes I was just about to say that we have gone over the spreadsheet almost two times - first time two weeks ago and then in more detail last week. And it was my impression that well hopefully I'm correct in understanding that the group has now understood what the reasoning behind the proposal as it stands. I think that there was some confusion because not all of the working group participants were aware of the explanations behind this, you know, that there's a spreadsheet where the asterisks are explained.

But the general response that I got was that there were parts of the working group that thought additional admission criteria should be added to the individual stages or areas of protection. And for the sake of time I do and did not plan to go over the whole spreadsheet unless the group explicitly asks me to do so in which case we can do that exercise. But I think what I need from the group - what I and everyone needs to understand is the line of thinking of those that do not think that what's in here is good enough a proposal and that think harsher admission criteria are required.

So I've seen a lot of no's on the mailing list and objections to certain protections and objections to the general notion of blocking or giving privileges to certain organizations. But what I've been missing and I hope I have been clear enough on that, what I've been missing is that people come up with constructive proposals as to what they need in there to satisfy their - or to address their concerns.

Because if nobody comes up with what they want, there's nothing for us to discuss and as you well know I have as Chair tried to amalgamate what I've heard during the last year's discussion into this and I've added some of my own thoughts into this in order to make it what I thought could be a suitable compromise for the group. But I haven't seen any specific information as to what is missing and I think I as Chair can't do that, so I think it needs to come from the group.

And if there are no suggestions that needs room for two answers, one of which is that those who are asking for additional question do not know what they are in which case we're stuck. Or they, you know, there is no willingness to come up with complete proposals because whatever hurdles we might establish will not be high enough because there is a general objection to certain mechanisms or procedures regardless of what the criteria for those would be - in which case we can also stop this exercise at this stage and ask the remain - the reminder of the group whether they're happy with the mechanism as it stands.

And then we can do a provisional consensus call and see whether everybody likes it and those who don't like it can say no. Do you - can you understand my concerns? You know, I'm sort of - I think I'm getting stuck as Chair with - because I'm lacking imagination as to what certain (parts) of the community would like to see the group produce for them to satisfy their concerns - any views on that?

We can - we could work on various aspects forever if - I think what I need is some clarity and transparency from the various participants and the groups that they represent as to whether we can do whatever we can and there would some say no, in which case we should take the shortcut and try to come up with an answer now, which they can say no to. Or whether we can expect constructive feedback as to what is missing in this scheme - Chuck please.

Chuck Gomes: Thanks Thomas, as I indicated earlier in the call David and I are at a point where we need to get broader involvement from the full stakeholder group, so it's going to be difficult for us to be too specific until we do that exercise. We've kept them marginally informed up to now - now that we have the General Council's response, we're at a point where we think we can go back and pose some different concepts and see where people's heads are and try and get some direction. Until that point it's probably going to be fairly difficult for us to be too constructive to answer some of your questions specifically.

Thomas Rickert: Which is understood Chuck and this is part, you know, my response is directed at you or your group specifically. But it was my impression that what some of the participants wanted to see more holistic picture of what an ultimate recommendation could look like.

And that would be something along the lines of what I have with Berry's help put together in the spreadsheet, i.e., what would the various protections be, where should protections be in place, what would be the associative mechanisms with (our) discussion? So I thought that participants would need a more concrete proposal to take it back to their group and ask for yes or no and that, you know, unless they saw this complete picture they wouldn't be able to get feedback from their groups. I have Jim, (Karen) or David next please.

Jim Bikoff: All right Thomas its Jim, I just want to say I think we take a position that you've done a terrific job here, I think this is a very difficult task to take

viewpoints from so many divergent constituencies. I mean I don't see how we can ever really all agree on something in this area because the opinions are just so different - but I think we have made some progress, especially I think in the qualification criteria.

I think a lot of that is due to your having put together a lot of these things and I can only take my hat off to you because I don't think I could of done that, so again I think we owe you a big congratulations.

Thomas Rickert: Thanks so much Jim, that's very much appreciated. I think that, you know, unless the group asks for it I think I'm not going to steal your time and go through the spreadsheet again. I think everybody - not only the participants that are on the call but also those who will hopefully look at the transcript or hear the MP3 or hear through the grapevine what we've been discussing, will take a look at that and say, okay I like most of it but I don't like certain parts.

But I would like them if we would tweak them a little bit and add additional hurdles here or there to please speak up - we - I think the group is more than happy to discuss whatever constructive proposals are out there. But in the absence of such proposals being brought forward during this call I think we should now leave this aspect of the spreadsheet. But what I think we haven't looked at closely enough and Jim this is not to put you on the spot, but I know that you and your colleagues have done some work on drafting some general principles from (sample) procedures and maybe we can take a few minutes to discuss those.

Berry I hope that this is not too difficult for you to put up now, but there were concerns by some of the group as to suppression of free speech or that blocking might ultimately exclude certain parties that are eligible for registration of certain designations from doing so. And I think there is more or less consensus in the group that exemption procedures are needed because - particularly in the light of General Council response now being available to

us, there is no general block - or there doesn't appear to be any general statutory block for certain designations to be used by (eligible) third parties.

And the question certainly is, how do we - how do registries and registrars find out what a legitimate third party is and how do we balance the request from the four types of organizations to get access to certain names versus other legitimate third parties? And Jim was kind enough to put together some general principals and Jim would you feel comfortable to show the group these bullet points in two or three minutes?

Jim Bikoff:

Sure I'll do a quick thing, I think everybody can see them if they're up. But I think based on our prior conversations, I think we've seen some examples with all of the entities seeking special protection that there will be occasions where there is a use that is legitimate and not an infringement such as news reporting or somebody who is entitled to use it for one reason or another.

And so I think an exception process is in order and this is something we worked on in the last group with Jeff and the IOCRC Group and I think that the goal here is to have a mechanism so that there can be a determination when an application is made as to whether it has - it is legitimate or it is cyber squatting or other types of illegitimate usage. And all we did was provide the four principals that we thought would be important here in sitting up this mechanism.

We could flesh out more details but for the - if the group wants to move forward because we've worked on this before and we haven't provided those details here. But I mean the most important thing is to have immediate notifications to an applicant and whichever the organization is that there are issues regarding that application and establish a channel of communication between the organization and the applicant.

And again I would just say that this is not as - has been mentioned by one or more people over the course of this group's teleconferences - this is not to

engender any kind of licensing at all and that can be made very clear. This is simple to find out whether the use or intended use is legitimate or not. And then to provide some process which would be impartial, which would be quick, which would not be expensive, to determine if there is the legitimate interest so that the string could proceed despite the fact that it is the same or similar to a protected string.

And then obviously to take advantage of any existing procedures which we have and I know within the ICANN world we have many procedures for dealing with disputes - URS, UDRP, panels, etc. So to try to link into procedures that already exist and maybe add a procedure here for determination of legitimate use.

So that's in a nutshell what we've done and if we want to go further, we'd be happy to maybe fill in some of the blanks or try to at least provide options on some of these as to which routes could be followed in coming up with more details.

Thomas Rickert: Thanks very much Jim, that's certainly very helpful and I see Chuck's hand up, please Chuck.

Chuck Gomes: Thanks Thomas, with regard to I think it's the - yes the second bullet and my comments with regard to preferring that there doesn't need to be communication between the organization that's protected and the applicant.

One of the things I noticed in the General Council's responses in several instances with regard to the national laws was that they kind of refer to an exception procedure. If there was an exception the organization needed to be involved to grant that exception, so that kind of jumped out at me when I - it wasn't in every case but if you look through the General Council's response there are several cases in their description of the laws that did kind of call for communication between the applicant and the organization that's protected.

So we may not be able to avoid that as I had hoped, but I just point that out and I just kind of look at the General Council's response to see what I'm talking about.

Jim Bikoff: Can I comment on that Thomas?

Thomas Rickert: Yes (see to) Jim.

Jim Bikoff: I was just - Chuck, I was just - that's in there because I think in some of these matters - some of these applications it will be very clear that an applicant is actually doing something that would be completely legitimate and it would be easy to have that agreed to so that the process would not have to proceed into, you know, a determination by a third party.

So I think it's sort of to expedite not to engage in negotiations or to engage in any kind of a licensing just, you know, have a very short period of time to consent, period.

Thomas Rickert: Jim getting back to Chuck's question, do you possibly have experience with these statutory situations where organizations with questions are heard?

Jim Bikoff: Are what?

Thomas Rickert: Maybe that's somebody - Chuck was saying that the General Council response mentioned that the organizations of question are heard in an exemption process and the question is whether you or anybody else on the call has some practical experience with this as to how this works?

Jim Bikoff: Well I've had practical experience in various jurisdictions with people who have applied either for trademarks or for domain names who are legitimate, who do have legitimate uses and have sought consents and they've gone very smoothly frankly.

Thomas Rickert: And what process in a way where the organization in question is getting a short or a longer period of time to respond and if they respond in the affirmative then I think there's no issue. But if the organization doesn't respond would that lead to an (auto act) - auto acknowledge or to enact?

Jim Bikoff: Well luckily I think for us almost all of the cases that we've been involved in have been cut off at the channel of communication because the uses have been legitimate and the applicants have sought permission because they wanted to make sure that they didn't start doing something that would be objected to. So I think we've been sort of fortunate in that.

We haven't - I mean other than oppositions and other types of things in trademark matters and obviously, you know, cyber squatting complaints and UDRP actions and so on, we haven't - there's no process that we've had formal process going beyond communications, except litigation type disputes.

Thomas Rickert: Okay, anybody else in the group want to chime in on this - maybe share some practical experience because I think that's very helpful in crafting proposals for exemption procedures. If there are models that we can borrow from, you know, that's the easiest thing we can do. No, okay I mean if you want to add to that later on or on the mailing list, you're certainly welcome to do that at any point in time.

Maybe we can now go through the four stages and discuss them individually if that's okay with you. I personally do have some questions and maybe others have some questions too. Provide immediate notification to the applicant and the organization when an application is refused registration. I think I need some help from the registry and registrar colleagues that are here but I guess in terms of language what we're looking at is not the refusal but it's technically with (pending create) where the request for the creation of a second level domain name and I think we're talking about second level domain names here, would be shelved technically speaking until some further information is there that allows for the processing.

Is that notion correct? Can maybe somebody from registries and registrars chime in and confirm or say that this is incorrect? Because Jim I think we're not looking at refusal but we're looking at, you know, having the (Craig) request put that on hold and I think that the EPP the (scripture) for that is pending create and have that pending until the case is resolved. And if it's not resolved than actually the registration is refused, but only in that point in time.

I don't hear or see any comment on that, so Berry I would like you to keep note of that point and I construe your silence as confirmation that you don't want to have the application refused instantly, but you want to park it technically speaking and Berry let's reach out to the technical community and have confirmed what the status of that would be so that we can put it in here.

Provide a channel of communication between the applicant and the organization - Chuck was asking what organization, I guess it's the organization that is coding the entry, the (ICH) as we called it, (the idea to define a) clearinghouse that, you know, might be an additional service of the trademark clearinghouse in terms of technical infrastructure, who knows. But the question is who does this channel of communication?

Just to flesh this out a little bit, are we asking the - or are we proposing that the applicant gets let's say an email or that it should revert to the trademark clearinghouse and get information or contact details to the (ICH) where maybe contact person for such process or at least a role contact for such process would be stored so that the applicant can go out and try to get some approval or documentation. Or is that a process that the group would like to see steered by ICANN?

Jim Bikoff: Uhm, since it's an...

Thomas Rickert: Jim please.

Jim Bikoff: ...existing procedure, I mean the notices that are sent out on claims and that go to both - that go to parties, I think - I mean there could be just a add-on procedure if this were a clearinghouse type operation where notices go to both parties so they're put in touch.

Thomas Rickert: So the idea would be to notify both the want to be registrant and the organization holding the entry of the (ICH) and give them each other's contact details so that they can establish contact directly?

Jim Bikoff: Yes I think so and then try to resolve it at that level, that's - I mean that's based on my experience that that's been a good way to resolve a lot of these things.

Thomas Rickert: Yes good, Claudia please.

Claudia MacMaster Tamarit: Hi, I'd just like to also agree as Jim just said, we have - at ICO we have quite a bit of experience with would-be registrants or recent registrants of domain names coming to us and just speaking of particular permissions on the various different manners and often it's just a matter of communicating different issues and finding a very quick (and useable) solution that doesn't really involve very much time or any money at all.

So having some sort of a notification that would be sent, for example copying both emails on file for both the applicant that they used to register the domain name and the organization as it's registered in the(, you know, the IBAA). I guess they identify a clearinghouse would be really, really helpful and I imagine would take care of maybe 1/4 of the situations where it's just a matter of education or negotiation.

Thomas Rickert: Thanks Claudia, Chuck?

Chuck Gomes: Thanks Thomas, as I think we said in the drafting team for the IOC Red Cross where there is some precedence for this in that the protection of coun-

two character country code TLDs are the two character country code at the second level and organ- a registrar or an registrant for that matter could go to those organizations and get their approval for using a two character country code in some cases.

So this would not be a first instance of doing something like this I think that, you know, indicates that, you know, I think we can work out the details. Obviously the protected organizations whoever they are would need to have a published point of contact with contact information for something like that to work, whether that was generally public or provided via some process when somebody wants to request an exception, that could be worked out.

Thomas Rickert: So you're referring to the - I guess the (Affenious) approach, right? That was first introduced by affiliates which is now being alluded to in the Applicant Guidebook, you know, just to get some reference for working group members to look at.

Chuck Gomes: Yes and I think that - in the new gTLD process that was extended a little bit at the second level.

Thomas Rickert: Thanks Chuck, that's helpful, so the suggestion is that we look at that and then look at the procedure for that. I guess the third bullet point might be a little bit more controversial because that says provide an impartial (expeditious) and expenses, an inexpensive process for determining if the applicant is a legitimate interest and that it's application should proceed to registration despite its similarity to protect it's strength.

The questions is who does that because certainly in an ideal world the organization concerned would just say - or declare it's consent with the registration and then once you have that on paper or once you have whatever documentation might be required, you can get access to the name. But what if it's not as easy as that? So would denial of an organization per se lead to a block? I guess the fear has been voiced by some of the working group that

organizations that have protection in the (ICH) or that have an entry in the (ICH) might not necessarily agree to use where the organizations are criticized.

So they're afraid of views being suppressed if the organization itself would be the only decisive factor to grant an exception or not - Chuck please.

Chuck Gomes: Thanks again Thomas, well of course the simplest way to do this although it would be fairly restricted would be to first verify that the organization requesting the exception was registered in the clearinghouse. And if it was demonstrating some rights then that would be a really easy way to answer this question.

Now I understand that that's fairly restrictive and doesn't cover the free speech issues that you were just addressing, but that would be very objective. If someone had a mark like Olympic for example, that - and had rights to that as evidenced by a clearinghouse confirmation - validation, then that would qualify them to, you know, request an exception from the organization. Now I guess I lean that way because it's really clean, you start getting into free speech rights and whether or not someone can register a name that's critical of one of the protected organizations and so forth, it gets a lot messier, which I like to avoid.

Thomas Rickert: Hey Chuck - yes I think we all want to have it as easy and simple as possible but the chance for that to happen are quite slim judging from experience, Claudia?

Claudia MacMaster Tamarit: Hi, just following up on that and hoping to - so to make a suggestion that's a little bit clearer as well. I think Chuck's idea of having for example a basis of a registration - having as the basis of registration in the trademark clearinghouse definitely is a one final legitimate interest that would stop a block I guess.

Maybe another way of avoiding having to create a procedure, although that might be the best way, would also be that in cases of free speech or sort of legitimate non-commercial use, the registrant would need to - would need to simply attest to that use. And if that use later became abusive then that would be a basis - a further basis in bad faith for example under the URS or UDRP or a trademark infringement case on a national level.

Perhaps having that as a faster way of trying to get at the idea of legitimate interest without requiring a process and perhaps a judge would be just to require that sort of a statement, you know, signed or whatever, electronically to make sure that at least there's this kind of fast up-doubt if you do have a - if you attest to using the domain for a illegitimate, non-commercial purpose.

Thomas Rickert: Thanks Claudia, I think that's very helpful and, you know, both your and Chuck's comment. I think one can have alternative criteria to look at, for example in the document on the trademark clearinghouse it says that during the sunrise phase marks and sunrise - in the trademark clearinghouse, excuse me - have to be honored.

So one option could be to honor entries in the trademark clearinghouse for the (ICH) and for the non-commercial use where in most cases no right would be present that could be entered into the trademark clearinghouse. I guess what you're looking for Claudia is something along the lines of my (only) proposal that one could abduct so to speak the idea of (a comment in the) statement may be. Or you were alluding to something which would be an analogy to the statement given by the registrant when he gets a trademark claims notice.

Because if you then do not abide by that statement then that itself can be if I'm not mistaking as evidence of that faith in a URS proceeding - any further thoughts on that - from the group? Because I think we need to take care of both legitimate commercial use (as well as) legitimate non-commercial use and if you all agree or if there's no objection to using those two alternative

approaches that I've just described then I would propose we just add them to the document.

Which leaves us with the question of who would prevail in case there is a contention between an organization that has the entry in (VICH) and a third party legitimate user? Do we say that per se, you know, if the organization holding the entry in the (ICH) did not participate in the sunrise and get the name there according to the registries respective sunrise resolution procedures for the resolution of contention sets? Then, you know, the only option for them would be to oversee that no illegitimate third parties can get access to the names.

But in the absence of that it would be a level playing field and they would not necessarily prevail over the organizations that are legitimate third party users. Claudia says that she likes the idea - any further thoughts on that - maybe from the organization seeking protection? Is that a risk that you would be willing to take?

Jim Bikoff: Thomas?

Thomas Rickert: Please Jim go ahead.

Jim Bikoff: I was just going to say yes we can look at that, we have some other details we could probably provide after this call because I think we're going in the right direction here. I think there needs to be some criteria established and I think maybe we can build on your thoughts there.

Thomas Rickert: Great thank you, any further comments or thoughts? Maybe I can ask David - David Maher in this case specifically David because you are if I'm not mistaking also the free speech expert, is that approach something that you think could accommodate concerns of those that were concerned about free speech?

David Maher: Well I'm not sure, the - I hesitate to say anything on behalf of the NCUC, Robin Gross of course is the principal voice of that group. Generally speaking my impression is that they object to any system that would require getting consent or permission.

If there's going to be any objection procedure that it ought to be after the fact - after the event that a registration takes place and then the party who was making the objection proceeds to do so. I think you're going to have that issue coming up with any of these exemption procedures.

Thomas Rickert: Thanks David, I think what we do have here at least my that's my understanding but please the whole group please correct me if I'm wrong is we would have a - I think you call it two-prong approach whereby you can get the organization's consent in the first place.

And if that's granted then, you know, no further inspection is required. But in cases where such consent is not granted one would look at the third bullet point of this impartial expeditious I think incapacitate - inexpensive process and that's what we've been circumscribing as, you know, using the trademark clearinghouse data or some other statement, whatever form that might have met the public interest commitment sort of thing.

Or a trademark (trans-notice) or willing if you wish by the registrant, you know, some sort of statement that the designation question is for legitimate purposes. So that it would be my understanding at least what was discussed today the legitimate users could get access to names even if the organization holding the entry and the ICAs would object to it. You know, certainly on condition that legitimate use can be shown.

But if that in itself would be reason enough to say no to the whole process I think there is - I wouldn't be able to think of any exception process that didn't have at least very low hurdles, so I think that's the price of establishing these procedures. David is that something that, you know, for you personally would

be worth considering or do you have (should) concerns with what we've been discussing in the last couple of minutes?

David Maher: Well personally I'm in sympathy here with NCUC, I think that a consent process is not satisfactory - I would rather see an objection process. But that's my personal view and I'm not sure that's the view of the Registry Stakeholder Group.

Thomas Rickert: Well that's helpful, but that would mean ultimately David that we wouldn't be able to tweak the process so that you like it, so you would be against any preventative mechanisms regardless of what they look like.

David Maher: That's correct.

Thomas Rickert: Thank you - okay any further comments on this, otherwise I would propose that maybe Jim, (Karen) and David maybe you can inject your thoughts to Berry by email and Berry I'm sure will be kind enough to amalgamate that with what we've been discussing today into an updated document. Is that something that you would be happy to do?

Berry Cobb: Sure.

Thomas Rickert: Great, thank you. Now we have some time left but I think that unless you have further suggestions or ideas that we should put into the document, we might be able to finish this call early today. Regarding the work plan - Stéphane please.

Stéphane Hankins: Thank you very much, it's Stéphane Hankins with (unintelligible) and before we end the call I was wondering whether we should not have reflection on what we will bring to the table with the discussion with the legal council.

I'm sorry I'm coming back to the initial plans of the call, but I think that in my view you don't have (satisfactory) legal team (unintelligible) rather swiftly and

I would come back to the suggestion I believe that our Chair made that, you know, we reflect on, you know, what is additional information might have been required. As Jim (mentioned) at the beginning of the call and the legal council that it does recognize potential basis the challenges to be brought a meeting with respect to domains, registration including potential (training) the registrar according to the registry or registry in a role in the registration chain...

Thomas Rickert: Excuse me, are you using hand-free - can you maybe use the handset - the sound quality is not very...

Stéphane Hankins: We - I - in any case I feel that, you know, the formulation of the question and I believe we made this case in the closing and in writing the formulation of the question put to the Council was unlikely I think to provide a definitive answer to a question which focused on liability or risk of liability of registrar/registry if only because if my understanding is correct there is still (un-clarity) on the actual liability of the registrar and registry under their role in the chain and are they off the hook?

I'm not sure this is the right way to put it, but are there agents of, you know, of an abuse or violation of designations in their respective roles? I also feel that the question refers to any jurisdiction which prohibits any of the actuals which are listed and I'm not entirely sure that, you know, this is equal to the question of whether there is legal liability. I'm not entirely sure that this is fully identical and I think, you know, this needs to be a little bit reflected upon.

And as we had also made the case very early on (any) additional question that we would of thought useful to (waive) is the actual responsibility of ICANN itself to take all the measures within it's authority to ensure that, you know, the protections are enforced articles of incorporation provide, you know, specifically refer to in international law. So I think for next week's discussion with legal council that my view is that we owe it to the process and

to the time that gone into this to clarify indeed exactly what is lacking additional information would have been needed.

Bearing in mind of course the (contexities), you know, of the dimension, you know. Is there jurisprudence which clarifies that the prohibitions on the treaties and laws that were adopted before, you know, anybody had even dreamed of, you know, what the Internet has now become. You know, that would I think we do need to clarify, you know, what would be required additionally to what is there and you know, put in (challities) that the (authors that the individual become) sort of the (paper had raised), what would be still needed and required.

So I just want to put it like this because I don't think that it serves the purpose that we've been waiting for so many weeks now for their opinion that we, you know, just put it aside and that will be it. That was just - that was the point I wanted to make, thank you.

Thomas Rickert: Thank you very much Stéphane and I thank you for bringing this up. I think it's - I very much applaud that you ask for more information on this because I've encouraged the group to come up with further suggestions and questions earlier on.

And that's why I think that General Council will also appreciate the fact that we have follow-up questions, although I'd like to lower your expectations with respect to the liability of ICANN itself, I think that the message was more than clear that General Council was reluctant to respond on that, but I'm sure that Berry and Brian have taken good note of your suggestions, including the one on ICANN's liability and ask General Council for clarification on that one.

Just to avoid misunderstandings Berry and Brian, I at least had some issues with sound quality which is why I have dared to interrupt Stéphane in the meantime - did you understand the full scope of the question to pass it on to

General Council or would you like Stéphane to maybe summarize his concerns and send them to you by email?

Brian Peck: Thanks Thomas, this is Brian from staff, Stéphane if you wouldn't mind it would be helpful if you could summarize in (pre-writing) your (unintelligible), that way we can make sure that indeed we actually convey your request. I also have a bit of problem with the sound part myself, so if you could that would be very helpful - I'd appreciate it.

Stéphane Hankins: If I may - Stéphane again...

Thomas Rickert: Yes please, go ahead.

Stéphane Hankins: I think my (talent) was making, you know, (unintelligible), you know, what we would like to put forward to legal council from our end. It was rather, you know, that we - that we do clarify further (unintelligible) (inviting) one this is (really) conclusive, you know, even potentially, you know, additional information for the reflection of the group.

I - that was really much more my point than, you know, for us, you know, to provide yet another, you know, (point) on how we feel, you know, the projections were going to be put into consideration and to truly (unintelligible) mechanisms, thank you.

Thomas Rickert: Thank you Stéphane, Chuck is next.

Chuck Gomes: Thanks again Thomas, assuming that I understood Stéphane's questions there, I would also tend to want to lower expectations that we're going to get anything back from ICANN staff in that regard.

And I'd like to point out and correct me if I'm wrong, but I don't think our question of General Council ask about liability. Okay that was just staff's - the General Council's office way of responding to our question - they brought up

the issue of liability - possible liability risk. We didn't ask what the liability was - and correct me if I'm wrong on that.

So I've heard a couple comments today that made it sound like we were asking about liability, we weren't we were asking about registry and registrar responsibilities based on international law and multi-national laws. And I think that they answered that, it may not be the answer that some of us wanted to see, but in their analysis it's not clear enough in law to be a compliance issue or one that we could totally base a policy on.

So I would also tend to want to lower expectations in terms of getting - having ICANN and General Council's office fill in the blanks of what more they need. I'm not sure there is anymore out there that they need, but again I may of misunderstood the question - thanks.

Thomas Rickert: Thanks Chuck and I'm sure that we will follow-up on the mailing list on this one. So that leaves us with next steps, Berry would you like to show the work plan to the group?

So we see in there that, you know, our meeting today is at the very top of the table, tomorrow it's going to be a council meeting, there will be no report from myself to the council so there's no event on that during tomorrow's call. We should further discuss our proposal maybe for the next two calls and hopefully we're going to have the initial report summarizing the status of our discussions by then. I'm not sure that's still realistic - I'm looking at Brian and Berry now who are in the process of drafting the report and maybe you want to chime in and provide some information on that.

But I'm not sure whether it's possible but at least I would hope that at the beginning of April we have something to put out. Because, you now, I think we've seen during today's call between calls and during the last calls that no, you know, we're making progress in certain areas but I think we need to put

something in writing and put it out to the community to respond to to make substantial progress and then ultimately come up with an answer.

There is the plan for a meeting in Beijing, I hope that some of you, preferably all of you will be present in Beijing and I'd very much like to have a face-to-face meeting with you to further to discuss things, but I think we shouldn't just have a meeting for the sake of having a meeting. I think those of you who have seen the very entertaining and constructive meeting tutorial by John Cleese, I hope you've see it - Meetings Bloody Meetings, one of - I highly recommend it. It's, you know, they basically say you shouldn't have meetings for the sake of having meetings.

And my question to you is if we do this face-to-face meeting whether you have any particular wishes as to what you would like to accomplish so that we can go into that meeting as prepared as possible. You don't have to respond now, although I see Chuck's hand up and it will be your turn in a moment Chuck, please do think about that, talk to your groups, consider issues that you find more suitable to be discussed face-to-face rather than being discussed on a list or during these calls - Chuck please.

Chuck Gomes: Thanks again Thomas, I agree with you we shouldn't have a meeting without having a clear agenda and a useful agenda. Unfortunately you have to get a slot for a meeting so far in advance that I think we need to request a meeting slot and if we had to cancel it, do that.

It seems to me that it's quite likely we'll be able to come up with a very meaningful agenda based on where we're at and where we need to be. And the nice thing about the in-person meetings it gives some new people a chance to come in and participate who may not of been able to in the past. So I would recommend that we reserve a slot for a meeting and so that we get one, otherwise getting one after the cutoff date is almost impossible.

So we can't wait until we know exactly what the agenda is even though we will be asked to provide some sort of an agenda fairly well in advance. But that can be fairly generic, so that's just my recommendation from my experience.

Brian Peck: (Thomas its Brian)...

Thomas Rickert: Thanks Chuck.

Brian Peck: Thomas I'm sorry, this is Brian from staff, Chuck in answer to your question, we did get a slot because actually the cutoff date was February 20, so we requested a slot on Monday, the late morning session I believe it's 11:00 to 12:30. They have not confirmed all of the requests yet, the schedule's still pending, but we do have our request officially in.

Chuck Gomes: Thanks Brian that's very helpful.

Thomas Rickert: And Berry has indicated to me that he will put out a doodle on the mailing list so that we can find out who from the group will be present in Beijing - I think that might turn out to be very helpful.

But Chuck you're perfectly right we should craft an agenda based on the findings that we then have, but I'd like the group to also think about, you know, format for example. You know, we might choose to have this a semi-open meeting for example, not only - and certainly everybody's allowed access to it, but what we could do is try to encourage GAC representatives to join the meeting and then maybe in broader terms discuss where we came from, what we've achieved so far, where we are, what the difficulties are in the process.

Because I think that not only the GAC but in the wider community there are a lot of people who think we're completely crazy wasting so much time in their view on something which they perceive as a small detail question. And, you

know, since this has been called a test case or a case study of PDP work in the GNSO it might also be something that we could open up a little bit to raise understanding for what we're doing.

And there are people that are engaged maybe GAC representatives or others that are willing to comment in point of view to this process. I think it would benefit our exercise. You know, there's nothing for you to respond to now although I see some activity in the chat, you know, we can discuss this further on this list. Just think out of the box - let's try to make the best use of our meeting when we see each other in person which I personally look forward to very much.

And with that, I think the only thing for me left to do is to announce the next call which is next week on Wednesday is going to be earlier, about two hours from today so we - in our rotation we have the earlier call next week. And unless you have further comments to make, I'd like to thank ICANN staff for their excellent support again as always, thank you for your participation and your constructive input and I'm looking forward to continue our conversation, thank you very everybody, bye-bye.

Man: Thank you, bye.

Man: Thanks.

END