

**ICANN
Transcription
IGO-INGO Protections in all gTLDs PDP Working Group on Red Cross Names
20 July 2017 at 13:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-igo-ingo-20jul17-en.mp3>

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Coordinator: Yes, the recording has started and thank you.

((Crosstalk))

Coordinator: A reminder to everyone to please utilize your mute button when (unintelligible) as well. And if you're using your phone line, please mute your Adobe Connect (from). You may continue Tom.

Thomas Rickert: Thanks for the reminder. We're still having quite some echo on the line, so somebody seems to, at least one person seems to have their microphone unmuted. Okay, so let's try this again. Good morning, good afternoon, good evening. This is Thomas Rickert speaking and I would like to welcome all of you to this reconvened (IGO), (INGO PDP) working group and this is actually our second call on the 20th of July 2017. For today's call we've allocated two hours, probably we won't use up the whole time but we wanted to leave sufficient space for working group members to (share) views so that hopefully we can conclude our work in a relatively short period of time.

In terms of agenda, what we've planned to do is what you see on the right-hand side of the Adobe room, so we're going to do role call agenda (SY)

updates in a moment. We will then have Berry remind all of us of the initial recommendations that were adopted by the (GNSO) council a couple of years back and then we're going to dive into the discussion how we respond to the (GNSO) council's request.

Now, are there any request with respect to the agenda? ...speak up to...

Berry Cobb: Hi Thomas, this is Berry. I think we're still having some audio issues on your side. Can you make sure that your mic is closed on your computer, since you're on the audio bridge now?

Thomas Rickert: Is this better now? I muted it a while ago but then I must have accidentally put it back on. Is this now okay?

Berry Cobb: It sounds a bit better to me. All right, I think we're good to go. All right, please continue, thank you.

Thomas Rickert: Thanks very much. Okay, so there don't seem to be any requests to changes to the agenda. Let's then do a role call and what I suggest doing since we only have a relatively small number of individuals on this call is that I mention your name and then we - then all of you very briefly state who you are and who you represent so that I - you know, I don't anticipate everyone to know everyone but I think it's beneficial for us to get each other, or get to know each other a little bit better before we dive into the work.

So I would start at the very top of the list in the Adobe room so the first one is Berry Cobb.

Berry Cobb: Hi, thanks you. This is Berry Cobb, Sustained (GNSO) Policy Staff and originally helped out on the first (PDP) back in 2013.

Thomas Rickert: Thanks very much Berry. (Marika)? I'm not sure whether you're on the audio... So (Marika) is not on the audio but (Marika) is the policy staff with

ICANN and I guess that most if not all of you do know (Marika) so thanks for joining this call. (Mary)?

Mary Wong: Hi everyone, this is (Mary Wong) from (Staff), I assisted Berry in supporting the first working group after I joined ICANN and now I'm a full-time staff member I'm continuing to support this group as well as the other (IGO) working groups on (curative) rights. I'm a member of the (GNSO) policy team, thanks Thomas.

Thomas Rickert: Thanks very much (Mary). (Michelle)?

(Michelle Desmyter): Hi Thomas. This is (Michelle Desmyter) I am (GNSO) and (GDD) support staff.

Thomas Rickert: Thanks very much (Michelle). Alan?

Alan Greenberg: Hi, I'm Alan Greenberg, I'm currently chair of the at-large advisory committee. I am not here representing the committee, but as an individual although there may be times in the future where I do carry a message forward that is a formal (AOX) statement. Thank you.

Thomas Rickert: Thanks very much (Alan). Chuck?

Chuck Gomes: Thanks Thomas. Chuck Gomes, and I have an update to my statement of interest. It has been updated in the (GNSO) site. I retired from Verisign at the end of June so I'm no longer a Verisign employee, although I will have a consulting a consulting agreement with Verisign primarily to continue my role as chairing the (RDF, PDP) working group. I was on the original working group a long time ago and so am rejoining hoping that we can reach some fairly quick agreement on the requests from the (GAC). Thanks.

Thomas Rickert: Thanks very much Chuck and thanks for spending time with us although you have retired (unintelligible) retirement now and I guess we're going to have a lot of fun together on this project. So thanks again Chuck. Next is David.

David Maher: Hi, David Maher, Public Interest Registry and the Registry Stakeholder Group.

Thomas Rickert: Thanks very much David. Greg?

Greg Shatan: My name is Greg Shatan, member of the Intellectual Property Constituency currently President of the Intellectual Property Constituency. I was a member of the original working group and I'm a lawyer in the private practice with Bortstein Legal Group (unintelligible). It's good to be back.

Thomas Rickert: Thanks very much. Thanks so much Greg. Heather?

Heather Forrest: Thanks very much, Heather Forrest here. I am a member of the (unintelligible) (ITC) the (unintelligible) here. I am a member of (unintelligible) leadership (unintelligible) invited to attend these mainly as of this time I was part of the facilitated discussion that led to the (reclamation) of the (PDP) so I'm really just here if you need me. And then (unintelligible).

Thomas Rickert: Thanks very much Heather. Jeff?

Jeff Neuman: Good morning, afternoon and evening. This is Jeff Neuman, I am currently one of the co-chairs of the Subsequent Procedures (PEP), previously at this time I was actually on the council. I think I was the vice chair at the time. There was actually a (pre-group) before this group and that (pre-group) was talking about these names even for the then current round of new (GTLD)'s in 2000 - whenever that was.

So, I'm mostly here now just as an observer. I think these discussions and the discussions we're having on geographic names, although not

substantively related are certainly related in how the (GNSO) deals with the (GAC) so I'm just kind of observing and happy to provide any input if you guys want me to. Thanks.

Thomas Rickert: Thanks very much Jeff and certainly we would welcome you not only as an observer but also as an active participant because you have the working knowledge about the subject as you've been in this, on this, project from the very beginning; the preceding (group) that you mentioned. (Jen) is on?

(Jennifer Breckenridge): Good afternoon from Geneva, my name is (Jennifer Breckenridge), I'm a senior legal officer at the International Federation of Red Cross and Red Crescent Societies. Unlike the previous speaker, I'm brand new to this process. I'm replacing (Chris Rassi), and also here to support my (ICFC) colleagues who have been leading on behalf of the movement. Thank you.

Thomas Rickert: Thanks very much (Jennifer). Mason?

Mason Cole: Thank you Thomas. Good morning everybody, Mason Cole with (donuts) and registry stakeholder group. I was a previous vice chair of the (GNSO) in that capacity I served as an observer on the previous working group. I'm back now to contribute whatever I can to this - to wrap up this (PDP).

Thomas Rickert: Thanks very much Mason. And as some of you will have seen in the (unintelligible) also on the call and he is not on audio either. (Steve) is ICANN's universal board staff. So welcome (Steve) and finally I'd like to introduce myself. My name is Thomas Rickert. I have been on the (GNSO) council at the time of this (unintelligible) with (PDP) was conducted and I shared the (PDP) I was also part of the preceding that Jeff Neuman mentioned a few minutes back. Lately I've spent most of my ICANN related time on the (PCWG) accountability where I'm one of the co-chairs.

And I would like to welcome all of you again to this reconvened (PDP) which I think is the first time in the (GNSO) history that we are invoking this Section 16 which allows for (GNSO) policy recommendations to be reviewed. And we will discuss in a moment what the original recommendations were as well as what the limits (had mandate) of this group is. So for those who are either on this call or listening to the recording, subsequently, this is not a place to reopen or open discussions on new items or other items, there are other questions, and we are doing what we are tasked with. So even if we wanted to, we would be prevented by the rules that we're working under to look into those so we actually have a very limited scope within this group, we have to stick to that because I think all of you will agree that what counts in all of this is not that much the outcome but what counts is that we follow new process because basically the policy development process and how we apply it, how we make - how we ensure that we're playing by the rules is the basis for ICANN legitimacy; vis-à-vis the global community.

Having said that, I think we can move relatively quickly to the second agenda item. So let me just remind all of you who have not published a statement of interest on the ICANN Web site to do so as soon as they can. There is no issue whatsoever to have an interest or to have interests but these interests should be (unintelligible) and we will make this reminder at the beginning of every call. So whenever you have changes in position, employers or other roles that you might (unintelligible), please do share this with the ICANN community so that everyone knows whose interests you are representing. I see Berry's hand is up. SO Berry, please go ahead.

Berry Cobb: Thank you Thomas. Just real quick before we get onto this second agenda time. I understand that Stephane Hankins is on the phone or the audio bridge only and perhaps we give him a second to introduce himself as well to the group.

Thomas Rickert: That's an excellent idea and I'm just reading the shared note in the chat so sorry for not having paid attention to that earlier. Welcome Stephane.
Stephane, would you like to introduce yourself with a couple of words please?

Stephane Hankins: Sure, you can hear I'm afraid. This is Stephane Hankins...

Thomas Rickert: We can (unintelligible) yes.

Stephane Hankins: Okay, sorry I'm legal advisor with the International Committee of the Red Cross and was indeed on the original working group together with colleagues in the international federation; so hello to all, thank you.

Thomas Rickert: Thanks very much Stephane. And let's now move to the second agenda item and Berry has kindly agreed to walk us through the original recommendation so that we are all clear on what the original recommendation was and then I would hope that Berry would also refresh our memory on what the actual request from the (GNSO) council is. So Berry over to you.

Berry Cobb: Thank you Thomas. Berry Cobb for the record. I think the day before yesterday when we sent out the agenda there were five attachments to that email. One of those is the document you see before you in the Adobe Connect room which is just an extract of the recommendations from the (GNSO PDP)'s final report.

The other four attachments were mostly for reference. One of which was the (GNSO) council resolution that adopted the (PDP) recommendations and the other three were subsequent ICANN board resolutions with respect to these particular recommendations. Again, mostly just for quick reference if you needed to have them for understanding the timeline and what had occurred back then.

So for now I'm just going to quickly brief you on the first attachment and this document is an extraction of recommendations specifically around the Red

Cross, Red Crescent recommendations that the working group had come up with. And a couple of items to consider when reviewing this document. First, it's kind of divided into two sections; Section 3.1 which is those recommendations that were adopted by or as you achieve consensus by the working group. Those are on Pages 1 and 2 and then there's also a 3.2 which was the unsupported proposals, note that that's not the - the 3.2 is not the actual section mark within the final report; just auto-numbered when I extracted that into this document. But there were also a set of recommendations that were not supported or did not obtain consensus within the working group and I wanted to include those for reference as well.

At that time when the working group was deliberating on potential recommendations within the working draft document or report that we had at that time, essentially it was divided across the four groups of organizations that were being considered. The first being Red Cross, Red Crescent. Second being the International Olympic Committee. The third grouping being the (IGO)'s and the last being what the group that used (INGO)'s or (NGO)'s. As we started to measure the consensus levels across the recommendations and as we approach the final version of the report to make it more reader friendly, we consolidated those recommendations that had obtained consensus by group and then there was a separate section that was labeled the unsupported proposals and that was consolidated by group so that's just how this is particularly laid out. The other thing I will draw your attention to is because within each one of those four groups the deliberations, there was different types of protection, recommendations, being considered within each one. And so at the top of the table you'll see what is labeled as Scope 1 identifiers and Scope 2 identifiers. Hindsight is 20/20, probably we could have found a better label to distinguish those two different groups of identifiers, maybe like Set 1 or Set 2 but the point here is that there were certain identifiers that were being considered for one set of recommendations and another set of identifiers that were being considered for different types of recommendations and we needed a way to be able to distinguish the two

groups so that we could better delineate the types of protections being considered.

So, with that in mind, specifically the recommendations that are considered here within the mandate of this reconvened working group, it's all around recommendations Number 5 which is essentially that the second level protection for exact match full name Scope 2 identifiers which is essentially the 189 national society names that they be bulk added into a trademark clearinghouse-like system.

We do want to make clear that at the time this working group we were very early days in the new (GPLD) program and any reference to trademark clearinghouse was for the system itself because that's what it was labeled but for sure any protections that were being recommended by the working group have nothing to do with trademarks in and of themselves but we wanted to make sure that it was understood that it would be that kind of system should any notification or claims notification recommendations be approved and implemented. But at the end of the day, the basis by which these recommendations are being afforded have nothing to do with the trademarks. So this particular bulk add into the clearinghouse, obtained consensus level support and then the secondary recommendation, which is Number 8, is that if they are added into the clearinghouse what type of protection do they actually get? And the working group achieved consensus on the 90-days claims notification which matched the trademark clearinghouse type RPM as a result of the new (GPLD) program.

And so in essence, once a particular identifier is loaded into that clearinghouse, and a (TLD) moves into general availability that (GPLD) is required or mandated to have at least a 90-day minimum claims notification period by which if any potential registrant tried to register any particular name in the clearinghouse and it was a completed recommendation, then a notification would be sent to the registrant telling them that they're potentially infringing on a protected mark and then secondarily if the registration

completed that the protected organization would also receive a notice that that particular name was indeed registered.

The second part that I would like to discuss which is also within the scope of the reconvened (PDP) is, sorry about that, is the - what number is it? Is under the unsupported proposals which is the first proposal, I wouldn't call it a recommendation but it was considered by the working group as should the Scope 2 identifiers at 189 national society names also receive top-level reservation as the Scope 1 identifiers did.

And just to draw your attention to this particular one was not supported by the working group as essentially labeled divergence. And the last thing that I'd like to mention about this particular document, in terms of how this reconvened working group was initiated as a discussion between the board and then the (GNSO) council which eventually approved the kick start of this, the scope of our deliberation for this reconvened group within the Scope 2 identifiers grouping is only the full names of the National Societies and it is not including the scope of the acronyms that are included there. So, again, this is just strictly about the full names of these 189, I think possibly maybe 190 because there might be a new national society that has been created since then and maybe Stephane can enlighten us, some of those highlights when we get to the point of discussing the actual names.

So that's kind of an overview of this document, an overview of the deliberations that occurred and an overview of which recommendations had obtained consensus and which ones did not. So, with that I'd be happy to answer any questions and other than that I'll turn it back over to you Thomas. Thank you.

Thomas Rickert: Thanks very much Berry. Are there any questions for Berry? I don't see any hands raised. Okay, so everyone seems to be clear on what the original recommendations were. So basically what we're now looking at is how to deal with the identifiers mentioned by Berry that only got temporary

protections and I guess what's important for our group as we move on is to get clarity on what solutions we might be looking into. If I'm reading the (countess) request as well as the discussions that we had in the discussion group a couple of month back as well as the original asked by the (unintelligible) correctly, then three questions in front of that is do we make a recommendation to make the temporary protections permanent?

I'm not sure whether individuals on this group have alternative suggestions that we could bear in mind to respond to this so let me just pause for a second to see whether we have other ideas and if that weren't the case then maybe in terms of keeping our (unintelligible) focused we should actually look at temporary versus permanent. This is not to preempt or to predict that this will be the outcome because that's something that we need to further work on but let's just try to get a line on what protections we'd be actually looking into.

Alan your hand is raised, please go ahead.

Alan Greenberg: Thank you very much. I don't have an answer to your specific question. I would like to take a minute and give at least my perspective of how things unfolded last time because I think it's an important issue. The individual country names were listed in the original request from the Red Cross. That goes way, way back to the (GAC), for reasons that I never understood and I don't think anyone else did. They were not carried forward into what went into our working group until at the very end someone realized that hey those names that we originally talked about were not there and they were put back onto the table by the Red Cross.

At that time, all I can say is this was a really hard (PDP) and coming to closure on it was really difficult; largely not due to the Red Cross but to the other issues we were discussing. And we were so close to the end at that point and a position where we thought we could wrap it up that there was a strong consensus, and I was among them, that this is just too late to put these names back on the table at this point from the perspective of many on

the group, they were being added for the first time, not being put back, and it was just too late to toss something into the group.

In retrospect, I suspect if they had stayed on the table, and certainly if we hadn't been discussing other groups other than Red Cross, I have little doubt that we would have accepted it and so that's the perspective I'd have coming into this re-opened (PDP). Thank you.

Thomas Rickert: Thanks very much Alan. I think we've put together the history of all of this in some document and in fact the names were only included in (GAC) advised at a later point in time. So, I guess we've been looking at the (ask) of the various requesting parties and we were looking at the things that were requested at the given point in time during our work during the (PDP).

Chuck your hand is raised, please go ahead.

Chuck Gomes: Thanks Thomas, Chuck Gomes, and let me qualify what I'm going to say because when I was on the original working group I was a delegate for the registry stakeholder group and again, like I said in my statement of interest update, I am no longer that so I'll let Mason and David come in and with regard to the registries position. But as I said in the email I sent a few weeks ago, I pretty much said the same thing that Alan said in terms of how this came about. He added even a little more detail which was good but I'm going to respond to your request Thomas and this is from my personal point of view and then I agree with Alan that I think probably if we had dealt with this in the original working group, there was probably pretty good chances that would have been passed. But I want to qualify that a little bit. So it seems to me that the request for the full names of these national organizations and the other organizations that have been added in the additional requests, is not a controversial issue. It doesn't seem to be really all that problematic and I'd like to think that we may be able to come to agreement on that fairly quickly.

With - and it would be consistent, I think, with the recommendations that were made in the final report. The one area though where I think it's more difficult is again the area of acronyms. And I'm open to being corrected on this but I don't think that the acronyms of all of these 180 organizations or so is quite so easy.

There - some of those acronyms probably would duplicate acronyms of other organizations and probably some of those other organizations it may even be more widely used as acronyms than the ones for these national organizations.

Now, I'm open to being corrected on that and we can look at those specifically if there are some that are particularly obvious for these national organizations. So what I'm saying Thomas then is that I think the full names, just like the original recommendation for the names that were approved is not controversial and I would hope we could come to agreement on those. I don't think it's so easy for the acronyms and would you even question whether the acronym should be included from my personal point of view. Thanks.

Thomas Rickert: Thanks very much Chuck and thanks for bringing up the issue of acronyms. It is my understanding that we are looking at the (full) names both on the second level as well as at the top level with respect to permanent protections rather than the currently existing temporary protections. We are not discussing acronyms. I do agree that acronyms would be far more controversial but it is my understanding of this groups mandate that we're not even allowed to discuss acronyms. That's something that hopefully you will like about my response.

So, I guess it's good to appease this out so we're not discussing acronym protections, we're discussing full name protections for the now (190) organizations and let me ask this again whether there's any objection to focusing at least for the time being efforts on a solution or potential solution where the temporary protection is made permanent and that's where we're

not (endeavoring) to look at other potential mechanisms to the (protection) sort of name.

Okay, so there doesn't seem to be any objection to keeping our work (that focused) unless your hand is up, the hand is now lowered so I wasn't sure whether Chuck's hand was a new hand so that's good. I guess what we need to do in order to come closer to a solution is maybe refresh our memories on the original legal rationale that the red cross provided during the original (PDP) work on which our protection should be based. And I don't mean to put either (Jennifer) or Stephane on the spot but it would be great if you could speak a little bit to the legal basis for granting protections or granting protections according to your legal assessment for these names.

The reason for that is two-fold. One is that our group can't just arbitrarily grant protections or privileges to special interest groups but we need to make sure that the protections that might be offered with policy recommendations to the (GNSO) council do have a legal basis. Also, at least some of you will have followed the (IRP) on the Amazon case which I think could have some relevance for our groups deliberations and so far as the board in that case was criticized for not offering sufficiently robust legal rationale for their decision in that case.

I'm not going to delve into details but certainly the way I described this now is really simplifying things but as you know, once policy recommendations coming out of our group are being adopted by the (GNSO) council and then adopted by the board, these might be challenged with an (IRP) and therefore we need to make sure that our work is sufficiently robust so that the work product would not be deemed to be in violation of ICANN's bylaws. So, having said that, I would really like to invite either (Jennifer) or (Stephane) to give us a little overview of the statutory or otherwise legal foundation or legal basis for protecting the names of the 190 organizations globally.

Stephane or (Jennifer), can I ask you to please give us an overview as you did for, or as Stephane did in the original (PDP) with respect to the legal basis for protecting the 190 or at the time...

Stephane Hankins: Thomas?

Thomas Rickert: Yes Stephane.

Stephane Hankins: Can you hear me?

Thomas Rickert: Yes, you can be heard.

Stephane Hankins: Yes, good. Thank you. Maybe I'll take the floor and (Jennifer) can add as would be required. Before I answer the question that Thomas is raising, I just wanted to make a couple of moments on what was said beforehand by previous speakers.

And I – first of all I want to acknowledge what several speakers said about the previous process under the – under this working – under the antecedent working group or the previous working group that, you know, maybe the – there was a – something akin to a misunderstanding at the time either that the actual full names of the national (unintelligible).

So I (unintelligible) late 1993 so well into the process we had not understood. It hasn't – hadn't come up so clearly in the discussions within the working group.

We had not clearly understood that protecting the words Red Cross/Red Crescent/Red Crystal would not of itself ensure the possibility of the protection and – protections and reservations of the names of the respective organizations, which are composed of this – of the effect of the names of the emblems Red Cross/Red Crescent/Red Crystal.

We hadn't understood but – that by protecting Red Cross we would not automatically be protecting the names British Red Cross or Quadrant Crosses.

That is why, you know, we were late but we were not that late, and indeed we did position this fairly soon and before the end of the working group discussions.

And that was also taken up and confirmed also in – as soon as late 2013, beginning 2014 in the GAC advice in no unclear terms. The second point I wanted to make in respect to what was said beforehand regards the acronyms.

So as I think was mentioned in the previous call of this reconvened group we – the acronyms of the national societies or the acronyms of the international bodies, the I set in the federation, are not on the table so, you know, they're not being considered here.

We would've encouraged the working group nevertheless to consider the acronyms of the international bodies, the acronyms of the International Committee of the Red Cross, ICRC, and the acronyms of the International Federation of Red Cross, Red Crescent Societies, IFRC, because these are organizations that are extensively known by their acronyms.

But I understand that, you know, we – this – the reconvened group will be looking at the names of the 190 national societies and I'm hoping the names – also the full names of the ICRC and the federation.

So I now move to responding to the question that Thomas is putting. Now this is a question that has many a times been responded to and that we have laid down in writing in many communications both to the members of the previous or the recent of the working group that is being reconvened to the GNSO/to the board.

It is – what has to be understood I think is that indeed the protections that are being called for are grounded in public international law/in treaty law/in 1949 Geneva Conventions and their additional protocols, in particular their additional Protocol 3.

The Geneva Conventions clearly state that the word Red Cross/Red Crescent and the additional protocol of 2005 does the same for the designation Red Crystal.

These are designations that are protected under international law. They're protected under universally in ratified international treaty law as the designations of the protected emblems in times of armed conflict.

So they – the protection of those names is really grounded in global public policy considerations. These are considerations which of course are primarily the concern of states, and states have a primary responsibility under these international treaties ratified by 196 states today to actually implement those protections under their domestic legislation.

So we have a very clear and well-defined protections for those names. I should add that the words Red Cross/Red Crescent/Red Crystal are also protected not only, you know, in their pure form, that is Red Cross on its own, but they are protected also in any other configuration, that is in any association with other words.

And the Conventions are very clear in forbidding or prohibiting imitations of the – of those names that come from the words Red – the name Red Cross and that would of course extend also to names such as British Red Cross and so on.

The entitlement to make use of those names is reserved under public international law primarily to armed forces medical services, and in addition to

that the Conventions provide entitlement for the respective components of the movement, the ICRC, the International Federation of Red Cross/Red Crescent Societies and the National Red Cross/Red Crescent Societies existing around the world to make use of those words for those names for indicative purposes.

This is what grounds the protections. They are under international law, under the legislation in force in multiple jurisdictions through the adoption of specific legislation, and it is what has justified the International Red Cross/Red Crescent movement and more importantly the GAC's engagement to support and call for those protections and those regulations to be put in place on – in the domain name system.

So I don't know whether I've given all of the elements. Perhaps an additional element that stems from what I indicated is that indeed these are not protections that result from trademark law, from common law rights or from rights conferred by registration.

Again they are conferred by universally accepted international treaty law, committing and binding upon the international community as a whole. Is – does – Thomas does this answer your question?

Thomas Rickert: Thanks very much Stephane. I think I would like to extend your question to the whole group and see whether there are questions for Stephane. So Stephane I guess the individuals on this call might need a few more seconds to consider this and formulate their questions.

I see Chuck's hand is up so Chuck you go first and then I will type a question for Stephane. Chuck please.

Chuck Gomes: Thanks Thomas and thanks Stephane. The question I have Thomas is kind of a charter question for this group. He did single out the two – I think there's

two international names that are included in this issue and he mentioned the acronyms for those names.

Am I correct in concluding that that would be those two – the acronyms for those two names are also out of scope for this group?

Thomas Rickert: That is my understanding Chuck.

Chuck Gomes: Okay thank you.

Thomas Rickert: You are just looking at names not acronyms. Stephane my question to you would be could you maybe help us understand better the link between the Geneva Convention and how it covers the national societies?

Stephane Hankins: Yes. Can you hear me Thomas?

Thomas Rickert: Yes you can be heard.

Stephane Hankins: I'm actually on my summer leave. Remember I don't have access to the Adobe Connect so I apologize for this. Well the international – the entitlement to display the emblems of the Red Cross/Red Crescent/Red Crystal and to make use of the words or designations Red Cross/Red Crescent/Red Crystal are under the 1949 Geneva Conventions specifically accorded to the respective components of the movement.

I – it is what we use – what is defined under the Geneva Conventions and related regulations as indicative use, which means that both international bodies within the International Red Cross/Red Crescent movement, the IRC, and this international federation.

And the 190 national societies recognized within the International Red Cross/Red Crescent movement have a specific and express entitlement to

make use of the words Red Cross/Red Crescent/Red Crystal, but those entitlements or the entitlements to make use of these words is strictly limited.

The answer – it's again, you know, the components of the movement are among those organizations or entities or persons who may make use of those words.

So the – it's – so that's the first point to establish the links we're referring to. The second point I've already alluded to, which is that the words Red Cross/Red Crescent/Red Crystal are protected again in any formulation as – so in any combination with other words.

So the word Red – the words Red Cross are protected whether they are on their own or whether they're associated with another word such as for example American Red Cross or British Red Cross.

Under international law it is the words Red Cross that are protected and they are protected in whatever configuration, so in terms of the strict legal protections they are – they – the names of the respective organizations would be protected.

So there's these two grounds if you like, first of all that the 190 national societies and the international bodies are expressly entitled to make use of those names and that – and the second is that those names are therefore also protected under international law and entitled to the protections that states must enforce in their respective domestic jurisdictions.

Thomas Rickert: Thanks very much Stephane. Can you confirm that, you know, I don't have the 190 names in front of me at the moment. Do all these names contain the component Red Cross or Red Crescent?

Stephane Hankins: Well the – they all – they are all composed of the words of either the Red Cross or the Red Crescent. There is only one exception, which is the Magen

David Adom in Israel, which is in the list which is the national society of Israel and which makes use – and this is a long history.

This is a non-question, which has been the subject of negotiation between states. It is not a movement question. It was settled through a negotiation between states but the Magen David Adom in Israel makes use of the Red Crystal emblem but it's name doesn't – is not composed of the word Red Crystal, right.

But otherwise all the national societies, and it is the case of the Magen David Adom in Israel, are held to make use firstly as an emblem but also to make use of the words Red Cross/Crescent/Red Crystal under international law as part of their official name.

Thomas Rickert: Thanks very much for this additional explanation. Any questions from the group? And I do note Heather's comment in the chat that we should have the benefit of reviewing the actual provisions of the treaties.

I guess that's something which we will do following up to the – to this call. So Stephane you are correct that you have explained this on various occasions.

Maybe I can ask you or (Jennifer) to forward in your view most comprehensive review of the legal situation to this group so that everyone can take a look at the – at your rationale for the protections in writing as well as the language of the treaties.

And maybe we can mark this as an action item in the notes to this call that would be added. Greg the floor is yours.

Gregory Shatan: Thanks. This is Greg Shatan. You – I think you just pretty much covered what I was going to request, and I think it's important that we work through for ourselves the proposed legal analysis just proposed by Stephane so that we can, you know, look at the language of the treaties for ourselves and kind of

ratify or otherwise come to our own conclusions on that as a legal rights basis for what we are considering.

So I look forward and I think we should do that. You know, once we obviously – once we get the materials and have a chance to look at them we should walk through it on a call with the materials.

There's only so much you can do listening to someone when you don't have any of the documentation in front of oneself. Thanks.

Thomas Rickert: Thanks very much Greg. Anyone else? Okay so the – there don't seem to be any further requests to speak. Let me note that Mary has offered to circulate the briefing document that was prepared for the facilitated dialog, and I guess that would be very helpful for everyone to study.

In – so I guess that we all need to individually and jointly review this legal analysis. In terms of process I guess I'd be interested in hearing your views on whether we look at the legal review.

And should that be to the satisfaction of the working group, i.e., if you think that what Stephane has presented is plausible from the way you read the treaty and further documentation, that we then move on to a consensus call on the recommendation for the permanent protections or is there – or would you see the need to get this legal analysis confirmed by an expert?

I'm mentioning this because I don't claim to be an expert in the – in these treaties. And would you think that our process is sufficiently diligent if we just take our own assessment or our own reading of the document as sufficient basis for making a recommendation?

I mean, that's certainly only if we are satisfied with our own understanding of the document. I see Greg's hand is up but before we move to Greg let me just add that at the moment if you are toying with the idea of hiring external

legal advice, at the moment that means we don't have any budget requested for such exercises.

And also if we did so I guess we would easily talk about a three to six month delay of our work before we get, you know, a statement of work together, get the work commissioned and get the result.

So I'm not advocating for asking for external legal advice, but I'd just like to get some clarity on what the group's expectations are in its dealings with the legal paper that we're going to distribute in a moment. So Greg first and then Chuck.

Gregory Shatan: Thanks. This is Greg Shatan for the record. Probably a little premature to answer that question. I think we need to see for ourselves what the legal analysis is, kind of parse through it/work through it.

And if it's completely cut and dried and obvious then I don't think we need to pay somebody to know what we already know. However if it is not so obvious, if it's open to other interpretations or there are, you know, various leaps of logic taking place then – and it's not just a – essentially a ministerial process we're going through, then we may want to and may need to get external legal advice.

I'd be a little more optimistic, just a little, that it wouldn't take quite as long as you say but of course, you know, that all depends on what we're – what we need to do to get the advice under discussion.

But – and I'd like to keep the question open and not try to answer it without having any idea of what the legal analysis looks like from our perspective.
Thanks.

Thomas Rickert: Thanks Greg. Alan?

Alan Greenberg: I think – I thought Chuck was in the queue before me.

Thomas Rickert: I do apologize. Chuck first and then Alan.

Chuck Gomes: The – so what I did Alan – I was going to say pretty much the same thing that Greg said so no need to repeat.

Thomas Rickert: Okay Alan.

Alan Greenberg: Thank you. I have a somewhat different position. I'm not at all convinced that hiring expensive lawyers will allow us to create a strong bread crumb trail if you excuse the expression between legal protection of names originally designed and confident – for use in times of warfare and domain names.

So I think this is always going to be a subjective issue no matter how much expensive legal care/legal advice we get, and it's going to be a subjective decision of this group.

I reentered this reformed group with the hope that we could in fact make that decision, and without predicting which way it would be that we could come to closure on it.

And I would like to find out to what extent after we look at the various documents that we can come to closure before going out for legal advice, which I think ultimately will not really provide any strong guidance to us.
Thank you.

Thomas Rickert: Thanks very much Alan. And now the queue is clear and nobody else wishes to speak so I suggest or I would assume that no one on this call objects to what has previously been said.

And I guess that's excellent news insofar as no one on this working group at least from those who are present on this call will inevitably require independent legal advice.

And that's sort of what I was hoping to tease out of this discussion is whether we can agree that once we've reviewed the document individually, once we've discussed the documents in this group, once we had the opportunity to ask further questions to Stephane we would not necessarily need to hire external legal advice but that we would be able to come – or that we would feel happy or that we are okay with coming to a conclusion amongst ourselves and reframe if that were the outcome the policy recommendations that were – that was originally made.

Let's not forget that whatever we come up with there will be a public comment period anyway, and that will give the opportunity for folks with more expertise in the area to chime in and let us know in case we have collectively read things in a wrong manner or construed things in the wrong fashion. Alan is that a new hand?

Alan Greenberg: No. Sorry I forgot to lower it.

Thomas Rickert: No worries. I see Greg's hand is up. Greg please.

Gregory Shatan: Thanks. Greg Shatan for the record. I would disagree with you Thomas slightly on where I think we are. I think that it's entirely an open question whether or not we would want to seek independent legal advice.

I think it would be premature of anyone at least I think to say we – that it's a necessity since we don't know what we're – what we'd exactly be asking for an opinion on nor would I say that there's a leaning against getting some legal advice, although I hear Alan's meaning in that regard.

But at my – at this point I would say that the needle is essentially on 0 or, you know, nowhere in particular and I don't think it's right to answer the question or to predict one answer or the other to the question of whether we would like to have external legal advice on the legal basis and analysis.

So I would just kind of ask that – I think that to me it seemed clear that we're just holding the question open. So I think it can be said that on this call we did not decide to get legal advice, but after that we also equally did not decide not to get legal advice.

So I'd say we're in equipoise or at best - but really more it's unright (sic) for the question to be posed. Thank you.

Thomas Rickert: Thanks Greg. And maybe I haven't been sufficiently clear but my summary of this is – and I guess that the result worthwhile noting in the record of this call is that there was no one in this group who said, "I need external legal advice regardless of what the group's assessment of the legal document is," and that's good news.

So what we haven't said is that we don't need legal advice, but at least we do know that everyone in the group depending on the outcome of what our review will be might feel comfortable moving forward without legal advice.

But let's not dwell on this more. I guess we can probably adjourn this call early. I see the queue is clear. I think we have somewhat of a clear path or a clear view on the next steps.

So a next step will be for us to get the background information. There is a task for all of us to review the background information and to note – ideally if you have questions with respect to this documentation, do send them to the list so that we don't need Stephane or others to respond to any questions on the spot but that they can actually give explanations in writing.

And so between this call and the next call that we're going to schedule in a couple of weeks' time we will hopefully have read everything. We will hopefully have asked all the questions, that we might have received answer to those and raised concerns.

And then the plan would be to have another call where we discuss – where we bring things out to the open and in case there are concerns, and then we should hopefully be in a position as a group to either determine whether we need more information or whether we feel comfortable with moving on to a consensus call.

And with respect to consensus call I do note that we have a fairly good representation of the ICANN community on phone but some groups are missing.

So I guess it will be the task for support staff and myself to reach out to the groups that have not been represented on this call, so hopefully that for the next call we're going to have representatives of all relevant groups in the ICANN process among the call and then quickly lead to a consensus call.

So this is – sounds like an appropriate way forward. I see (Jennifer)'s hand is raised so (Jennifer) the floor is yours please.

(Jennifer Breckenridge): Thank you very much. I just want to take the opportunity to thank Stephane for putting the movement position for us. I just want to clarify. I see the – in the action items there is an action item for the Red Cross reps and the staff to circulate the briefing document.

Is that the case? There are two documents: the historical briefing document but you require some additional information from Stephane and myself on behalf of the movement. Is that correct?

Thomas Rickert: I guess it would be good for you to liaise with the staff and I'm sure that Mary and Berry will reach out to you. Mary has actually raised her hand so she could speak to that in a moment.

But I understand that the background documents for the Copenhagen discussion group have been prepared in consultation with Stephane. So chances are good that we're in good shape distributing those only, but we want to make sure that all the information that you think it – helps to facilitate those discussions are actually included. Mary anything to add to that? Your hand is raised.

Mary Wong: Hi. Thanks Thomas. This is Mary from staff. I think the original action items we captured were in D2 as shown in the pod. But as you've just noted Thomas it really is for (Jennifer), Stephane and their colleagues to see if there's additional information particularly specific to the point of how the Red Cross society names are protected by the Conventions and associated laws.

As you noted Stephane and his colleagues did contribute to that briefing document, so hopefully the idea is to have that document and any other relevant information that the Red Cross representatives believe would be helpful on this point so that the working group has as much information before it as possible. Thanks Thomas. Thanks (Jennifer).

Stephane Hankins: Thomas if I may.

Thomas Rickert: Thanks very much Mary.

Stephane Hankins: It's Stephane.

Thomas Rickert: Stephane please. Please go ahead.

Stephane Hankins: Yes so we have submitted in the past quite detailed materials on this including, you know, the detail of the relevant provisions from the international treaties and so on.

So I – we need to check - I need to check a little bit whether, you know, this needs to be reconfigured to meet the requests which I believe is being made but certainly we will look into this. We probably need a couple of weeks so thank you.

Thomas Rickert: Okay so what I suggest we do then is take a staggered approach. We will have staff circulate the Copenhagen background material almost straightaway and we can start reviewing that.

And then in the course of the next couple of weeks as soon as Stephane and (Jennifer)'s time permits they will add to that. We will have a discussion on the list and I would suggest that we schedule a follow-up call in three or four weeks to have sufficient time both for the ICRC to contribute everything that they deem relevant to this discussion, but also to give the working group enough space to digest the material, ask questions and have a dialog on the mailing list because ideally the plan would be to bring this to a close, and the close could either be a revised policy recommendation that we put out for a consensus call or asking for more information, but that's something we should achieve during the next call.

So (Jennifer) I'm not sure. Is that an old hand or a new hand that is raised? So it is now lowered. So I don't see any further hands raised so, you know, the way we operate in these working groups is that if we don't hear or see objection to things that are summarized we take that as confirmation and I will use that history of ICANN's dealings in this case as well.

So I trust that the suggested way forward finds your support and with that I think we can adjourn this call and actually give back 40 minutes of your day back to you.

Thanks everyone for your contributions, for your attendance, for the constructive dialog and I'm looking forward to talking to you again on really the list in the next days and weeks. Thanks very much and bye-bye for today.

Mary Wong: Thanks Thomas. Thanks everybody.

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