

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

Note: The following is the output of transcribing from an audio recording of the GAC/GNSO issues related to International Olympic Committee (IOC) and Red Cross (RC) names discussion group teleconference held on Wednesday 08 February 2012 at 1800 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gns0/gns0-gac-ioc-20120208-en.mp3> On page:
<http://gns0.icann.org/calendar/#feb>

Attendees

Jeff Neuman - Registry SG group leader
Lanre Ajayi - Nominating Committee Appointee
Thomas Rickert - Nominating Committee Appointee
James Bikoff- IPC
Steve DelBianco – CBUC
Konstantinos Komaitis - NCUC
Wolfgang Kleinwachter - NCSG
Kiran Malancharuvil – IPC
Charles Gomes - RySG
Gregory Shatan – IPC
Osvaldo Novoa - ISPCP
Christophe Lanord - IFRC
J. Scott Evans - IPC
Osvaldo Novoa - ISPCP
Stephane Hankins - International Committee of the Red Cross
Alan Greenberg - ALAC
Debra Hughes - NCSG

ICANN Staff

Amy Stathos
Glen de Saint Gery
Brian Peck
Nathalie Peregrine

Coordinator: Excuse me, this is the operator. Just need to inform all participants today's conference call is being recorded, if you have any objections you may disconnect your line at this time. And you may begin.

Nathalie Peregrine: Thank you very much, (Laurie). Good morning, good afternoon, good evening. This is the IOC Red Cross call on the 8th of February, 2012. On the call today we have Christophe Lanord, Stéphane Hankins, Kiran Malancharuvil, Konstantinos Komaitis, Lanre Ajayi, Greg Shatan, Charles Gomes, James Bikoff, Thomas Rickert, J. Scott Evans, Steve DelBianco, Amy Stathos, Osvaldo Novoa and Debra Hughes.

From staff we have Berry Cobb, Brian Peck, Glen de Saint Géry and myself, Nathalie Peregrine.

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

Chuck Gomes: Okay well if nobody objects I'll go ahead and try and facilitate some discussion so that we make - hopefully make some progress on the call. Any...

((Crosstalk))

Amy Stathos: Chuck, this is Amy.

((Crosstalk))

Chuck Gomes: Go ahead, Amy.

Brian Peck: Oh so go ahead, Amy.

Amy Stathos: Yeah, hi. Sorry, just want to clarify, yeah, I am with staff. I think I know most of the folks on the line but not everybody. And Brian just asked me to be on

the call at the very beginning in case there were particular questions about the Board's resolution respecting the IOC and Red Cross names.

Of course if there are any general questions I'm certainly - you want to send emails through Brian I can respond to questions. And if there's not I can certainly drop off. I don't want to interrupt your flow of the meeting so I wanted to jump in at the beginning here.

Chuck Gomes: Thanks, Amy. Does anyone - if anyone has a question for Amy about the Board resolution or some other general question please raise your hand in the Adobe Connect room or if you're not on Adobe Connect just speak up. I'm not seeing any hands and I'm not hearing anyone.

Amy Stathos: Very good.

Chuck Gomes: You get off easy today, Amy.

Amy Stathos: Excellent. Okay well thanks, Chuck and thanks, Brian.

Brian Peck: Yeah, Amy, thank you...

Amy Stathos: And again if you do have any additional questions feel free to - have Brian send them through and we'll make sure they get answered.

Chuck Gomes: Did someone say something?

Amy Stathos: No I think that was Brian.

Brian Peck: Yeah, I was just...

Chuck Gomes: Oh okay.

Brian Peck: ...thanking Amy for making the time available. And as Amy mentioned just if you have any follow up questions just email through me and we'll get them to Amy.

Amy Stathos: All right good-bye everybody.

Chuck Gomes: Good-bye. Okay so shall we just kind of walk through the options? And again if people - remember to identify yourself for the recording. And let's talk about the options to the extent that you have feedback.

I noticed by some of the email exchange that you were in the same boat as me as - it took a while to start getting feedback from your stakeholder group or constituency.

I finally started to get quite a bit the last couple days so I'll be able to share some from knowing that I'm not just speaking for myself but for other registries at least in part.

And hopefully some of you have some ideas so shall we start with Option 1? And does anybody want to start the comments on Option 1? That was recommend no changes to the Guidebook and reject the GAC proposal, etcetera. I won't read the whole thing.

Steve DelBianco: Chuck, this is Steve. Pursuant to the - (unintelligible) the request that Jeff gave us last week at least in the Business Constituency we looked at each question and then picked our preferred option. So we might not have a comment on every option but we did have a preferred option.

Chuck Gomes: Okay that's good. And you want to just bring those up when we get to those, Steve?

Steve DelBianco: Be happy to.

Chuck Gomes: That would be great. And I see Konstantinos has his hand up.

Konstantinos Komaitis: Yes, thank you, Chuck. I've sent these questions - I've circulated these questions to the Non Commercial Stakeholder Group at least. However the answers that came only were from the Non Commercial Users Constituency. And I would like to emphasize that for the record.

The overwhelming majority of the - of NCUC is leaning towards Option Number 1. And that is for the main reason that many of the members were fearing the kind of the precedence this special protection will provide especially in light of the letter that was also sent to ICANN by other international governmental organizations.

And generally speaking what this process will do to the whole new gTLD process and the fact that these protections - these requests if you want are coming quite late into the whole process.

Also there was some discussion about whether - how the compatibility between this request and the GNSO which is meant to create this policy. So at this stage the majority of NCUC because of fears mainly of precedent and also because they're not really convinced about the justifications especially when it comes to the dotOlympic - the Olympic mark. Not so much for the International Red Cross as for the Olympic.

They're not convinced that the Nairobi Treaty is applicable and they're not convinced that special protections are required as coming out of the Nairobi Treaty. And they consider the existing rights protections mechanisms existing (and new) that are sufficient.

So up until this stage - we will also send a report - NCUC is in favor of Option 1. Thanks.

Chuck Gomes: Thanks Konstantinos. Interestingly enough the registries - and actually this decision was made before we even got this list of options when the earlier motion was on the table in the Council. And we were also concerned about undue precedent setting.

But we felt - and I'm not just speaking for myself, it was a strong position on the part of the - all of the registries - that the GAC did a very good job in their request of essentially dealing with the concerns we had regarding precedence by identifying the uniqueness of the two strings with regard to international treaties and so forth.

So we came - we were also concerned about precedence but came to the opposite conclusion. And so we oppose Option 1. Anyone else?

((Crosstalk))

James Bikoff: This is Jim Bikoff...

Chuck Gomes: Yes...

James Bikoff: Chuck, I just wanted to say on precedent that it's been made clear by the GAC that this would apply to no other organizations except these two which I think are somewhat unique, as you said, in their international protection.

The Nairobi Treaty is not being cited for protection of the word Olympic. It was only cited as an example of the international recognition given to the movement not to the specific word.

Both the Red Cross and the IOC rely on international sui generis protection statutes in many, many countries that protect the word Olympic and other words that are used by the movement. And I think similarly the Red Cross has that type of protection also.

So these are basically the unique features that are being relied on here and have been recognized by many countries and by the GAC.

Chuck Gomes: Thank you.

J. Scott Evans: This is J. Scott Evans.

Chuck Gomes: Go ahead J. Scott.

J. Scott Evans: And while the Intellectual Property Constituency does not have a unified position so I'm sort of speaking for my personal experience. But with regards to Konstantinos and the NCUC's comments the reality is that the majority of jurisdictions throughout the world do treat these terms different whether we like it or not.

There are many criminal statutes and extra special statutes beyond trademark law that protect these particular terms because they have been seen by the legislatures as somehow different from trademarks.

So I think that to say that this - the precedent is already set and it has been done by a great many governments throughout the world. And we are merely reacting to the reality of the world we live in.

So I would say that, you know, there are other ways to achieve what the GAC has asked us to do and yet I still think we can build in fail safes so the concerns the NCUC may have about the term Olympic, or some variant thereof, would - can be handled without just a flat out rejection of the GAC's request.

Chuck Gomes: Thanks. Steve.

Steve DelBianco: Thank you, Chuck. The Business Constituency actually support Option 5. But I wanted to speak to Option 1 because the BC expressly objects to Option 1

since we think it would be precisely the wrong time and wrong issue for the ICANN community to tell the GAC to take a hike particularly given the context of the RAA amendment negotiations running into some snags at a point when most of the people on this call understand that the private sector role, nonprofit's role in Internet governance, bodies like ICANN, is under significant threats by governments who don't want to let the private sector have such a big role to play.

So all the merits of what I've heard so far I would just ask those of you who are embracing Option 1 to consider it in the context of who it is that made this request on behalf of the IOC and the Red Cross...

((Crosstalk))

Steve DelBianco: ...GAC and the very same governments who in many respects hold ICANN's fate in their hands at the UN and other places. Thank you.

Chuck Gomes: Thanks Steve. Lanre.

Lanre Ajayi: Yes, all the options listed except (unintelligible) Option 1 I think that they can't put (unintelligible) at this moment. But if it turn out that the Guidebook on (unintelligible) at this moment then it would be very difficult to consider all of the options except Option 1.

So I think we need to clarify whether (unintelligible) at this time when the applications has commenced. If the Guidebook (unintelligible) change or not. If the Guidebook cannot be changed then we are stuck with Option 1.

Chuck Gomes: I didn't follow that totally; my apologies. Are you saying that we should eliminate Option 1 or consider Option 1?

Lanre Ajayi: I'm saying that we would not have any other options but to stick to Option 1 if the Guidebook cannot be changed at this moment. All the other options are

(unintelligible) that you can change the Guidebook. Is that correct? I need to be sure about that.

Chuck Gomes: Well I think the - I think there can still be changes to the Guidebook. And I should let staff speak to that. But my understanding is there still can be changes to the Guidebook although I think they would probably not be looking at any major changes.

Now we could argue I guess whether this is a major change or not. I personally would think it's probably not in the category of major. But this is a - I do believe that there can still be some tweaks to the Guidebook during the application period.

Brian, do you want to speak to that?

Brian Peck: Well - thanks Chuck. I think as we mentioned in the last call, I mean, you said there is - there's possibilities that the Guidebook could be changed. But it's, you know, obviously no guarantee and it would have to be taken into consideration given the scope and level of invitation that would be necessary to do that.

The other is that the options I think we're looking here is again in response to the Board request to the GNSO to provide policy advice on how to proceed with this particular show and how to protect these names if indeed, you know, it deems - if the GNSO Council does it - or GNSO does decide indeed to, you know, to provide some level of protection.

So viewing these options are not necessarily, you know, entailing or require a change to the Guidebook. We view these more within the scope of responding to the Board respect for policy advice from the GNSO.

Chuck Gomes: Thank you. Does that help, Lanre?

Lanre Ajayi: Yes, yes and so in that case we announce (unintelligible) the options listed.

Chuck Gomes: Yes okay. Alan.

Alan Greenberg: Yeah, I have a quick statement but a question also. In terms of At Large there is no formal consensus. The general feeling among those who have been vocal is that, you know, I guess it can be summarized as why should we give these people special privileges. I think still Steve DelBianco's answer is relatively relevant in answer to that among other things plus the way they are treated internationally.

My question is Option Number 1 when that says no changes to the Guidebook I presume that means but the restriction that the terms - that these terms can't be used at the top level that the Board put in the Guidebook is still there.

((Crosstalk))

Chuck Gomes: I think you're correct...

Alan Greenberg: ...for Round 1, okay. So it doesn't mean they are not protected at the top level it just means we are not recommending any more protection. But I'm not quite sure how that's rejecting the GAC proposal. I should have asked this question on the list but I didn't really think of it until I read the words here and listened to the discussion.

Chuck Gomes: So your question is what?

Alan Greenberg: Well the question is how - what in the GAC proposal are we rejecting if we're keeping the restriction for using these names that was put in by the Board and I believe is in the Guidebook as it stands now.

Chuck Gomes: Well the - didn't the - and I don't have the GAC letter right in front of me but...

Alan Greenberg: Nor do I...

Chuck Gomes: ...didn't the GAC letter go further than what the Board did?

Alan Greenberg: At the top level? I don't think so.

Chuck Gomes: But they did go - they talked about second level as well right?

Alan Greenberg: Well in the letter they did talk about other translations.

Chuck Gomes: Right.

Alan Greenberg: But the Guidebook - the Board's words in the Guidebook is relatively vague. So I guess I'd like to make sure I understand what Option 1 is. My personal belief is Option 1 is not what we should be doing but there is certainly not a consensus within ALAC and At Large and it may in fact be the opposite.

Chuck Gomes: Okay thanks.

Alan Greenberg: But I would like a clarification. I wish Jeff was on the call.

Chuck Gomes: Yeah, well Jeff will have to clarify what he wrote here. But I'm pretty sure that, you know, maybe he didn't choose the best words to say recommend no change to the Guidebook and reject the GAC proposal. But the idea was - is - I don't know if he also meant rejecting the Board's motion which probably we...

Alan Greenberg: Which does require a change...

((Crosstalk))

Chuck Gomes: ...I'm not sure we'd be successful.

Alan Greenberg: Oh I don't think we would but...

Chuck Gomes: Yeah, I agree.

Alan Greenberg: ...regardless I think that requires a change to the Guidebook so that's why I'm a bit confused.

Chuck Gomes: Yeah right, right. So...

Brian Peck: Chuck - yeah...

Chuck Gomes: ...I wouldn't get too hung up on Jeff's language - recommend no change to the Guidebook and reject the GAC proposal. I think all of us probably understand the gist of what Option 1 was so - so. But do you want Brian to come back with a response on that, Alan?

Alan Greenberg: I think we need to be sure what we're talking about when we say what option we're preferring.

Chuck Gomes: Okay.

Alan Greenberg: You know, I could ask Konstantinos when you said NCUC is selecting Option 1 does that mean that in your mind Red Cross will be protected or will not be protected at the top level in Round 1?

Konstantinos Komaitis: This is Konstantinos. I don't have the Guidebook in front of me but my understanding is that there is a small section mentioning the Red Cross and the Olympic. And I think that my understanding is that it stays the way...

Alan Greenberg: Okay.

Konstantinos Komaitis: ...it is. The Guidebook does not change. I mean, that was my understanding but this is something that I need to go back and ask the members.

Alan Greenberg: Yeah, okay. So your understanding is Option 1 is that - we are not widening the protection given by the Board but we're not trying to remove it either.

Konstantinos Komaitis: My understanding is that in Option Number 1 it stays the - the Guidebook stays the same...

((Crosstalk))

Konstantinos Komaitis: ...the same way it is right now.

Brian Peck: And I - this is Brian Peck. If you look at the question how Jeff posed it as you all point out correctly is that in the current Guidebook the two names are listed in a section called strings ineligible for registration for the first round. And I think the GAC - again reading Jeff's language the GAC proposal would request or proposes to protect the Olympic and Red Cross terms in the Section 2.2.1.2, you know, to be similar to names such as test and example.

Alan Greenberg: Okay.

Brian Peck: So that would be the change I think that the - according to Jeff is what the GAC is proposing moving it away from, again, these string ineligible for registration to actually putting them on the same level as names such as test and example...

Alan Greenberg: Which includes translations if I remember correctly.

Brian Peck: That's correct.

Alan Greenberg: Yeah.

Brian Peck: Extending those terms to multiple translations.

((Crosstalk))

Brian Peck: And also making them - also making them subject to string similarity review.

Alan Greenberg: Yeah, my personal opinion is that the intent of the Board was not just to protect those particular letters but the meaning of it in line with international agreements. And I think that would include translations but...

Chuck Gomes: Now I'm going to get to Greg because Greg has hand his hand up for a while...

Alan Greenberg: Yeah.

Chuck Gomes: ...but I just want to...

Alan Greenberg: Okay thank you.

Chuck Gomes: ...comment it wasn't my understanding that the GAC was actually requesting string similarity review; I thought that was something that came up in our discussions. But we can deal with that later.

((Crosstalk))

Chuck Gomes: Greg, I'm going to let you jump in now please.

Brian Peck: Yeah.

Greg Shatan: All right. I just wanted to bring up that I did dig up the letter from the GAC to the GNSO and the underlying proposal. And more I think is a point of information just briefly wanted to read what the proposal - the GAC actual

proposal was which was that ICANN should amend the new gTLD registry agreement to add a new schedule, a second level reserve names.

The new schedule should reserve those terms most directly associated with the International Olympic Committee and the International Red Cross and Red Crescent movement; terms that are protected in the international legal instruments and to a large extent in legislation in countries throughout the world.

The reserve names are provided in the attached Schedule A. This proposal is intended to complement the permanent protection of Olympic and Red Cross words to be implemented at the top level.

Chuck Gomes: Thanks, Greg. Steve.

Steve DelBianco: Thanks, Chuck. When we had an explanation earlier of what's in the current Guidebook my question was do we know if, when the GAC prepared their letter - the one we are dealing with here - were they in full understanding of what was already in the Guidebook with respect to Red Cross and do we know implicitly they said that is insufficient? Thanks.

Chuck Gomes: Would you like Brian to take that back or have someone take that back to the GAC?

Steve DelBianco: If no one on the call knows I'd love to understand what - whether they explicitly felt it was in adequate or not. Thank you.

Greg Shatan: This is Greg again...

((Crosstalk))

Chuck Gomes: ...know the answer to that?

Greg Shatan: This is Greg. If I could just read what it says in the GAC proposal to the extent that it speaks to that. The last bullet point in their proposal says, "The proposal is intended to complement the June 20, 2011 Board resolution which created a top level moratorium. Future work by the GAC and GNSO Council is necessary to ensure permanent protection at the top level."

"Permanent protection for the Olympic and Red Cross terms should mirror reservation of the words test and example under Guidebook Section 2.2.1.2 extending to multiple languages and receiving consideration during the string similarity review."

Steve DelBianco: Thank you for that. And yet that reflects that the GAC was fully aware of the June Board proposal - Board resolution. But I was wondering whether they had explicitly looked at the Guidebook changes that came out later than that and whether they felt the Guidebook itself was inadequate that's all.

Greg Shatan: That's unclear. And the date of the letter from the GAC is 14 September 2011 so...

J. Scott Evans: But we're talking about two different levels. They're talking about reserving names on the second level am I not correct in this proposal because they've already blocked it on the top level.

Chuck Gomes: For the first round.

J. Scott Evans: Yeah, and so they're saying should we add these additional protections? The very fact that they use additional - the word additional means that they believe protection at the top level alone is not enough.

Chuck Gomes: That was J. Scott by the way for the transcript and so forth. Remember to identify yourself for the record.

J. Scott Evans: Sorry.

Chuck Gomes: Thanks. Greg, did you still have your hand up?

Greg Shatan: No my hand will come down.

Chuck Gomes: Okay thanks. And, Steve, same with you?

Steve DelBianco: Sorry, hand down.

Chuck Gomes: Okay, Alan, you're up.

Alan Greenberg: Yeah, thank you. No in answer to that last question I don't think this is talking about the second level. The question of string similarity and contains, you know, and contains in was discussed at a little bit of length at the second level. And it was clear that the GAC was not requesting that.

So if they're talking about string similarity reviews that only applies at the top level so I think that section that was just read out is talking about top level not second level.

I mean, they are asking for some second level protection but I don't think that particular section that was read out is referring to it. I think it's - so it's clear that the GAC proposal was talking about string similarity; it wasn't something that was just brought up in our meetings as you implied, Chuck.

Chuck Gomes: Oh thanks - thanks, Alan, for clarifying. Steve, do you want a question to be asked of the GAC?

Steve DelBianco: Well I don't want to risk sending them off in the wrong direction with a question so my intention was to see if anyone on the call...

Chuck Gomes: Oh okay.

Steve DelBianco: ...could match up the dates of the letter to the date of the Guidebook. But as you know the letter itself starts off talking about second level as J. Scott indicated. But it concludes on a final bullet on making a point about the top level...

Alan Greenberg: Right.

Steve DelBianco: ...so I know that the letter addresses both. And I wanted to know whether that letter was fully cognizant of the actual Guidebook change that was done pursuant to the Board resolution. Let's not ask the GAC; I don't want to do that right now.

((Crosstalk))

Alan Greenberg: It's Alan speaking. Did that change go in at just the last version that went out - that came out in December or did it go in earlier than that?

Steve DelBianco: I'll look at a redline and see if I can figure it out.

Alan Greenberg: Yeah.

Chuck Gomes: Okay we've spent quite a bit of time...

((Crosstalk))

Alan Greenberg: Yeah, my impression...

Chuck Gomes: ...all of us have a better understanding as we continue to get feedback from our constituencies. Are there any final questions or thoughts on that?

Okay. Let's go to Option 2 which is to treat the terms set forth in Section 2.2.1.2.3 as reserve names, etcetera. And I won't read the whole thing there. Is - who would like to be first in talking about Option 2?

Nobody is jumping up. Let me...

Alan Greenberg: Just a point of order since we don't have control of the screen can someone make it a little bit larger since we're not only talking about one option at a time?

Brian Peck: Sure, hold on.

Alan Greenberg: Or give us control; one or the other.

Chuck Gomes: Thank you.

Brian Peck: I could do both. How's that?

Alan Greenberg: That's perfect now I can fix my ailing eyes. Thank you.

Brian Peck: Okay.

Chuck Gomes: Okay, thanks for bringing that up, Alan. So let me kick it off. Because - and these were initially my own thoughts but others in the Registry Stakeholder Group were comfortable of bringing these up.

Because the reserve names working group as part of the new gTLD PDP didn't recommend these names as reserve names it may be best that if they're to be treated as reserve names using the definition of reserve names in the Guidebook that it would probably be better to have some sort of process to come to that conclusion.

So the - they would be set aside in the first round as the Board has directed. But in subsequent rounds either a PDP or maybe some other process - there were some in the registries that thought maybe it wouldn't have to be a full blown PDP.

I'm not advocating one way or the other. But that it would make sense to - and I - also I think one of the advantages of reserve names is that they do go through string similarity review. And as I said on the previous call I think that's a healthy thing because that's designed to avoid user confusion. Whether they're reserve names or not I think that would be helpful.

So that's just my start of thoughts on Number 2. Let's go to Greg.

Greg Shatan: This is Greg. I guess Option 2 just seems a little odd. If either the IOC or the Red Cross were to apply for dotRed Cross or dotOlympics and telling them that they can't have that new gTLD I don't know whether either organization is planning to apply and nobody will until the day of the big reveal.

But it seems to me that if either organization did want that top level domain telling that they need to wait for the as yet unscheduled second round to do so doesn't seem like a good result.

Chuck Gomes: Good point, thank you. Anyone else on Option 2? Alan.

Alan Greenberg: Yeah, thank you. I agree with that last comment. But what I was commenting on is Point C and if there is no appeal. I asked this question on the list and no one picked up on it.

My understanding is according to the bylaws the Board review and the ombudsman are always available to question how anyone is treated by an ICANN process. So under what conditions are we saying indeed there is no review?

Chuck Gomes: That's an interesting question because considering there will undoubtedly be hundreds of applications if the independent review or ombudsman or any of those processes were brought in and every time somebody didn't disagree with a decision it could really bog down the process.

But I confess I don't know that I've ever heard that specific question asked the way you did...

Alan Greenberg: Yeah.

Chuck Gomes: ...so it's a fascinating question.

Alan Greenberg: I mean, I don't think - I don't think the Guidebook in the interest of efficiency can overrule bylaws.

Chuck Gomes: Well the - but there - and I don't have the language in front of me right now but there's some pretty specific language in Module 6 of the Guidebook in terms of the applicants agreeing to accept the decisions of the - of the process.

Alan Greenberg: Oh okay. All right that may be the catch which gives it to us.

Chuck Gomes: Okay?

Alan Greenberg: Yeah, thank you.

Chuck Gomes: All right...

Brian Peck: Chuck just to let you know just real quickly Jeff Neuman just sent an email that said he'll be on in a couple minutes.

Chuck Gomes: Good. I'll be glad to turn it over to Jeff. Greg, is your hand still up?

Greg Shatan: No just stuck.

Chuck Gomes: Okay I understand. I've done it plenty of times. Well let's go onto Option 3 if there are no more comments on 2. And this is the idea - and I think it's a term

that Jeff came up with himself; the modified reserve names thing which is a new term. And I won't read the explanation there.

Does somebody want to talk about Option 3? Anybody want to kick it off?

Jeff Neuman: Hello everyone.

Alan Greenberg: Hello.

Chuck Gomes: Is this Jeff?

Jeff Neuman: I have to apologize I was - this is being recorded it's a great - I was at a stop sign going to - coming back from lunch. And while I was at the stop sign a car decided to make a left hand turn in front of me so like it was coming perpendicular and he decided to hit my car as I'm just stopped. I'm just watching him turn into my car. He didn't make the left hand turn wide enough.

So sorry about that. I had to stay and collect some information and I'm here.

Chuck Gomes: Jeff, let me - this is Chuck. Let me tell you where we're at and I was kind of volunteered to just start the discussion. And so what we've done - and I don't think we have time to repeat it but you can listen to it on the recording and so forth.

We had I thought some very healthy discussion on Option 1. And a little briefer discussion on Option 2. And we just started Option 3 and just generally discussing. I think as you've seen on the list a lot of us are still getting more feedback from our stakeholder groups and constituencies. But there were some good thoughts shared so far that'll hopefully help us zero in on options.

And I would certainly welcome turning it to you.

Jeff Neuman: Let me - why don't I just have you do the next two minutes while I'm signing in.

Chuck Gomes: Okay.

Jeff Neuman: Someone needs to accept me on Adobe. But let me - and then I'll join in like right afterwards.

Chuck Gomes: Okay you just let me know when you're ready and that will be fine. So Option 3 I have a few comments that have been shared with the registries and have some support. But I'm welcome to let somebody else start it off.

Okay Konstantinos.

Konstantinos Komaitis: Thank you, Chuck. Very briefly if my understanding is correct under A, for example, and I'm speaking right now in my personal capacity. I think we - as we've discussed it and I've said that - I've repeated myself quite a lot in this group.

Personally I think that making these strings available only to the International Olympic Committee in particular will contradict many trademarks, for example that exist in Greece as well as many geographic indications.

So in that sense I really think that it would be highly unfair to assign the term Olympic and all its variations to the International Olympic Committee when there are also legitimate rights within Greece and outside; I am thinking of the Olympus trademark here - the cameras - that might be - that might want to apply for gTLDs. Thanks.

Chuck Gomes: Thank you, Konstantinos. Anybody else before I jump in?

Jeff Neuman: And, Chuck, I could take over after you jump in.

Chuck Gomes: Okay good. Well then I can jump in as just a registry stakeholder representative so that will be good.

Jeff Neuman: Great.

Chuck Gomes: Okay well I'm not seeing anyone else or hearing anyone else. So, you know, several of us in the registries, in fact nobody objected to this approach. We were okay with this one except that we think it would be good - and I think this goes along the lines of what Konstantinos was talking about and what we've talked about on previous calls.

We're supportive of an exception process whereby an applicant having trademark rights, for example Olympic Airlines or something like that, could be granted a string if there was a proof of non objection from the applicable organization, the IOC or Red Cross or whatever and/or the GAC.

So that's so far what we've come to in the registries that this one might be okay if there was some sort of - and we would be supportive I think of a - an exception process for other rights holders. It's all yours, Jeff.

Jeff Neuman: Thanks. And maybe, Chuck, did you have any ideas or the registries have any idea on how that exception process would work? We say an exception process - it would be after the fact or after string similarity is found?

Chuck Gomes: Well we did - we didn't get that far; we didn't get into the details. Since we're talking about the top level right now if there was an exception process like this used there would need to be a - for example if it was a proof of non objection from the IOC for example I would think that would need to be right up front in the application. But frankly we didn't try to refine the details on that.

This wasn't necessarily our - the strongest option I don't think that we had. But we're okay with this one with that exception.

Jeff Neuman: Okay. Anyone else want to comment on this option?

James Bikoff: Jeff, it's Jim Bikoff.

Jeff Neuman: Yeah, thanks Jim, sure.

James Bikoff: I was just going to say I think that from the standpoint of the Committee - the International Olympic Committee - 3 or 4 - either one would be acceptable. I think the letter of non objection would be clearly something that would be okay with the Committee because certainly if there is somebody that has legitimate rights they would agree to such a letter.

Jeff Neuman: Okay that's helpful. Konstantinos, what about that? So you've talked about the rights of others. I mean, would that be something that's acceptable within your community?

Konstantinos Komaitis: I can't speak about - on behalf of my community at this stage on Option Number 3. But I would like to bring to the attention of this group that there are not only trademark rights associated with the term Olympic; there are also geographical indications.

And I find it quite concerning that a government like this would have to go to the International Olympic Committee to ask permission to use a geographical indication that is located within its territory. But I will take it back to my group and I will certainly come back to you on that, Jeff.

Jeff Neuman: When you say government you're talking about Greece itself applying for a trademark?

Konstantinos Komaitis: Well not a trademark but...

((Crosstalk))

Jeff Neuman: Yeah, sorry.

Konstantinos Komaitis: Yes, for a geographical indication for example.

Jeff Neuman: So if Greece itself were the applicant for...

Konstantinos Komaitis: Well like you have, you know, the application for dotBerlin you could have dotOlympiad which is a place in Greece. So the idea that this will have to go through the International Olympic Committee in this stage personally it's - I find it a little bit concerning or problematic better yet.

James Bikoff: Could I reply to Konstantin, Jeff?

Jeff Neuman: Yes and then I'll go to Alan. Yes.

James Bikoff: Jim Bikoff. Even under the laws of many countries, including Greece, the words are protected. And they are within, you know, the statute that exists in Greece since 1998. So I'm not sure, you know, if he's familiar with the statute, Konstantin, if you are maybe you could tell us because it seems to be very clear that it is protected even in your own country.

Konstantinos Komaitis: Yes well - but what is protected is not just the term it's the term associated with the five circles. And here we're just talking about a name...

James Bikoff: No, I'm sorry, I don't read it that way. It says the Olympic symbols, the terms, the motto, the badges and trademarks are protected.

Konstantinos Komaitis: Yes. So where is the word that is protected specifically in that sentence?

James Bikoff: The terms Olympiacos, Olympiad, the motto, (unintelligible) both in Greek and in any language as well as the symbols and trademarks of the Olympic Committee are protected according to the provisions aboard 2.2.3.9/1994.

And in fact it goes on to say in Provision Number 7 that the relevant provision - prohibition also extends to the use of these terms as domain names on the Internet.

Jeff Neuman: And just to - and then I do want to go to Alan. Konstantinos, isn't what you're saying - wouldn't that fit within Option - I know we haven't gotten there - but there is an option down - I think it's 5(d) which could be a non objection from the Olympic Committee or the relevant government.

But let me go to Alan and then Greg and then if you want to come back in the queue, Konstantinos, let me know.

Alan Greenberg: Yeah, I - my comment was a question to Konstantinos so it's appropriate if he comes back. One of the - Konstantinos, one of the things you said is you're objecting to it because of things like Olympus camera. Now I don't see the term Olympus mentioned in the GAC document so I'm - and it's certainly not confusingly similar to Olympic I don't believe; maybe someone is more confused - more easily confused than I am.

So I'm not quite sure if your argument is bringing in things that are not really indicated in this option or...

((Crosstalk))

Alan Greenberg: ...if you could explain.

Konstantinos Komaitis: Yes, this is Konstantinos. I think that this specific issue about the Olympus trademark - the camera - was discussed in the previous call, Alan. And that's why I brought it forward. And my understanding, and I might be

wrong here, is that we are seeking to protect (unintelligible) their variations and that can be classed as a variation. But as I said I might be...

((Crosstalk))

Konstantinos Komaitis: ...mistaken about the variations issue.

Alan Greenberg: Yeah, I didn't think Option 3 was talking about variations though but maybe.

Jeff Neuman: Well it's not - so let me just jump in and then I'll go to Greg. It's not that it covers variations it's just that there will be a string similarity review which will use the same criteria as the string similarity review for the other strings which include reserve names, which would include existing TLDs and other applied for TLDs.

So it's not - it's not saying that variations automatically have some sort of protection it's just that if there is string similarity found using that criteria then there would be no appeal, right, that it would be rejected...

Alan Greenberg: Okay.

Jeff Neuman: ...it would be rejected. So let me go to Greg.

Greg Shatan: Yes, this is Greg. I just wanted to - this is partly a point of information or clarification. I don't pretend to be an expert on Greek geography. But the - in doing a little quick research the only place called Olympiad in Greece I found is a village of about 700 residents in Chalkidiki Province I think.

So I just find that the idea that, you know, the Greek government would spend half a million dollars to put up a first level TLD for a town of 700 people not particularly compelling as a reason to kind of, you know, assert the rights of the Greek government.

J. Scott Evans: Yeah, this is J. Scott. I'd like to get in the queue and I don't have access to Adobe.

Jeff Neuman: Sure, J. Scott. Anybody else after J. Scott? Okay J. Scott.

J. Scott Evans: Again this isn't the position of the IPC because we haven't had a chance to go through all of these although we've had some discussion (unintelligible) that they would find pretty worrisome.

And while I think Jim makes a very, very good point in the fact that the - that the Greek government itself has said that these terms are protected and they're protected beyond trademark law as many governments have recognized.

I think the biggest concern that - and I think this is Konstantinos's concern as well is there needs to be some sort of safety valve. And I don't think it's an adequate safety valve for a rights holder to have to get permission from the Olympic Committee to use its trademark.

I think all they should have to do is demonstrate that they have legitimate rights to the term that are recognized, let's say a trademark registration from a government separate and apart from the Olympic - International Olympic Committee and that should be sufficient. They shouldn't have to ask permission if they can establish that they have prior rights that coexist.

Jeff Neuman: So J. Scott - and that's why after the last call I created this kind of Option 6 which is...

J. Scott Evans: I don't think it should be an appeal but I think it should just be demonstrate you have rights in the term. It coexists with it now in the real world; that should be enough.

Jeff Neuman: Right so the reason I had it as an appeal is because just more of a mechanics as opposed to maybe the word appeal...

J. Scott Evans: Right, right.

((Crosstalk))

Jeff Neuman: It wouldn't become an issue until after string similarity is found.

J. Scott Evans: Right, right. And I agree and I like that. That seems to me - while people - that even the people who chafe at this - and there are trademark owners - IP owners who chafe at this - I think that as long as there's a fail safe that you can point to to say you're not completely locked out if you have legitimate rights; you're not completely locked out of the system I think that that's a workable solution.

It's not a perfect solution but this is ICANN. And we threw out perfect about 12 years ago.

Jeff Neuman: Let the record reflect that. Chuck.

Chuck Gomes: Yeah, just a question for J. Scott. So does that - do I take that to mean that the IPC may not like the Board resolution for the first round in that it appears that other rights holders would be locked out.

J. Scott Evans: I'm saying that there has been some discussion - it has been very minimal but I represent everyone - that why should there be special protection for anyone. But then my answer is the same answer I gave Konstantinos at the beginning is because the reality is governments around the world give these two institutions broader protection than any other trademark owner in the world.

And that's the reason it's different is because that's just the way it is whether we like it or not.

Jeff Neuman: Oh so you're - you don't like it because it gives special privilege to some rights holders over others but...

((Crosstalk))

J. Scott Evans: I think there's that argument and also that there's the fear they could lock people out. And I think that's the reason there has to be some sort of safety valve to ensure that that doesn't occur. And I'm not so sure making the organization that receives the protection as the gatekeeper is the best idea.

((Crosstalk))

J. Scott Evans: Or that certainly can be one option but it shouldn't be the only option. We certainly saw that in the Cat example; Caterpillar was more than willing to give a letter of consent.

Chuck Gomes: Yeah, and - no that's helpful J. Scott. Thanks. Because I think that helps us kind of zero in in terms of where we're going with possible recommendations. Appreciate it.

Jeff Neuman: And so - okay let me go to Thomas and then I'll put myself in the queue. Thomas.

Thomas Rickert: Thanks, Jeff. I think what frightens me is that we don't only have the identical names and also translations thereof which gives us a very huge number of terms that would be run against a similarity check. And that would be the similarity check as we see it defined in the Guidebook.

So I think what would be needed is a modified similarity check allowing for a panel to look at the intended use of the TLD. You know, not only looking at

the string and its potential similarity to existing strings or other strings that are applied for but if there was a trademark, you know, a legitimate right in the jurisdiction - in its jurisdiction somewhere around the world and if the goods and services that this trademark has been granted for does not conflict in any way with what the Olympic Committee and the Red Cross are doing.

And I think if we got these extra safeguards in there then there would at least be a panel looking at that and we wouldn't have anybody excluded from day on just by applying.

Jeff Neuman: Yeah, I think - and, Thomas, I think that's a good point. I just think just because of the mechanics of the process the way it's set up there's going to be a string similarity review that's done as the very first thing - or one of the very first things.

And once the string similarity review is done it would only be after something is found to be similar would they look at the other factors. And I'm almost seeing an option - and I hate to do this - but I'm almost seeing an Option 7 which is really just Option - which is just Option 3 but if string similarity is found then you basically look to see whether the applicant has established some sort of legitimate rights.

And that could be - that could take into consideration a letter of non objection or just a general demonstration that you have rights however that would be done. It's almost an Option 7 because I notice Option 6 is really refers back to Option 5 as opposed to Option 3. That must sound confusing for someone who's not looking at the document in front of them.

But, you know, at the risk of jumping ahead to try to come up with some sort of solution as opposed to going through each option separately fundamentally does anyone have an objection if we basically kind of had this Option 7 which would look exactly like Option 3 except - well it's not even Option 3, right, now that I'm looking at it.

It's basically the option where they would do a string similarity review and if it's found to be similar the applicant - the applicant has to demonstrate some sort of legitimate rights. And it's not quite like any option...

Thomas Rickert: It could include a letter of consent from the - one of the organizations.

Jeff Neuman: Right so it could...

((Crosstalk))

Jeff Neuman: Right so it could be - it could either be - it could be the Olympic Committee, the Red Cross itself, applying or any other entity that believes they have legitimate rights. And of course there'd be some sort of determination made on that whether they have legitimate rights or not.

Chuck.

Chuck Gomes: Yeah, Jeff, you know, I think you're onto something whether we've nailed it yet I don't know. But in all the conversation we've had so far there - it seems like there's some pretty good common agreement about the direction we're going.

So I support the idea of trying to - it's fine if it's an Option 7 and combine some of the things from above. That's kind of the way this was anyway; there was quite a bit of overlapping. So I'm supportive of the direction we're going and I think it's a positive direction.

Jeff Neuman: Okay, Alan.

Alan Greenberg: Yeah, I tend to agree. It has the added benefits that it gets rid of the - of Option - of the A part of Option 3 implicitly as long as the organizations have a right to it then they can demonstrate that and bypass the implications of the

string similarity. So it simplifies the process as well. So I like the way we're going.

Jeff Neuman: Okay. And so - so basically the notes I have it would be an option that would say - I guess it's kind of the notion of the modified reserve names where you're going to do a string similarity review. In the event that there's string similarity then the applicant is given some sort of - and I don't want to call it appeal for the reasons that J. Scott mentioned...

J. Scott Evans: An opportunity.

((Crosstalk))

Jeff Neuman: The applicant is given an opportunity - it's given an opportunity to demonstrate it has legitimate rights to the string.

Alan Greenberg: And that there will not be confusion. That's Alan speaking.

J. Scott Evans: I don't think you could, you know, I guess you could do that, Alan. But I just think it's legitimate rights because if you have legitimate rights with one of these two marks you're coexisting in the world with them. These marks were omnipresent.

Jeff Neuman: And it's hard to - it's hard to...

((Crosstalk))

J. Scott Evans: ...very subjective thing. You should be able to say I have rights. Now that doesn't mean that the organization couldn't then bring a legal rights objection if they didn't agree with that; they thought there was going to be confusion. They still have - the Red Cross and the IOC still have an out.

Alan Greenberg: Yeah, I - you know, you're right, they do. I was trying to cover the case of Olympic Airways where...

J. Scott Evans: I get it but that should be left to the legal objections because they should have to play in the same playing field with everybody. We're giving them this first step that's extra...

Alan Greenberg: Okay.

J. Scott Evans: ...because they're special. But we don't want to go too far.

Alan Greenberg: Okay you're right. They still have the objection process to handle the outliers.

J. Scott Evans: You know...

Jeff Neuman: And I see a comment from (Stefan) - or is it Stephanie, I apologize.

Stéphane Hankins: Yes, yes. Yes, hi. If I may - I'm sorry I'm not quite sure what the procedure is to put the hand up so I - but may I take the floor or...

Jeff Neuman: Yes absolutely. And there should be an icon in the box that's got all the people which - I'm sorry in the top of the screen which it looks like it's a person raising their hand. That's actually how you - if you find that on your screen on Adobe...

Alan Greenberg: Near the top - near the top left.

Stéphane Hankins: Okay. Thank you very much. First of all I do want to express the gratitude of the International Committee of the Red Cross and I will speak on the behalf of my colleagues on the International Federation of Red Cross (unintelligible) for the opportunity to attend this working group for the first time.

We've been represented by our colleagues on the American Red Cross, Debra Hughes, until now very ably. But we're very happy to be able to chip in today.

I - what is being discussed (unintelligible) interesting to us. We have - had the opportunity of course to read your cross exchanges. Maybe I - I would now just like to speak to Option 3 which I think from the perspective of the International Red Cross Red Crescent movement probably would be the most suitable from our perspective.

I don't think there is a need here to remind you of the international protective regime which applies for the Red Cross Red Crescent Red Crystal emblems. I think has been presented and discussed in the past in this forum so I won't go into that.

Simply of course - I do want to remind of course the specificity of the emblems of the Red Cross Red Crescent, their actual origins, the fact that of course they lie at the heart of international humanitarian and all that purpose. If the service are protected emblem of the medical services of armed forces and those who provide medical care on the battlefield.

So the protection and the international protective regime which is enshrined in international law and international treaties which have been ratified by all the states of the Geneva Conventions, it underscores this.

The consequence of this of course is that the emblems don't actually belong to the Red Cross Red Crescent movement if one wanted to speak in terms of belonging they belong to the states. And I - because they are the protective emblem of medical services of the armed - of states armed forces.

And of course that explains also and gives clarity to why the GAC has actually contributed on this front on taken up the question. I just wanted to remind that as you know of course the protection of these emblems under

international law is very strict. Those entitled to use it as a protective device or an indicative device are very limited.

And the notion of legitimate rights which we have discussed is something to which, you know, cannot be discussed abstractly it has to be looked at in relation to the international legal regimes that apply to this protection with a very limited number of organizations and persons who may carry the Red Cross Red Crescent emblem.

Of course it is the case that the components of these national Red Cross Red Crescent movements, whether the international component or national societies of the Red Cross Red Crescent are given the entitlement to make use of the emblems as an indicative device but this is very much a unique case, it's (unintelligible) privilege that is given to use the emblem for the purpose of identification.

And it doesn't - the entitlement or the authority to give the right to display or to use the Red Cross Red Crescent name is not something, you know, that can go beyond the requirements of international law. And I think that would exclude Option 4.

As regards - our point of view, as I said, I think Option 3 would presumably be, you know, the most suitable. It would allow indeed components of the Red Cross Red Crescent movement to apply. Although, you know, no decision has yet been taken within the movement on applying for those names.

But reserving that entitlement would reflect also the entitlement that we have to use the name of the Red Cross Red Crescent Red Crystal for indicative - for indicative purposes.

Now to the similarity check question. I just - to that it think what we would have liked to remind is that it's not just the emblems and the names of the

Red Cross Red Crescent Red Crystal which are protected under international law. It is also imitations of those names which are prohibited and that are crimes under international law and which are punishable also under the legislation of many governments as apparent in an annex which was submitted by the GAC to their own - to their submission.

So I think although, you know, as far as I'm concerned I don't have the details of the similarity check procedures as they will be implemented but certainly, you know, the - that similarity check it would potentially now indeed for the - for stopping the registration of names which are very similar.

For example if we think of the word Red Cross it could be spelled with three Ss for example then, you know, that should - that should not pass the test of the similarity review.

I can - I would have commented but I don't want to speak too long. But I could have commented on 5(a) and 5(b) because indeed as I understand the only difference is that 5(a) and 5(b) would permit an applicant or as the case may be a non successful applicant who would want to apply for the Red Cross Red Crescent Red Crystal name.

And to - he could - this person could apply for a waiver in the form of a letter of non objection. And I think here on 5(a) well - as I think I've indicated the International Red Cross Red Crescent movement doesn't really, you know, own the emblems and the notions that it would be able to offer a waiver I think is difficult to be (unintelligible) with the strict legal regime.

Whether the 5(b) which would be the option - if our understanding is correct to offer to the states the ability or the authority to offer the waiver in the form here again of a letter of non objection.

I think also here this would - this raises a number of questions. One of the questions is it says from a relevant government which would be the relevant

government which would have the authority to do so because of course, you know, these are internationally protected emblems.

And under international law - and all the states - have exceeded to these and have a vested interest in their protection. And maybe I'll just leave it at that. But I wanted to chip in maybe some words from the Red Cross Red Crescent perspective if we may. Thank you very much.

Jeff Neuman: Thank you, Stéphane and thank you for those comments. And I'm glad you have joined the call. I think your perspective as well as the perspective from Jim and the Olympic Committee are very important to the work of our group.

I didn't hear you talk about kind of this new option that we're creating which is sort of like Option 3 except we're basically saying that - we're giving - if they fail the string similarity review we're giving the applicant an opportunity to demonstrate they have legitimate rights to the string. And that could be in the form of this letter of non objection.

And, you know, you talked about the difficulties of getting a letter of non objection with respect to Red Cross and those marks.

((Crosstalk))

Jeff Neuman: What about an option like that?

Stéphane Hankins: I think as I - I think I mentioned the notion of legitimate rights is something that, you know, is difficult to define to begin with and which in some degree of - for my understanding, you know, is difficult to (unintelligible) with the strict international legal regimes that I have referred to which protects the use of the Red Cross Red Crescent Red Crystal name.

The number - the entitlement to display or to use the names is extremely restricted. And the, you know, the notion that someone could outside of those

specifically designated under international law to display or to use the Red Cross Red Crescent Red Crystal names would come up and, you know, be able to advocate for a legitimate right is something that is difficult to imagine.

Jeff Neuman: Yeah, and...

Stéphane Hankins:: You know, the range of users is extremely limited.

Jeff Neuman: If there was a dispute - let's just take it out of the ICANN realm. If there was a dispute with someone that was using the Red Cross name that would - I think what you're saying is that that would be handled usually - the party that would enforce those rights would be the national chapter and they would go to court to enforce their rights is that correct?

So it would be like if I'm in the United States and I use a Red Cross mark in a manner that's not authorized that would be enforced by the American Red Cross in the US courts correct?

Stéphane Hankins: In principle - in principle it is the responsibility and these are firm obligations undertaken by the states under the Geneva Convention. It is the responsibility of the governments to enforce this - the international legal protective regime.

There is in fact (unintelligible) within the mandate of the Red Cross and Red Crescent movement component, you know, they have mandates to support the states, if you will, to put it in that manner, in monitoring and prosecuting.

But the primary responsibility is with the states. And that again come back to the point that I was making that these emblems do not belong to the movement they are lent to the movement. They belong to the states because of their, you know, their primary function.

Jeff Neuman: Right. Okay let me go to Alan.

Alan Greenberg: Yeah, thank you. I guess perhaps a question for Stéphane but I'll state what I was going to say first and we'll decide where it goes at that point. I think (Stefan) was saying that for the Red Cross it is hard to imagine that there are legitimate uses which would not be disallowed.

And in that case that makes your Option 7 more palatable I think that yes it would have to go through this process but it's hard to imagine that there are any legitimate uses and that means not a lot of things would be caught by that filter.

I mean, for better or worse we've been asked to address not only the Red Cross but the Olympics. And there certainly are a lot of imaginable uses of the term Olympics and Olympiad outside of the Olympics, you know, Olympic Airlines is the classic one but there's, you know, all sorts of others.

((Crosstalk))

Alan Greenberg: So I would think that (Stefan)'s position of it's hard to imagine a reasonable exception just makes that option more palatable.

Stéphane Hankins: Yeah, if I may? So...

Jeff Neuman: Sure.

Alan Greenberg: Yeah, I'm finished. Thank you.

((Crosstalk))

Stéphane Hankins: Yes. I - first of all I would like to invite (Kristof), my colleague from the International Federal if he wants to chip in I think - I invite him to complement or.

I may have, you know, expressed myself improperly, I mean, as I said, you know, the notion of legitimate rights is governed and we're strictly regulated. So, you know, there are two users of the emblem, they're strictly defined under international law.

The protected use medical services of armed forces, civilian medical units in times of conflict which are duly authorized by their authority and then there is the components of the movement who may use it as an indicative device. I'm not giving you the detail. But it kind of comes down to - it comes down to that.

So I do continue to think that, you know, it - Option 3, which actually clarifies and does put, you know, the line which, you know, would be drawn and if the string similarity review would have the role to enforce it - the line would be drawn in congruence with, you know, what international law in many domestic legislation foresee.

Jeff Neuman: Okay, Christophe

Christophe Lanord: Okay thanks. So I'm also from the Red Cross and would like to come back to two very important issues I believe. The first one is the one that Konstantinos has mentioned earlier which is that in terms of protection of a name Red Cross Red Crescent Red Crystal it's not a trademark issue.

And I think that (Stefan) went back also to that issue to show that it's something which exists on the basis of universal treaties which have nothing to do at all with trademarks. So we are not in the problem of commercial rights.

The second aspect is that why do we need that protection right now? Let me explain you something. As soon as we have a disaster in the world you very quickly have some websites which are established on the name of let's say Japanese Red Cross as it was one year ago.

Suddenly after the earthquake you have some people who are establishing some fake websites saying let's give money to the Red Cross. And this is what we are really fighting.

So this leads to a question which is how to prevent that (unintelligible) fraudulent uses of gTLDs that include Red Cross Red Crescent. But also how can we avoid that someone create a gTLD which is for instance humanitarian and then that second level add redcross.humanitaian.

And this is something on which we don't have the answer but in any case it would be a breach of national law. Simply we would have to take care of it instead of having a possibility to prevent it. And that from me is a key point.

Jeff Neuman: Okay thank you, Christophe. Alan.

Alan Greenberg: Yeah, thank you. In relation to one of the points that (Kristof) just made of second level domain names like haitianearthquake-redcross.org we understand why you would like to see that such names aren't possible but that's not one of the requests that we're looking at right now.

The GAC has explicitly said they understand that will be a nice thing but it's virtually impossible or very, very difficult to implement and they haven't asked for that. So I just want to set expectations that what we're talking about right now is top level domains. We will be talking about second level domains later.

But it's not - we have not been requested to include in that names - second level domain names which include the protected strings. So I think we want to make sure that we're not - we don't have expectations which are completely out of line. Thank you.

Christophe Lanord: Yeah, understood. Yeah, completely understood, yeah, yeah.

Jeff Neuman: And I think one of the points too - I just wanted to come back to (Stefan)'s point. One of the points that I thought I heard was that even if you have in this Option 7 the concept of demonstrating legitimate rights it's not very easy to have a panel that could preside over that because the determination of what is and what is not legitimate rights are left up to the individual nation states within their own territories to decide, you know, what uses are proper and what uses are not.

And it's not really something where there's any kind of judicial type standard that it could be measured across. Is that one of the issues as well?

Stéphane Hankins: No, actually I - again I'm sorry if what I said was not clear. What I mean is in fact the legal standards on, you know, the entitlement to use, display the Red Cross, Red Crescent, Red Crystal emblems and names are finite. That is that, you know, the authorities that may display the emblems in certain circumstances and those non - those organizations that may display the emblem as an indicative device essentially - it's the components of the movement.

This is a finite list. And the domestic legislation of states which the GAC has since provided a very extensive list reflects and implements that legal regime that is that you're beyond those duly entitled under international law to display or to use the name. There is no entitlement, there is no (contest) possible as to legitimate rights you see.

Jeff Neuman: Okay. I think I understand. But - and it almost goes back to Alan's point is it's very - it's very - oh we have a (unintelligible). Is there an operator that can deal with that? There we go.

It goes back to Alan's point that it's a very finite list of what could be legitimate rights then is it really a harm to recommend this new Option 7 which includes everything in Option 3 except the ability for someone to demonstrate legitimate rights.

And if there's not much that can be done to demonstrate legitimate rights then it's pretty much no harm in giving them the ability to try.

Alan Greenberg: Given - it's Alan - given that there still will be an objection process allowed.

Jeff Neuman: Correct; there will still be the objection process afterwards.

Stéphane Hankins:: Well I don't know, Christophe do you want to - do you want to comment additionally to what I said or...

Christophe Lanord: No, no, no, no, not so far, no.

Jeff Neuman: Okay does anyone - so it seems like we're sort of heading down a path where we're - we at least have conceptual agreement but I want to make sure to go through the list and make sure everyone has had kind of their thoughts heard.

You know, I think Steve DeBianco from the Business Constituency had to drop off a little bit early and so it'd be interesting to get the BC's view on this. And what I think I will do is I'll write up this option and then have everyone take this particular option back to see, you know, to look at the language, to look at wording, to look at the content and see if this is something we can conceptually get behind.

And I apologize for my voice it seems to be getting worse and worse as we get through this call. At some point I might lose it completely. Chuck.

Chuck Gomes: Yeah, just a quick question, Jeff. On the Options 4-6 that we already had on the table I assume since we didn't discuss those today that you would welcome comments on those on the list as well is that correct?

Jeff Neuman: Yeah, I would certainly welcome those comments. But if it sounds like we can get to a consensus on this Option 7 that may not be - I mean, it's still good to

get comments on it because it's good to have the record built up that has comments on all these options, yes.

Chuck Gomes: Okay.

Jeff Neuman: But I'd still like - if we can get - it'd be fantastic if we can get to some sort of consensus or as close to consensus as possible on this Option 7 and that would be fantastic.

Okay I want to jump then to the second question - second overall question which is - okay so let's assume we went with this Option 7 - or whichever option we go with. The question is to give a little bit of background the Olympic Committee and the Red Cross submitted an initial list of translations as more of an illustrative - or sorry as illustrative list of names in not just the English language but in other languages.

And the ICANN staff incorporated that particular list into the Guidebook and that was approved by the Board. The question was should it include additional languages other than that list? And if yes which ones?

And so the three options we came up with were Option 1 is no just those languages that are in the Guidebook. Option 2 is accept the GAC proposal completely and say it's protected in multiple languages; all translations of the listed names in languages used on the Internet.

And Option 3 is some sort of subset of Option 2. So it's extending the protections to other languages but not every single language used on the Internet. And I guess I want to open up the floor. I have not looked at some of the newer emails that have come in since the call started.

But I do notice just looking back that the Business Constituency is with Option 2. And let's see if there are any others. Osvaldo has said Option 2 as well.

And any other thoughts on this question? Chuck, do you want to give the registry position?

Chuck Gomes: Sure, Jeff. We haven't talked much about it but based on the feedback I got so far expand - and I don't think the registries are opposed to expanding the number of languages that the protections exist in assuming it's feasible.

Jeff Neuman: Right I guess - and that's one of the thoughts that I had is, you know, it's one thing to state the premise that you could protect it in every single language that's used on the Internet; it's quite another to actually come up with that list.

And so it would be - maybe I'll go to Alan and then if I could actually ask if the representatives of the Red Cross and representatives of the Olympic Committee maybe want to address that question after Alan.

Alan Greenberg: Yeah, thank you, Jeff. Again this is not an At Large position but a personal one as pretty much everything is that I'm giving right now.

I don't see how Option 2 can - is feasible. Pretty much what you said; not only is it a long list but it's a changing list as languages come to exist on the Internet and hopefully that will be something that will change over time. So I don't think it's practical to implement.

I'm not sure anyone knows what all the languages are that are used on the Internet. There's plenty of languages that are written with Latin characters and we don't know what the languages are. So I don't see how Option 2 is implementable at all.

Option 3 given some specific subset of languages, which needs to be defined, is certainly viable. Thank you.

Who's speaking?

James Bikoff: Jim Bikoff.

Alan Greenberg: Jeff still here?

Jeff Neuman: I'm sorry, yes I was on mute talking to my phone.

Alan Greenberg: Okay.

Jeff Neuman: Yes, let me go to Christophe and then I'll go to you, Jim. Christophe

Christophe Lanord: Okay thanks. Yeah, we agree on the question of the feasibility of seeing all languages if you have some languages in very remote parts of the world which are spoken by probably a few hundred people. It makes little sense.

Can we imagine that we would (unintelligible) in establishing that list in most used languages? It's probably something that we can work on to help the work of ICANN of those managing the system.

Jeff Neuman: Yeah, speaking personally I mean, I think if you could come up with - I mean, ultimately a list will have to be made so that the evaluators could do the string similarity review and enter that into the algorithm and then do the personal review. So that list will have to be made.

To the extent that you can do that and give us that full list that would be greatly appreciated. Jim.

James Bikoff: Yeah, I agree with what Christophe said. I think the intention here was to have the translations in all languages used on the Internet. But of course if there are languages that are used by very small groups of people obviously it would be reasonable to make some exceptions.

But we too have lists of languages that we could submit and maybe we would work with the Red Cross to produce a list that we could recommend that both of us would be in favor of.

Jeff Neuman: So how do others on the - on the drafting team - how do you feel about - I think that's a very helpful suggestion. And I don't know, Jim, if that's something you can get together in the next week or two. But that would be extremely helpful I believe.

James Bikoff: Well maybe after this call we could talk offline with either (Stefan) or (Kristof) to see how to produce such a list. Because we have other languages that we've already - have in translation although not all of them. But maybe we could agree on a list that could be jointly submitted to save time and effort.

I had one question, Jeff, and that is what - with other names that are referred to as including translations that are already in the reserve list what languages are those available in?

Jeff Neuman: That is a great question and thank you for the reminder because that was something that we were hoping to hear back from Brian on. Brian, were you able to get that list from ICANN staff? I'm hearing silence. Brian, are you still on?

Brian Peck: There - I'm sorry, I was just at the same mistake of talking to myself on mute. I apologize for that. Unfortunately no; I did submit the request for that question a few days ago and I've yet to hear back from them.

And I apologize too because we had actually Amy - before you came on, Jeff, we had Amy on the phone but failed to request that. So I'll - after our call here I'll try to go down there and see if I can nudge an answer out of them for that.

Jeff Neuman: Great and actually if you could coordinate then with Jim and (Kristof) or at least send that list to the group so that might help them as well.

Brian Peck: Okay.

Jeff Neuman: Okay any other - so it sounds like we like the spirit of Option 2 but we realize just from practicality that it's going to have to be some version of Option 3. And Jim on behalf of the Olympic Committee and (Kristof) and (Stefan) will work together to try to come up with the list of languages that they would recommend.

Okay (Kristof) has actually posted to the list. I think those languages are all - already - may already be included - the ones that you have listed, (Kristof), in the Guidebook. But why don't you all work - if you can work with Jim to come up with the full set of languages.

And then that would give us at least something to work with. Does that sound like you can do that?

Christophe Lanord: Yeah, sure.

Jeff Neuman: Great. Okay then let's go to Option 3. And I'm hoping this might be the easier of ones at this point since really we're in the middle of the first round and we need to settle the issue with the first round. But this was in the GAC proposal so we do need to address it.

Which is, should the protections in Questions 1 and 2 apply to subsequent gTLD rounds? And of course Option 1 would be yes it should apply always. Option 2 is no it should only apply to the current round and we don't even want to talk about the future rounds.

And Option 3 is it should apply with this - in this current round. No decision on the subsequent rounds but we should evaluate the results of this initial round, document lessons learned and then decide on recommendations on subsequent rounds based on the results of the evaluation.

So with that one let me turn it over to Alan and then I'll ask Chuck again after Alan.

Alan Greenberg: Yeah, again I'm having revelations looking at this document that I haven't had when I looked at it offline. Option 4 is the one I like. That is it applies to further rounds with the option of reviewing based on the experience. That last caveat however may be implicit on everything associated with the gTLD process and maybe we don't even need to say that.

Jeff Neuman: I mean, Option 3 is really the first sentence. It should apply in this current round but no decisions made on subsequent rounds.

Alan Greenberg: Right.

Jeff Neuman: The extra sentence in there I could take out. That was just - that could apply...

Alan Greenberg: No but I'm saying we should suggest that whatever we're putting in place is permanent with the obvious option - which I think applies to virtually everything in the process - that after the experience of the first round it gets reviewed.

Jeff Neuman: Okay.

Alan Greenberg: So in other words Option 1 I think implies what I was saying was Option 4 because I think everything is on the table again based on experience.

Jeff Neuman: Right. I think that's right, Alan. I think your Option 4 is really implicit in Option 1.

Alan Greenberg: Okay then I'll back out. Bye-bye.

Jeff Neuman: Okay. Chuck.

Chuck Gomes: Sure. On Option 1 it really depends on the lessons learned from the first round and whether or not a PDP is needed. So it's hard to say yes on that right now. Option 2 seems like a good place to start and then allow evaluation of that round and any PDP if needed. And then in Option 3 that seems good with the inclusion of any PDP if it's needed.

Jeff Neuman: Okay. Just to go through the email Steve DeIBianco on behalf of the BC (unintelligible) selected Option 3 which is basically the policy would apply in this round with no decision on subsequent rounds. Osvaldo has said Option 1 which is it applies to this and all future rounds.

And let's see if there's any others. No that would be it that submitted it on email. So Konstantinos, please.

Konstantinos Komaitis: Thanks, Jeff. I think I'm speaking on behalf of NCUC but in any case I'm speaking on my personal capacity. And I think we should go for Option 2 but as everybody else said in this call we should - after a year we should sit down and evaluate whether this is the right option.

And generally speaking I would like to say that whatever we decide we should not consider approaches as if it's set in stone. This is a brand new process; we learn, you know, we learn as we proceed.

And generally speaking there is a tendency within the ICANN circles to go back and revisit those decisions. The same has happened for the rights protection mechanisms that we said we were going to go back and revisit them.

So generally speaking this should be, you know, presupposed that any recommendations that this group makes we should go back and revisit them to see whether actually this group reached the right solutions. Thanks.

Jeff Neuman: Thank you, Konstantinos. Does anybody - I mean, it sound like people are in agreement that it's really something that we need to review. I'm not sure it's helpful to take a position yes or not that it should definitely apply to future rounds or it shouldn't apply to future rounds but certainly say that we want to go forward with it in this round.

And then, A, figure out how to - or actually review what happened in this first round. And to Chuck's point figure out whether we need a formal PDP or something like that to have it apply to future rounds so we kind of need some questions in the process.

But also in any case - or in any case do a review to see if there's any lessons learned. Alan.

Alan Greenberg: Yes thank you, Jeff. I think that's an extremely reasonable way to go forward and extremely unpragmatic. The reality is yes we want to go back and review things but look at the UDRP; we haven't yet. We don't know when we will.

There's only a finite number of things we can review and I think given the amount of effort we're putting into this process we should leave a regime that can live in the second round. And if we say it should only be the first round and then reverts to zero it's just going to trigger this process again.

And I'm not a masochist. I think we should leave a regime which is reasonable that we can survive and not mandate that we're going to have to do this process a second time one way or another. We're just not going to review everything in detail.

And making that an absolute requirement is simply increasing the amount of work the GNSO and the community is going to have to do. So I think the option that was suggested is reasonable; I don't think it's rational however.

Jeff Neuman: So let me - and it looks like Greg and (Kristof) are in the queue so I'm interested to hear their thoughts on what you just said so Greg.

Greg Shatan: Hi this is Greg. I guess I would just say that, you know, given what Konstantinos says that, you know, it is in the nature of the organization to go back and revisit things from time to time as they need to be revisited that whether we - even if we were to say that it exists in all future rounds it certainly would be open to review.

I think requiring a review before the next round would be burdensome. If a review seems self evident after the round it'll occur and if it does not rise to the level of the things that must be reviewed before the next round it won't occur.

So I think it's better to say that it's something that should exist now and in future rounds and just like every other aspect of what ICANN does it will - it may eventually get reviewed. Certainly nothing that we say would prevent it from getting reviewed. We can't engrave this in stone.

Jeff Neuman: Okay. So it sounds like - you and Alan are in agreement. And I think, Chuck, if we added some language to say it's our recommendation that this applies to future rounds subject to any procedural requirements for a formal policy development process would that satisfy - what do you think of that?

Chuck Gomes: I think it would, Jeff. The, you know, in my assessment I don't think we're necessarily advocating a full blown formal review. But there are going to be some lessons in the first round and it would be good to incorporate those.

Jeff Neuman: Okay so...

Konstantinos Komaitis: Can I just - Jeff, this is Konstantinos. And I can I - I mean, we can make mistakes so are we suggesting that if these mistakes are being obvious

after the first round we should not revisit it just because it's burdensome? I mean, here we're creating and we're establishing brand new principles.

I've heard people referring to international law. We are trying to apply international law. Are we really saying that if we're mistaken just because it's burdensome we should not revisit it? I think that's a little bit problematic.

Jeff Neuman: So okay so taking that comment and taking Greg's comment about if you require a review that may be burdensome. We can recommend that a review be done without saying it's an absolute requirement.

I think that is something, frankly, we should because Konstantinos is right we're new at this, we're making a recommendation on this round and we could be completely wrong or, you know, we could be completely right, you never know. But you do need to have some lessons learned. And so we can make the recommendation but not a requirement.

So it sounds like we're saying Option 1 but we recommend a review of this program after the first round prior to the start of a second round but it's a recommendation it's not a requirement.

Let me go to Christophe.

Christophe Lanord: Yeah I was almost on the same line of saying yes it should apply in more future rounds unless we realize suddenly that something is not working then we need to reopen the discussion. But to have a burden of saying we need to review it for the first round actually yes seems to be (unintelligible) at least from the Red Cross side, yeah.

James Bikoff: Jeff, it's Jim Bikoff.

Jeff Neuman: Yes please, Jim.

James Bikoff: I agree with Greg's suggestion and I think (Kristof) seconded that. But I think that it should be Option 1 but subject to any recommendations for review that occur after the first round.

Jeff Neuman: Okay. How about - everybody else - anybody else have a different thought? Okay Konstantinos, is your hand still up from before or is it new? Yeah, okay there we go.

Okay well it sounds like we got through these three questions. We're going to do a write up based on what we talked about today, clarify Option 7 and ask people to really focus on that one but also give us comments to the other options just so we have a complete record.

Option 2 - sorry, Question 2 Jim and Christophe and - well Brian will ask ICANN staff and hopefully get an answer in the next couple days as to which languages the other reserve names are going to be - string similarity checks will be done in. And Jim will work with Christophe or Stéphane to try to come up with that list of languages.

It sounds like Question 3 we're all the same position here that yes we're creating this rule for this round and future rounds but we recommend that a review be done to look at the implementation of this program and see whether there's lessons learned to apply.

It sounds like that's where we are on the three questions. I do want to talk about we are still trying to get a meeting together between members of the GAC and this group and the GNSO Council.

Just as a reminder this will be a - it's not an official GAC meeting; it's not an official GNSO meeting. Members of the GAC will be invited to attend if they have an interest in the subject. Anything they say during that call shouldn't be taken to mean that it's the position of the GAC.

They're really just there to listen, to get a status update and to help advance our discussions our Costa Rica. So they wanted me very strongly to point that out that this is not a official GAC group or there will be no decisions taken at this meeting. But I do think it'll be very helpful to get in front of them.

The goal is to try to get that the week of the - in actually two weeks - the week of the 20th. I don't have a definitive date on that and I don't know if anyone from ICANN has heard anything. Brian, have you heard anything on that?

Brian Peck: I have not.

Jeff Neuman: Okay. So our goal is to definitely get it in before Costa Rica hopefully with enough time that we'll give the GAC some time to talk amongst themselves on our progress.

We do plan on having a call two weeks from today at our - let's do it at this same time - the same hour and a half timeslot so that's - I don't know the UTC time but if someone could help and plan that and send that meeting invite out for the same exact time as this call.

I will try not to get into a - an accident on the way back from lunch. Let's hope that's a one-time event. Especially because I was just really literally sitting there at a stop sign. And I now have to call my wife and tell her about this. So wish me luck.

And I think that's it other than my voice going.

Alan Greenberg: Jeff, it's Alan. On an administrative part of the thing I wasn't at the last meeting and I hadn't realized this was a long meeting. I'm not sure I was scheduled for two hours or one and a half - you just said one and a half but we've run for two.

Could I ask in meeting invitations say how long the meeting is if it's not the standard hour? Luckily I wasn't otherwise committed but I wasn't aware at all so.

Jeff Neuman: Yeah, I probably misspoke; I was looking at another meeting invite that was an hour and a half. We'll start it at the exact same time that we started this one which was - someone help me out on the UTC...

Brian Peck: It's 1800 UTC.

((Crosstalk))

Jeff Neuman: Thank you very much. Yes, we'll start that at the exact same time in two weeks.

Stéphane Hankins: Can I just jump in? So can you just outline - this is Stéphane Hankins (unintelligible). Could you outline for us maybe just the next steps and how this - the outcomes of this group will be brought to Costa Rica? Do you know or could you tell us very briefly?

Jeff Neuman: Sure. So from - the goal is to present - we were formed to provide advice to the GNSO Council. The GNSO Council formed us because they needed some people to look into this issue and so we formed this group to do that.

So our task is to provide the GNSO with a position paper or report - I'm not sure what we - we haven't really given an official name to what we're going to produce - present that to the GNSO who in turn will most likely because there's been some really good participation from the GNSO.

The hope is that the GNSO will then adopt the position and then discuss that with the GAC in detail in Costa Rica. So ultimately the overall overarching goal is to meet with the GAC to hopefully come up with some sort of consensus position between the GNSO and the GAC to present to the

ICANN Board in time to adopt at least at the top level for - before the application window closes.

And the second level, you know, we still have to work on that but the timing of that we have a little bit more time - not too much more time but a little bit more time to talk about protections at the second level.

Stéphane Hankins: Thanks very much.

Jeff Neuman: Sure.

Alan Greenberg: Jeff, it's Alan. Is that - what you just described - possible given that the GNSO only meets formally on Wednesday and we generally only will pass a motion at that GNSO meeting that has been submitted at least a week beforehand. I'm not sure how we can have discussions early in the week that result in us doing something and then go to the Board.

Jeff Neuman: I think it'll be done at the Costa Rica meeting.

Alan Greenberg: Okay.

Jeff Neuman: I understand and I know what you're thinking; you don't have to say it. There's not much time left in the application period window but, you know, it's the work we were asked to do.

Alan Greenberg: Then we better have a blanket motion presented and get a waiver that we can put the right words in at the last moment.

Jeff Neuman: I think that's right - or at least, yes, I think that's right. So there's some procedural hurdles we will need to jump through. And I will talk to Stéphane van Gelder and Wolf and the GNSO Council leadership to try to figure out how we think we can do that.

Alan Greenberg: And the Board will then have to waive getting a public comment period on it.

Jeff Neuman: Details, details, Alan.

Alan Greenberg: Details, okay, thank you.

Jeff Neuman: All right any other questions? Okay I want to thank everyone. And sorry again for being late. I won't let that happen again.

James Bikoff: Thanks Jeff.

((Crosstalk))

END