

Complete discussion on International Olympic Committee and Red Cross Names (IOC RC)

>ZAHID JAMIL: Thank you. I just -- what I wanted to do is take this opportunity and sort of add the issue of the IOC/RCRC and possibly the IGOs. But I think they're separate to a discussion today. The background to it was the sort of back and forth that we witnessed in the GAC board meeting where the GAC asked what have you done on this and the board said we're waiting for the GNSO to come back and the GNSO hasn't come back to us on this.

I understand there's been a lot of work and an effort made in the drafting team. And I also understand that, including myself, I must say, many councillors have not necessarily been participating with the same zeal and energy that would be required to get this work done faster and maybe send it to the council so we can then move on with it.

So just, even though I think one of the things is participation, let me say that it may help, from what I understand, to give a little more clarity to the purpose of, you know, the scope of the drafting team. Because some of us -- at least I am so confused about finding the top level that wasn't accepted by the board, we didn't hear anything back. So now that we're looking at the second level. You know, what are the scopes of it? Are we deciding on who this applies to, or are we deciding what to do? And I think it's important that we make that distinction. Because the job given to by the GAC through the board to us, in a sense, is that we are not supposed to look into whether this is supposed to be done but whether this protection is supposed to take place. So it's about how and not whether and if and to whom it should apply in a sense. That seems to be already having been determined by the board.

And I think maybe that could be something that can feed into the group.

The other thing was, you know, maybe we can expedite it. A PDP would just take too long. We'll just never get it done. And that sort of gets in the way of what the GAC wanted, which is we want it as soon as possible and before the launch, et cetera.

>>STEPHANE VAN GELDER: Thanks, Zahid. Maybe I should just add or stress that what you've just said is informal. Formally, we've not had any other response from the board than the one that we had on the -- when we sent -- when the working group sent us the result of their work and when we sent it to the board.

But I think what you've just said is useful. It adds to the discussion. Jeff Neuman is heading that working group. So perhaps you've got things to add, Jeff.

>>JEFF NEUMAN: Thanks, Stephane. And thanks, Zahid. It's -- my comments here are as the chair of the drafting team. So, just to clarify it's actually a drafting team, not a working group. And there's a lot of confusion around that as well. There is a lot of confusion around this area. And I don't blame the GAC and the board,

although I couldn't fit into the room because it was so crowded. I tried to remote in, and I heard a little bit of it. And I think I got a flavor of what was going on.

The reason there's a lot of confusion is that there's a number of different moving parts and a number of different paths that are going on. So you have -- first, you have the proposal that the GAC made in September of last year, September 2011, that deals with just the International Olympic Committee and the Red Cross marks. That proposal was made as a reaction to a resolution that was passed by ICANN board in Singapore in June 2011, a year ago.

The drafting team was formed with the very limited purpose of looking at that particular GAC proposal and trying to dissect that proposal and provide advice only on that proposal to the GNSO so that the GNSO could then take that and then forward its advice on to the board. It was very, very limited.

So the drafting team decided to divide it into two parts. It looked at, first, the recommendations from the GAC at the top level. And then, after we did everything we did -- I'm not going to go through history -- we decided to look at the second level. And that's where it stands today at the drafting team.

Since then, there's now been an issue report, preliminary issue report out for comment -- and I think in the reply period now -- on the protection of international organization includes things like IGOs and NGOs and a lot of other items.

And that item, that particular issue paper, preliminary issue paper or issue report is out for comment. And, ultimately, probably the month or a month after we'll have a final issue report. We, the council will have to decide whether to issue a PDP on that.

There's confusion even with that report. Because in that report, there is mention of the International Olympic Committee and the Red Cross, even though they're not IGOs or theoretically international organizations that fit within the definition of what was contemplated. But the preliminary issue report talks a lot about the Red Cross marks and the Olympic marks. You add on top that of a briefing paper that came out from the staff on defensive registrations. That was in response to something completely different, which was a request from -- I believe by the board for some additional clarifications to comment on the notion of defensive registrations. So you have these three things that are all -- that all have intermingling parts. If you were to draw a Venn diagram of this, it would just be a lot of intersection but a lot of parts that are completely unrelated.

So trying to explain that to the GAC during the five minutes that we had was extremely difficult. There's also contemplated -- because the drafting team is seeking information from the ICANN staff that information -- this also came up at board/GAC discussion. That information is still labeled as privileged and confidential and redacted from the board report June meeting in Singapore. So we're trying to move forward with all these moving parts. There's a ton of work. And I think Zahid had

said he really wants to move this forward. Nobody wants this to move forward more than I do. And moving forward doesn't necessarily mean accepting it or rejecting it. But we really do need participation from all the groups.

Today's attendance -- the attendance at today's session was fairly low. And it was not what I had hoped for. But I understand there's lots of conflicts that go on. But what we did today and what we're moving on is really limiting ourselves to looking at the GAC proposal.

But, ultimately, what comes up -- and I think Zahid had said this -- that you should just accept what the board and the GAC found and just move forward on how to address it. But I think what you'll hear -- and I know Avri is at the mic -- is there's not agreement on what the board did, the findings the board may have had. And, of course, we don't know what those are. And so the discussion within the drafting team is not as simple as describing how we address it. But we really have to get to the what and the criteria behind it. And it's fairly complex, trying to move as fast as we can. But we're finding that there's too many crossing parts and moving parts, so it's not an easy subject.

But I would certainly look forward to getting more involvement from you, Zahid, and from some other constituencies and stakeholder groups which have not shown up in a while. So with that, I'll turn it back.

>>STEPHANE VAN GELDER: Thanks. So I had Avri, Zahid, and Yoav.

>>AVRI DORIA: Thank you. Avri Doria, NCSG, NCUC. Just two quick points. I want to say first of all, I completely agree with everything Jeff said. Not something you've heard me say often.

One of the things that Zahid said that I wasn't sure that I understood correctly was that the board had already decided that there needed to be protection at the second level.

I've, actually, never quite seen any decision from them that said they had decided there should be protection and that all we had to do was define how that was put. So I don't -- I'm asking for clarification on that.

The only other point I wanted to make is to dispute the claim that a PDP could not be done in time. We have seen that a group of dedicated volunteers working weekly or even twice weekly with a specific set of goals and a specific set of things can do a PDP fairly quickly. And we've also seen that the process for getting new gTLD contracts out can't be done very quickly.

So I think that, you know, to sit at this point and say we cannot get a PDP done in the next 9 months, 12 months, which is what we've got, is, I think, an unfortunate thing to hear from the GNSO. I think it's up to you to be able to look at the PDP stuff and give us a schedule that gets it done.

I agree completely with Jeff, again, on we need to move forward. However, I would like to add that we still need to move forward within proper policy development processes. Thanks.

>>STEPHANE VAN GELDER: Thank you, Avri. I'll move down the queue. I also want to make it clear that, as we have 10 minutes left, this is also very much the open mic time. So, if any of you want to make any comments, not only linked to the IOC/RC working group drafting team -- sorry, Jeff -- but any other comments, please do step up to the mic. I have Zahid, Yoav, Thomas, Chuck, Steve.

>>YOAV KEREN: Stephane, can I go one after? I'm just trying to get the board letter.

>>STEPHANE VAN GELDER: Okay, no problem. We'll go to Yoav then.

>>YOAV KEREN: So several points I want to relate to -- excuse me -- my voice is a little low. One is about the process. I want to remind us all that in the previous GNSO meeting in Costa Rica, while we, as registrars, were supporting that motion, we said that we are -- you know, we want the bottom-up process to be respected in the next time we have these kind of things on the table. I really trying to understand, because I wasn't at that -- this is kind of good that you're after me, Zahid, because it's a question to you.

I want to understand exactly what is the rush? So we have a year. It can be done in a year. I agree with Avri. It seems a minimum of a year that we have. So this can be done on time.

And, since I wasn't in the GAC/board meeting, I would really love to understand what is the rush.

And the third thing is -- and it's completely my own personal opinion, not registrars or anything like that -- is I really don't understand the notion of protection at the second level for specific organizations. That's only my personal view. And that's it.

>>STEPHANE VAN GELDER: Thank you, Yoav. Thomas next.

>>THOMAS RICKERT: Thank you, Stephane. Maybe the poor attention this morning was due to the fact that the drafting team session was at 8:00. At least I was suffering quite a bit from that early time.

But, having been present at the GAC/board meeting yesterday, and gladly -- thankfully, Jeff described some background. I was confused and I would have loved to step up to the mic and say some words. It sort of appeared like the GNSO was not responsive in this process.

And I would just like to go on record saying that for the first-level protections we've done what we could in order to provide the result in time. And, also in the meantime,

we started working on second-level protections and answering that. And we -- it's not like we had left everybody else twisting in the wind.

There was a letter by the GNSO to the board -- to the GAC saying something about the status of our work and that we would get them involved as soon as we had something to share with them. So that's just something that I'd like to make clear for everybody. We have been very responsive. I think the drafting team is making good progress in gathering all the facts that we need in order to move forward.

And can just speak for me personally, but I'm willing to take this forward full throttle in order to close the matter following due process. Thank you.

>>STEPHANE VAN GELDER: Thank you, Thomas, I have Chuck next.

>>CHUCK GOMES: This is Chuck Gomes from VeriSign. But let Zahid go first, because he may very well address my issue.

>>STEPHANE VAN GELDER: Okay, Zahid.

>>ZAHID JAMIL: Great. I was looking for the board letter, and I think I found it. I'm not quite sure. But, looking at the GAC letter first, it, basically, says as an implementation issue, we should figure out how we're going to protect them. It's not a question of whether or not we should protect them and whether they are -- they merit protection or not. That's the GAC's view. Fine.

The board letter, again, sort of the one I'm looking at right now, says something similar. It says whether we can work out this issue of protection and definitely talks about second level. I'm struggling with some of the specific language. Maybe later on the staff can help me find that letter specifically. I can respond to that. Now that's the substantive aspect of it. That's the job we've been given.

Here's why. And I'm addressing Yoav's question. What is the reason? Why do we need to do this quickly? Maybe we can take a year, and after that it's okay.

We heard, I think, some very urgent requests from the GAC of the board. And the only thing the board did was say, well, the GNSO hasn't come back to us on it. In fact, it became fairly I think -- it was a pointed question that was asked. Is this enough for you that the GNSO hasn't responded yet? Is that enough for the GAC? I think the GAC's response was no. They may not have said so. But it was quite obvious. So to say, well, this is something we can make either part of a policy development process; we can push it down the road; it can take a while. I think we can do that, absolutely, if we choose to do it as GNSO. But we must be wary of the consequences of working with other SOs and ACs. There is a sense of urgency. Even the board senses it, I think, the pressure. So we can't sort of kick the can down the road to this one. That would be my response to Yoav's comment.

>>STEPHANE VAN GELDER: Zahid, Jeff wants to make a point of clarification on what you've just said. And then we'll go back to the queue.

>>JEFF NEUMAN: So, Zahid, so everyone's on the same page, can you just tell us a little bit about -- not tell us about, but just what board letter are you referring to? And if you could just give the date and -- so people can find it.

>>ZAHID JAMIL: As I said, I'm having trouble finding it myself. I just had something in front of me. I've got a GAC letter that was written to Stephane. I've got that and that -- from the GAC.

>>September.

>>ZAHID JAMIL: I'm struggling kind of trying to find any instructions from the board that we should do it. If we could look at that, that would be helpful to me as well.

>>JEFF NEUMAN: That's my clarification. I don't believe, unless I'm mistaken, and I'm chair of the drafting team. And I could just -- it could just be a long week. But there was a proposal by the GAC specifically on the IOC Red Cross, which is what I'm talking about. I don't believe there's ever any letter from the board to the GNSO asking us to address that. There was a resolution from the board or letter to the board on the GNSO on the IGOs, but that's something completely different. So maybe I'm just confused, and it's late.

>>ZAHID JAMIL: I'll respond quickly. You're right. There's a letter from the GAC. That's why we're doing this. Is that right? Do I understand what you're saying, Jeff, is that, because of a letter from the GAC that's why we're doing this? I hear you say yes.

Well, the letter from the GAC is very specific. It says -- and that's fine. It says please deal with this as an implementation issue. It doesn't say go into the process of whether or not they should be protected. So, if we're looking at our mandate as a GAC letter, I think that's absolutely clear. Then we are supposed to just come out with an implementation of how we're going to protect them. If we're just -- I think it's a September 12th letter of the GAC? Is that right?

>>STEPHANE VAN GELDER: Can I just -- I want to let other people get into the conversation. Jeff, I'll let you respond after I go to the queue, if possible. So Chuck, please.

>>CHUCK GOMES: Thank you, Stephane. I'm Chuck Gomes. I'm the registry stakeholder group representative on this drafting team. Zahid, I interpret the issue with the GAC letter very differently than you do. The GAC certainly would like us to recommend that these be -- these names be reserved at the second level.

It's very clear in their request. That doesn't mean that we should automatically implement it.

It's our responsibility, because we are changing policy that was already approved, to do an evaluation of that and make a recommendation to the council.

Now, with regard to your other point with regard to expediency, totally agree with you. And Jeff can correct me if I'm wrong, okay?

But I believe the intent of the drafting team is to do very similar to what we did at the top level and to come back with a recommendation to the council.

Now, one of the possibilities there -- I'm not suggesting that this would happen -- would be that we suggest that this be implemented. Another possibility, among others, would be that this be handled through a PDP. But I do think that the intent of the drafting team is to do something more expeditious and at least do similar to what we did for the top level in as expeditious manner as possible.

>>STEPHANE VAN GELDER: Thank you, Chuck. I'll go to Steve next, please.

>>STEVE DeBIANCO: Thanks. Steve DeBianco with NetChoice.

Thomas, you, to an extent, and maybe Jeff to a less extent, we have a tone of almost being defensive about the implication that GNSO has not delivered or not been as responsive as it needed to be to whatever the GAC had imagined was our obligations and what they expected us to do. But I think we should take a queue from chairman Crocker and several members of the board at their GAC/board meeting the other night. Their tone wasn't defensive at all with the GAC. I think it's because they're all aware that right now ICANN is in sort of this perfect storm where a handful of governments, intergovernmental organizations, covet the sort of governance role, to the limited extent that we have it. If they knew how little we can govern the Internet, they may not be as interested to have it. That's the first part of the perfect storm.

The other part is we're on the cusp of introducing the most significant risks on the Internet since its beginning. The risks doesn't mean problems. It means potential for things to go wrong.

And the third element of the perfect storm is we've only done a couple things so far, and the first couple didn't go so well. We've had some operational hiccups that are being looked at under a magnifying glass as an indication that we're somehow not going to be able to execute.

With that perfect storm you heard Chairman Crocker open the meeting with the GAC with the words, "We're here to listen. We are here to serve you." Check the transcript. That tone kept through the meeting.

Right now, if, in fact, the GAC is asking for a response, and that letter is in September, 94% of the words in that letter are about second level. Only 6% were with respect to top level. I was one of the work team members who said forget the

top level. We've already built in the ability to do objections at the top level. We should never have done that.

Jeff, I respect your leadership, and you've done a great job on the team. But I just respectfully disagreed with that decision. So that's all, be that as it may.

So at this point, let's not be defensive. Let's be aggressive. Let's move ahead as fast as we can with a PDP. I'm not saying get out of process.

We knew all along this is about protections at the second level. Let's get to it. You said, Jeff, that it's not easy and there's a lot of moving parts. That will not be helpful rhetoric right now. We're the Marines, right? The difficult we do right away; the impossible takes a little longer. Thank you.

>>STEPHANE VAN GELDER: Thanks, Steve. I just want to read an online comment, first of all, before going back to the queue. This comment reads, "The distinction between drafting team and working group is important. The question is whether the preliminary issue report is a basis for preempting an agreed process that was adopted as a result of GAC advice to the board. ICANN has publicly stated to the GAC that it is awaiting the GNSO response with respect to protection of IOC and RC at the second level. This may merit further drafting team work and a special motion to be voted on before Toronto. This may be worth the effort regardless of the result." That's the comment. I'll now go back to you, sir, for the queue.

>>GAVIN BROWN: Thank you. This is Gavin Brown from CentralNIC. This is in relation to the gTLD registries stakeholder group, the introduction of the observer status.

CentralNIC is one of a number of registry service back-end providers. We are not an applicant for any of the gTLDs we're providing back ends for. But, assuming contention and objections go well in our favor, we could be running 60 gTLDs. But the observer protocol that -- I had a quick look on the gtdregistries.org Web site -- doesn't allow us as a non-applicant but still a back-end provider to participate in that process. It leaves us outside that stakeholder group. I wondered whether there's been any thought about expanding it to allow for technology providers to participate even if we're not an applicant.

>>STEPHANE VAN GELDER: Do we have an answer from the registries? Keith?

>>KEITH DRAZEK: Thank you very much for the question. Keith Drazek, registry stakeholder group alternate chair. It's a good question. The answer is that, because we're part of the contracted parties house, our members, our voting members must have a contract with ICANN.

So the answer is directly that, basically, we are limited in what we're able to offer as far as full membership or full voting membership.

That said, your customers could delegate or designate you as their representative within our stakeholder group. So you would be able to participate as far as, you know, participating on the mailing list, participating in the meetings, just as if you their representative, because you would be. So I think there's not currently envisioned a separate classification or a separate sort of division within the stakeholder group for somebody who is simply -- and I don't mean that in a negative way -- a back-end service provider or a technical service provider. But, certainly, as a representative of your customers, you would certainly be welcome if they designated you for that role.

>>GAVIN BROWN: Okay, that's fine. Thank you.

>>STEPHANE VAN GELDER: Thanks for you both. I know we're over time. I'm going to allow this discussion to continue. It's a very interesting discussion. I think we'll just take a few more minutes for it. Robin.

>>ROBIN GROSS: Thank you, Stephane. I'll be brief.

My name is Robin Gross. I'm the chair of the non-commercial stakeholder group. And first I wanted to comment that I am in strong agreement with Chuck Gomes' previous comments that we just heard. And I also want to ask this drafting team that it is incumbent upon these groups who want these additional rights and protections to show why the rights and protections and the mechanisms that we came up with through the process are inadequate. What is it about the existing mechanisms that we've come up with that don't allow them to achieve their legitimate rights? I think that is a question that needs to be answered from these organizations who are coming and seeking extra super protections.

And then, finally, I would just also like to ask again this drafting team to go out and really try to get some independent legal research. I think it's important that we can't - - we have to do due diligence here. We can't simply rely upon the advocates of rights to define those rights, to tell us what those rights are and we're just supposed to trust that and give it to them. I think we have to do our due diligence and go out and get independent research on these issues as well. Thank you.

>>STEPHANE VAN GELDER: Thank you, Robin. Jeff, next.

>>JEFF NEUMAN: Thanks. I want to address a couple comments that were raised as, again, as representative of the drafting team.

And I'm impressed, Steve, that you counted the number of words. 96% or 94%. That's pretty cool.

I don't agree necessarily with your classification of that, you know, that number. And I do think that the GAC was certainly appreciative of the work that we did the at the top level. And I don't think any one of them say that we wasted our time. In fact, we found some things in there that they were extremely thankful that we brought up, things that would certainly be used by them in subsequent rounds.

But we're moving. You know, we are moving. We are addressing this. We certainly understand that there's a number of groups that want this addressed. I do believe we have a year. I do believe we have plenty of time.

As far as Robin, and I saw people shaking their heads at Robin in agreement. You know, it's easy to shake your head in agreement and say, "Show me why. Show me why." Well, I think these folks have put forth a good-faith effort to show us why. I'm not saying we all agree with that. I'm not saying anyone here agrees with what they've put forward, but I will defend them, in some sense, of saying that they have tried; that they have consistently provided us with information. Whether we like it or agree with it or not, they have continually provided us with information. There may be other types of information that we're seeking, and one of the things that I've tried to do today and in previous calls is tell me exactly what type of data you want. And every time someone has asked them for some type of data, they have provided it.

So I want to thank them for providing that data. It still may not be enough and you still may want more, but please come with -- what I'm looking for help is tell me exactly what you want.

Thomas has done a good job with that. They have responded. I still think Thomas wants more. He explained that during the meeting.

So it's easy to stand there and say they need to show why. I think they've made a good-faith effort to show why. Again, whether we buy that or not, whether we agree with it or not, that's something we can weigh the data.

So show up, read the archives, read the volumes of material that they have submitted.

As far as our due diligence, I completely agree with Robin. I just don't know how to get there because it's not like we have a budget. It's not like any of on the team -- some of us are lawyers but not necessarily in that area nor do we have the time nor resources do that. I was kind of hoping someone had do the research prior to the Board actually passing the resolution in June. So I was kind of hoping that those three pages or four pages that are redacted could kind of lead us in the right direction. I may be completely off, but for now we are kind of guessing and grasping at straws.

So maybe it's a question to ICANN staff to go back and see if we can get independent analysis done on this. I don't know if we can. I don't know what authority we have to ask for that. I suppose you can always ask. It doesn't hurt to ask. But then again -- So putting my registry hat on and not the chair hat, I think when we discussed this in the stakeholder group, the registries kind of approached this more like Zahid was talking about is we have gotten all this material from the Olympic Committee and from the Red Cross. We also have this decision that was made by the Board and the GAC advice. We have no reason to believe that the

materials provided to us by the advocates of those groups are in any way misleading or false. So we're trying, as registries, to say given -- assuming all that is true, what reasonable measures can we take that may balance those issues.

So I think the group is trying. I would certainly love Robin and Zahid and others to actually attend these groups and help us move it forward in one way or another. I guess that's all I have to say.

So thank you.

>>STEPHANE VAN GELDER: Thanks, Jeff.

And I'll go back to another online comment, and it's been drawn to my attention that I forgot to give the name of the person who made the previous comment so I'll put that right by saying it's Anne Aikman- Scalse.

And I now have a comment from Rob Golding, or it's a question: As neither have or will ever get worldwide exclusive right to the words, there are hundreds of companies in the U.K. with Olympic names, including a tube station Olympia, roads in London of Red Cross Street and so forth. Why are we entertaining special provisions for two rights holders treating them above and beyond any other IP issue? Blocking the names at the highest level from registrations will impact legitimate other uses of same/similar terms and by IOCC/RC all for what appears to be sound bites and appearances to be doing good.

That is the comment. We are way over time, so I propose to bring this meeting to a close now.