

Transcript
GAC/GNSO issues related to International Olympic Committee (IOC) and Red Cross (RC) names discussion group teleconference
22 August 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 22 August 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/gnsso/gac-ioc-20120822-en.mp3>

Attendees

Lanre Ajayi - Nominating Committee Appointee
Chuck Gomes - RySG
Kiran Malancharuvil – IPC
Alan Greenberg – ALAC
Jim Bikoff – IPC
David Heasley – IPC
J. Scott Evans - IPC
Debra Hughes - NCSG
Thomas Rickert - Nominating Committee Appointee

ICANN Staff
Margie Milam
Brian Peck
Berry Cobb
Nathalie Peregrine

Apologies:
Jeff Neuman - Registry SG group leader
Avri Doria – NCSG
Gregory Shatan - IPC

Coordinator: Participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

((Crosstalk))

Nathalie Peregrine: Would you like me to do a roll call before you start the conference?

Thomas Rickert: I just wanted to ask you to do exactly that. Thank you.

Nathalie Peregrine: All right. Good morning, good afternoon, good evening. This is the IOC call on the 22nd of August 2012. On the call today we have Alan Greenberg, Lanre Ajayi, Chuck Gomes, Kiran Malancharuvil, Thomas Rickert, Jim Bikoff, Debra Hughes and J. Scott Evans.

We have apologies from Avri Doria and Jeff Neuman.

From staff we have Margie Milam, Brian Peck, Berry Cobb, and myself, Nathalie Peregrine.

I'd like to remind all parties to please state their names before speaking for transcription purposes. Thank you very much and over to you.

Thomas Rickert: Thank you. This is Thomas Rickert and let me start by saying that Jeff Neuman sends his apologies. He's on a train right now and asked me to take over the roll of the chair for this meeting.

I have discussed with Jeff what his plans for this meeting were. And defined, for those who are on the Adobe, you will find the agenda on the Adobe. And for those who are not I'm going to read it out because it's very, very simple.

First I'm going to make a brief introduction. After that I'd like to go through the options in the paper that was produced by sub to go through the various options that are on the table, including the modifications and new suggestions that have been sent to the mailing list and discussed there.

And hopefully we're going to be able to reduce the number of options that are on the table to not more than three, preferably two options if we can. So that participants of this call can take those back to their individual groups and discuss them with their respective groups. And we can also make it available to those who haven't been able to make it to this call.

Now I think that judging from the group of participants of this call, I don't need to make a lengthy introduction because you're all very well informed about the progress made so far (and we stated) up our discussion.

We do have a paper that was sent to the list by Brian, and which is on the Adobe. Which lists the various options as to how to approach the issue of second level protection for identical strings for the designations of the IOC and (our third party).

In addition to this, to the options that are on the Adobe, Chuck Gomes has sent the proposal or the (stated up) the discussion in the registry stakeholder group. And there were additional comments made by other participants of this group that we're going to go through when we get there.

So that's pretty much it. And I suggest that we go through the approaches one by one. First of all there's Option 1, which basically says that nothing shall be done. And I'd like to ask the - ask you whether you have any comments to make to address this Approach Number 1.

Hearing none I understand that there would not be, at least in this group there is no support for supporting this option on an as is basis. So that I would like to open the floor, and maybe Chuck you can kick this off because you have added to the list a variation to Option Number 1 including additional notes.

Chuck would you like to lead us through the proposal that you sent in as a representative of the registry stakeholder group? Are you there? Chuck?

Chuck Gomes: I'm sorry, I was on mute and forgot. By the way, before I do that Thomas, I noticed that Alan's hand is up.

Thomas Rickert: Alan would you like to go first then?

Alan Greenberg: Yes, just a very quick comment. As people have mentioned on the list, Option 1 can certainly go hand in hand with 5. And this group doesn't even have - doesn't have the discretion to negate 5.

You know, a PDP will be done, which implicitly will include IOC and Red Cross along with other rights with other groups. So 5 exists in parallel with everything. It's not within our prospective to say 5 won't be done.

So what we're really intent, we can't look at Number 1 alone. Number 1 has to be done with the knowledge that 5 may change things in the long-term.

Thomas Rickert: But then still the assumption would be correct to state that Option Number 1. And isolation does not find support of the participants of this call.

Alan Greenberg: Yes. No, no, I'm not arguing with the outcome. I'm just saying that I think we have to be careful that, you know, as staff presented the options, they potentially could be taken one at a time.

And as pointed out, 5 does exist in parallel with everything. So if we're accepting 1 or rejecting 1, it's in the context of 5 also going (unintelligible).

Thomas Rickert: I'm going to go ahead anyway. I would like to discuss when we get there because it is up to the group to suggest to the council if they want to (unintelligible) designations as well to these organizations as well.

Alan Greenberg: Okay.

Thomas Rickert: Lanre do you have something to add to this very point? Or shall we let Chuck go first explaining his proposal?

Lanre Ajayi: Okay. I just want to express my (unintelligible) Option 1. I feel Option 1 as not recognizing (all the) good points in favor of (unintelligible), protection toward the IOC as (ARC).

I believe compelling points have been made. Compelling cases have been made for additional protection for this organization. So if the (unintelligible) 1, which means do nothing. I believe that will not reflect the vision (unintelligible). That would not reflect the (need for grants) and required protection to help the (unintelligible).

But I want to say that I also believe that if protection is not going to be done by this division, all the divisions pull out the need for additional protection. And that is why I favor Option 5. And when it gets to that (unintelligible) talk more on that option.

So I just want to say that Option 1 does not look very good to me. The do nothing option looks good to me.

Thomas Rickert: Okay thank you Lanre. And over to you Chuck.

Chuck Gomes: Thank you Thomas. The - I'll very quickly go through the what I sent to the list with regard to a fairly heavy discussion that occurred four weeks ago. And the registry stakeholder group finally got a lot more participants actively participating instead of just ending up with a default position.

So that's what I tried to communicate on the list. But the option was basically to, the proposal was basically to use Option 1 as a starting point in our communication with the GAC.

And provide the rational for that. And then ask for a response from the GAC to see if they could effectively counter the rational or some of the concerns that were raised.

Now, with that said, a very quick summary of what we suggested. I personally think, although I have not tested this specifically with the registry stakeholder group.

I think that we could replace Option 5 with Option 1 as the base position. And then follow the same process of communicating to the GAC that our position is that this really needs to go through a policy development process, not only including the IOC and Red Cross, but the IGOs, etcetera.

And provide a rational that this group would refine. We made some suggestions there. And then ask for a GAC response. In other words give the GAC a chance to react to that.

And so what I'm saying now is I'm pretty confident that we could substitute Option 5 for Option 1 in the approach that I communicated on the list and that Thomas and Jeff responded to on the list as well. Is that good Thomas?

Thomas Rickert: I'm wondering whether we should spend a little more time on this one and maybe go through the individual items that you listed, including the questions that you raise?

And open the floor whether there is consensus or disagreement on the individual statements. Or maybe we can reach the status where we have sort of a revised option, what is it then, a new 1 right where we have a revised version ready for the members of this group to take back to their groups.

Chuck Gomes: I'm okay, this is Chuck again. I'm okay with that Thomas. I guess I just, you were starting to go through all of the options. Is there anybody on the call that still wants to do that before we focus on the registry approach?

Or has that been covered well enough on the list and in previous meetings? In my opinion it probably has. But I don't want to step on anybody else's toes if that's not the case.

Thomas Rickert: Chuck this is an excellent point. I think we can go through that very briefly before taking a deep dive into the (niceties) of your proposal. So let me ask whether there is any support for Option 2 of the staff paper?

So hearing nothing, I would propose that we don't focus on Option 2. I should say though that certainly this group might not actually reflect the thinking of the discussion group since we have some apologies and some other people missing.

So all of the options can certainly be supported afterwards in future calls or on the mailing list. But for the time being, in order to narrow down the options, I would then propose that we rule out Option Number 2.

Is there any support for Option 3? Chuck, I know you mentioned that there are some people in the registry stakeholder groups that would like to go forward on the basis of Option 3a, I think it was?

Chuck Gomes: That is correct Thomas.

Thomas Rickert: Would you like...

Chuck Gomes: I, you know, there's still some support for Option 3a in the registries. But the - there's probably more support for this new approach that we have put forward okay?

Thomas Rickert: So would you like to keep that up from a registry stakeholder group perspective?

Chuck Gomes: It's not necessary at this time. But I did want to be up front that, you know, it wasn't necessarily unanimous, this new approach. I think that if the discussion group is able to come to reasonable, at least rough consensus on an approach that the registries will take that seriously.

Jim Bikoff: Thomas?

Thomas Rickert: Yes. I wanted to ask, because I know that the IOC is in favor of Option 3, so please go ahead.

Jim Bikoff: This is Jim Bikoff. I just wanted to say we've made our position I think clear on 3a. We think it's, it would be sort of a compromise in the sense that you're giving additional protections.

But you have an exception process so that any applicant on the second level who applies for a domain name that would include the words would, if they were - they could either have a consent. Or they could have a legitimate right upheld by, you know, a body or a process that would be developed.

And we think that that would take care of making sure that any legitimate rights are vindicated through that process. So we believe that would be the way to go.

You know, we may join in that with some of the folks on the registry group. And I'm not sure who else has indicated support for that proposal.

Thomas Rickert: I wouldn't have ruled out Option 3 anyway because as you stated earlier, as you said that you are supportive of this option. So I think we should keep it on the table.

I have one question though. And that is you may have followed the discussion between then GNSO Council and the ICANN Board with the

GNSO Council complaining to the board that there have been several locations where the council has been bypassed.

My concern, and this is at least what I read from other comments and picked up from discussions is that if we did follow option - one variation of Option 3. How would we respond to those that claim that it's not appropriate for the council to complain to the board about being circumvented if the council itself bypasses bottom-up policy-making?

So I think if we chose to pursue Option Number 3 further, we would need to have a sound answer to that question. Would you agree?

Jim Bikoff:

Well I think that one of the answers to that question is that if ICANN is following applicable rule under the affirmation of commitments, then they should be looking at whether these terms are protected legally by treaty and by national law.

And if they are, then I mean I think that it's consistent with implementing a protection scheme. We've had a year of discussion on these issues, or I think actually more than a year since Singapore.

So I'm not sure that a PDP is necessary in that it would be going over the same ground again. And just adding more time and possibly two, three years of more time to this discussion.

I also want to say that it's sort of interesting that in certain cases where following the law relates to certain topics. It seems that people want to follow the law.

Like when we talk about privacy protection, such as the European Union Data Privacy laws, at that point people are saying well, those are the laws. So we have to make exceptions like on the (dot cat) agreement.

And here we're saying even if this is law apparently, we think it should be - go through a PDP rather than a judgment from this group, which I think is well qualified to continue its work and come to a decision.

Thomas Rickert: Thanks Jim. That's very helpful. I have Alan.

Alan Greenberg: Thank you. In response to your original question on support for Option 3, ALAC has made it clear that it would be supportive of Option 3b. But doesn't really see the need for adding Olympic names to this, you know, to the list of extra preserved names.

ALAC, what I think would also be equally happy at this point would be no additional protections, but pending the larger scale thing.

With regard to the question, your question about bypassing the council, I understand that not everybody agrees. But the way I read the bylaws, the PDP process is necessary if we want to effectively bind the board to carry out our policy decision.

That is it takes an overwhelming majority of the board to overrule it. However, that is - it is also, and a PDP is also necessary if we want to enact consensus policy, which changes existing contracts.

It is - does not seem to be - you do not seem to need the PDP process for then GNSO to make policy however. If the policy is - if the policy is one that we're happy that the board can overrule with a smaller majority if it chooses too and it does not change consensus policy.

All it takes is from my understanding is a simple majority of council. And if they choose to enact what this group, this drafting team recommends that is GNSO policy. It's not being bypassed.

It's bypassing the PDP process. But that only needs to be used in very specific circumstances. Thank you.

Thomas Rickert: Thanks Alan, Debra.

Debra Hughes: Thank you. Without repeating what Jim stated, much of which Red Cross Red Crescent would certainly support. I would say that to your question about bypassing a process.

As we've explained on behalf of the Red Cross Red Crescent, the emblems, and we say emblems, we mean the words Red Cross Red Crescent and those as the nations, are not the designations of the movement.

They are the designations of the governments. And so they did what they were supposed to do as governments, which was to bring forth their obligation.

So from our perspective there was no bypass. And I won't go back through the conversations we've had before about ICANN's articles of incorporation because Jim has just mentioned.

But I did want to bring that distinction again to the attention of this group that from the Red Cross Red Crescent's perspective, there was no bypass because we agree that the GAC did exactly what they were supposed to do.

These are the words that they have an obligation to protect. They have the Geneva conventions and statutes in more than over 180 countries. And it was their obligation to do such.

We have, we being the individual national societies we have a role in making sure that we protect the use of those names in our jurisdictions. And so that's the role that the individual societies like American Red Cross or British Red Cross has in this process.

But it should be driven, as it has been driven, by the GAC. And so we support that. And want to make sure that this group is really clear and understand that we're not, again, we're not talking about trademarks owned by American Red Cross or British Red Cross.

These are words owned by the signatories of the Geneva conventions, which is a very, very different distinction from those that might be, you know, offered up by other NGOs and other worthy organizations.

And for that reason we support Option 3. And obviously would not support a status quo or would not support a PDP. Thanks.

Thomas Rickert: I have J. Scott next, J. Scott.

J. Scott Evans: I was wondering if perhaps a compromise position might be to recommend that we go with Option 3a subject to the outcome of a PDP in 5? Because remaining as a status quo puts these two organizations at a disadvantage because if the outcome of 5 is they should have get additional protection, they're screwed. Because they've got to go out and spend additional moneys, resources, time to acquire this in 1,400 gTLD.

Wherein if there's sort of a period where they are allowed to reserve these pending the outcome, if the outcome is in their favor, then they - we've put them in a position where the status quo can continue. And nobody is damaged.

On the other hand, if the outcome is that there should be no additional protection, these names would just then be available for registration. And it's just identical. It's a very small pool of names.

And so I just throw that out rather than going with, you know, let's not doing anything at all, which I think is an unacceptable answer to the GAC. I think

you should acknowledge and say if you want to study it further, you need to put some sort of stop gap protection in that says well we'll try to develop a process that allows to give some additional protections while we look at this.

Subject to the exceptions of 3a where those parties that have identifiable rights or co-existence agreements can go forward. So that would be my suggestion.

((Crosstalk))

J. Scott Evans: Bound and determined to go with a PDP.

Thomas Rickert: Thanks J. Scott. I have one follow up question for you. And that is regarding the exception procedure. Who, in your opinion, just to maybe beef up your proposal a little bit, who would be responsible for operating the exception procedures?

J. Scott Evans: ICANN. Maybe we make the ombudsman. And I would say we use - didn't we have an exception procedure already sort of set out in the top-level recommendation we made?

Thomas Rickert: But we didn't further specify who runs it.

J. Scott Evans: I'm just saying we got a procedure. And giving that to someone, the ombudsman at ICANN, you know, some party that's deemed more neutral than, you know. I'm just - I'm, you know, I'm just throwing this off at the top of my head.

Thomas Rickert: Would you volunteer to elaborate a little bit more on that on the mailing list? Or would you like staff to pick up your ideas and add them to the list?

J. Scott Evans: Well, I mean I'm just offering a proposal that, you know, I don't think we have a large enough group here on this call today to make an particular decisions.

I think we could talk about what we said. And we can put that out to the larger group. But I don't think we have the ability to make any final decision that we can then go back to our groups and say here's where the drafting team is.

So I think this is going to require further discussion. And I was just trying to put out another proposal that I think would not disadvantage the organization that the GAC is seeking to assist. If in fact the majority believes that a PDP is required.

((Crosstalk))

J. Scott Evans: Status quo does disadvantage them. So I think 1 in tandem with 5 is not a good outcome. I think 3a in tandem with 5 is probably something that is, I think I could get behind.

Thomas Rickert: Thanks J. Scott. I wasn't suggesting in any way that we could make a decision on this in this call or as this group. I was just asking whether you would like staff to just take what you said and add that to the list of suggestions?

Or whether you want to more elaborate on this proposal and sent it to the list later? But I, for the time being I would suggest that staff picks up the idea and adds it to the list. I have Chuck next.

Chuck Gomes: Thanks. I raised my hand to respond to a couple of thing that Alan said. But before I do that I want to respond to J. Scott's suggestion. I think it's a constructive suggestion and certainly one that I would be willing to take back to the registry stakeholder group.

So I agree with you Thomas that this should be added to our list as a possible way forward. And that we can take back to our groups.

With response to the question about whether or not the - we defined the exception procedure at the top level, I don't think we did. We - that was work still to be done. So if we did end up recommending 3a or 3b, we would need to better define the exception procedure I believe.

Now back to something that Alan said. And Alan, you may not have meant it the way I took it. But there is no way that the GNSO Council or any SO for that matter can bind the board, regardless of whether we have a unanimous vote or a majority or whatever.

What the GNSO Council does is make policy recommendations to the board. It's up to the board to decide whether to approve those or not. And they can even overrule unanimous decision by the council.

But if it's a two-thirds support, a super majority support by the council to do something, support has a bigger obligation in terms of its response as to why they did it. I just wanted to clarify that.

Thomas Rickert: Thanks Chuck. That's very helpful. Alan would you like to?

Alan Greenberg: Yes. In response to Chuck's response to me, Chuck I wasn't saying anything different. When I said bind, I meant the board needs a two-thirds majority to rule against it. It wasn't - it's not really binding. It's just highly unlikely the board could develop that much against the GNSO policy.

But the substance of what I was saying was that if we're not interested in forcing the board, using that definition of force, or changing consensus policy. Then we don't need a PDP to set GNSO policy. That was what I was suggesting. And I'd be interested in knowing whether you read that the same or not?

In - and just in response to J. Scott's position, from my personal point of view, and it's not an ALAC position at this point is I would be very satisfied with that

position also. Because I think Option 1 combined with 5, and 5 is inevitable at this point I think, Option 1 I think is not responsive to the GAC.

And simply saying that we believe other organizations might be approved by the GAC in the future to widen the scope from just the two I think is trying to read the tea leaves. And I'm not sure the GAC or anyone else is going to take very well of that. Thank you. I would like to hear Chuck's opinion.

Chuck Gomes: This is Chuck. And we're probably just, it's probably just a matter of semantics so - Alan. So I think we're probably understanding the same thing.

I just wanted to make sure everybody was clear on that. And I don't think anything more is needed on that unless somebody else thinks differently.

Jim Bikoff: Thomas.

Thomas Rickert: Okay thank you. Jim, I noticed that you want to speak. J. Scott, is your hand still up from previous?

J. Scott Evans: Oh I'm sorry, no. I'll take it down.

Thomas Rickert: Okay so Kiran has also lowered her hand. Jim it's your turn.

Jim Bikoff: All I wanted to say is I, going back to J. Scott's suggestion, the ISU would be very comfortable with a neutral person making this determination such as the ombudsman.

I can tell you, although we haven't sent this to the committee. But our last couple of watch reports, which both included over 400 domain names. Going through those we've seen only a very, very few that could be termed legitimate, non-commercial use of the words.

And I think that in practice there would not be an awful lot that would be needed to be looked at as legitimate. But those that do come up I think, you know, having a neutral body to make those decisions would be very acceptable to us.

Thomas Rickert: Thank you very much. May I ask J. Scott then to maybe add to - add the modification to Option Number 3 that the exception procedure should be handled by an independent body. Unless there is opposition to that, you know, I just like to resign the proposals that are on the table to best possibly reflect the current status of our discussion.

Unless there's anything further to add to Option Number 3, I just want to make a final call whether there is any support for Option 3c to 3f because otherwise I would like to abandon those as well? I have Kiran.

Kiran Malancharuvil: Hi Thomas. I just wanted to quickly respond to what Chuck said about the board. I don't know if you recall in my communication with Chuck on the list serve, I pointed out the language that was contained in the new gTLD program committee progress report I think was the name of it.

In which the board acknowledged that the GNSO was properly considering the options and second level protection. And essentially conceded that they would be willing to be more open to GNSO recommendations on the second level.

That was my interpretation of the progress report, which I spoke to more eloquently on the list. But I don't think that we're in the same position that they - that we were in the top level where we run the risk of the board basically not - refusing to adopt our recommendations as they did on the top level.

Thomas Rickert: Thank you very much for that additional remark, Chuck.

Chuck Gomes: Yes. The - with regard to the exception procedure, I personally think it's better for this group not to try to spend too much time defining that. If we go with one of the three opt - one of the options under 3 that's work that needs to be done.

Whether it's done by a neutral body or whether it's - the exceptions are clearly defined, I think that's work that needs to be done. And can be done if and when we decide to do that.

So I caution against going - spending too much time on defining what the exception procedure would be for this group. It is work that will have to be done. And I think can be done once - if we decide to go that route.

Thomas Rickert: Now with respect to that, you will remember that we talked about an exception procedure for the top level. And Alan has referred to that I think in the chat because we didn't say who should be doing it.

But I think the status of the discussion was that it would be letters issued by the respective organizations to allow an exception. And I would just like to make clear without talking about too many niceties whether we think the same why here that these exceptions should be granted by the (OIC RCRC).

Or whether the thinking of this group is that this should be done by an independent body. Because I think that there might be reservations against the first option. You might remember that Avri spoke about licensing schemes.

So, you know, I would like to adequately or accurately reflect the thinking of this group. Would you keep up, Chuck your reservation again? Just adding that an exception procedure should be handled by an independent body?

Chuck Gomes: No. I don't think that there's agreement on that. I mean I know within the registry stakeholder group we don't have an agreement towards any one of the different exception procedures that was suggested.

And I think it's going to take some time to come to agreement on that. And I - that's why I suggested we don't spend a lot of time on that. That's work that can be done if and when we decide to recommend this direction and the council approves this direction.

So I don't - I certainly know that within the registry stakeholder group that there have been people that have expressed concern about giving any organization some sort of a veto power or approval power.

So I can tell you right there that that's one idea that some in the registries oppose already. So again, I suggest we hold off on that. It - that's a task that will have to be done if we go this direction.

Jim Bikoff: Thomas.

Thomas Rickert: Yes let me take Alan first and then you're in Jim.

Alan Greenberg: Thank you. What I said in the chat, the letter of reception certainly is the first level. I believe there probably would need to be some level of appeal. Who the independent body is or how that would be done is far from clear, as Chuck said.

And I'll recall the discussion we had at the beginning of this meeting perhaps before the recording started about the trademark clearinghouse and the current problems with (ERS) which have to do a lot with money.

Now if we say there's an independent body who is going to evaluate a request, who funds that body? Is it ICANN? Is it the protected organization?

Or does the person who wants to apply for Olympic pizza have to now pay a \$700, you know, arbitrator fee to even get the question asked?

So some of these things get into areas which I don't think we're going to resolve right now. And the inability to resolve them may well break the consensus on this recommendation.

But I don't think - I really think we need to go on and narrow the scope. And if we try to spend too much time on understanding how we're going to do this, I think we're going to get bogged down. Thank you.

Thomas Rickert: Thanks Alan. I understand that we're not going to make any amendments to the language with regard to the exception procedure. However, we're going to delete Options 3 to f from the list, at least for the time being.

Again, none of this is carved in stone. So anybody in this group may bring back an option to the table. But, you know, just for the time being I think we should narrow it down.

Which leads us to Option Number 4, which I'm going to withdraw since I thought that the suggestions that are made could be well (automated) with Chuck's proposal from the registry stakeholder group. So Option Number 4 is gone.

Jim Bikoff: Thomas?

Thomas Rickert: Yes, Jim please.

Jim Bikoff: I just wanted to clarify one point. You had mentioned earlier I think Avri's comment about licensing schemes or whatever that there was really - that was never anything that was intended or discussed or put forth by the IOC.

And frankly the way we looked at it was that one of the alternatives is a simple consent proceeding, which would be a consent to the registration if someone applies for a particular domain name. And it appears that it's a legitimate right, which would (obviate) the need for a mechanism for somebody to study it and make a decision.

So I think these are - when we get into more detail on these, the consent procedure plus somebody like a neutral body like the ombudsman to make a decision if there weren't a consent might be an alternative to just having a neutral body.

Thomas Rickert: Thanks Jim. Is there anybody in the group who would like to keep up Option 5 in isolation? I which case I think...

Man: Thomas, 5 in isolation is abrogating our duty to answer the original question that was put to us by the council and implicitly by the GNSO and the GAC. So I don't think we can, you know, we can say 1 and 5, which is we're doing nothing and we're waiting. But we have to say something about how we're answering the GAC right now.

Thomas Rickert: Certainly. But my impression was that we would, you know, as options we would have sort of a variation of Number 1 with Number 5 or 3 in addition with 5. But 5 as it stands I think can be deleted from list (condit).

Man: As a stand-alone certainly, I think so.

Chuck Gomes: I guess I don't understand that. This is Chuck. Why is it a problem in isolation?

Alan Greenberg: Doesn't, Chuck it's Alan. Doesn't 5 in isolation really imply 5 plus 1?

Chuck Gomes: No, I don't think so. I agree with others that have said that 1's an inadequate response to the GAC. So I would be in favor. And I'm not sure everyone will be.

But forgetting about 1 and focusing on 5, either with the registrar approach or with J. Scott's approach or something like that. But why is 5 alone not a viable option in and of itself?

Thomas Rickert: Alan would you like to respond?

Alan Greenberg: Yes I can respond. One says we're doing nothing. And 5 alone implies we are doing - we are making a recommendation to do nothing at this point since we're going to wait only for the PDP.

So I think 5 alone is equivalent to 5 plus 1. But I think we're all violently agreeing with each other that 5 alone is not something we want on the table.

Chuck Gomes: So why are we agreeing on that? I'm not agreeing on that.

Alan Greenberg: Well I thought you were proposing 5 plus 1 or 5 plus 3.

Chuck Gomes: No. I propose that we could - the registry proposal was that we said Item 1 as the starting position with the GAC and then have some dialogue with them.

Alan Greenberg: Okay.

Chuck Gomes: I think that the registries would support switching 5 for 1 okay. And using that same approach. So I'm not eliminating 5 at all. Five's one way of answering the GAC.

Alan Greenberg: Okay.

Thomas Rickert: So we keep 5 on the table for the moment. And Lanre you raised your hand.

Lanre Ajayi: Yes I did. I just want to say that while I see Option 5, I'm beginning to see some reasons why we should consider Option 3. Three being particular in conjunction with that Option 5. So I would like to favor a combination of Option 3b and 5.

Thomas Rickert: Thank you Lanre. Before maybe creating the variant and then get back to the proposal for registry stakeholder group, is there anyone who would still take to Option Number 6 at the moment?

Hearing no support for that, I would propose that we then try to define the new or the remaining proposals as they stand. And that would be either a variation of 3 and 5 or 1 and 5. And maybe even 5 in isolation if I get it correctly.

And before - but I would suggest then Chuck that we go back to your proposal and talk a little bit more about how we could raise this to make it a proposal that people can take back to their groups.

So shall we go through the proposal, including the discussion that has been taken place on the list? Chuck I assume you're on mute. Is that possible?

Chuck Gomes: I was. I had an interruption that I had to deal with here at the house. So my apologies. I was talking to someone else and was on mute. What did you ask me?

Thomas Rickert: I would like to get back to the proposal of the registry stakeholder group and go through that, including the comments that have been made on the list aiming at (ameldimating) that into one proposal or approach. That can be put on the - put into the document for the participants of the discussion group to take back to their groups for discussion.

Chuck Gomes: That sounds good to me. Are you asking a specific for something specific?

Thomas Rickert: Maybe you can show us through the individual items of the proposal of the registry stakeholder group?

Chuck Gomes: Okay. Well I thought I did that before. But let me do it again. So assuming that the registry stakeholder group is okay with substituting 5 for 1, which I think they will be based on my understanding of the lengthy discussion we had four weeks ago.

The idea would be the position that we recommend to the council that the starting position be Option 5 okay. And then providing a rational for that, which is not dissimilar to the discussion, the ideas for the rational that we put forward and that you added Thomas and that others can add to.

And ask for - and then tell the GAC, you know, hey here's our position. You know, if you think you're wrong on some of this rational, please explain it.

I know and I respectfully say to Jim and Debra I have found that in trying to convince a lot of people in the registries that the law is absolutely clear and so that's all we need to go by. I fell short even though I was fairly convinced myself.

Although I've found problems too, especially with regard to the uniqueness of the Red Cross and the IOC when I start reading some of the rational from the IGOs.

So I do believe that there would be some value in some additional work on this through a PDP process. Not wanting to drag it out. But the bottom line it's not as - everybody doesn't believe it's as straightforward. Otherwise we wouldn't still be having this debate.

Now, that said okay, we give the GAC a chance to respond. That's the proposal that's on the table from the registries with the one modification.

I'm also willing, like I already said, to take back to the registries J. Scott's proposal with Option 5. So is that give what you wanted Thomas? Is that sufficient? Or do you have other questions of me?

Thomas Rickert: Well I was more looking for actually going through the individual items and see whether we can reach agreement on those.

Chuck Gomes: You mean the rational?

Thomas Rickert: Exactly. For example the question of RPMs and DRMs, you know, to make those accessible to (IOC RCRC).

Chuck Gomes: I can do that. I didn't realize you were focusing on the rat - the rat - some of the reasons that the registries provided, and I'll go through them one at a time and pause if there's comments.

One of them is - that was provided in the registry group was reserving names for the (IOC or RC) could set excessive precedence. And motivate unlimited numbers of other organizations to see special protections even though the GAC did a commendable job of trying to narrowly qualify the organizations for which names would be reserved.

Just a comment on that, and I kind of just commented on that previously is that I was fairly well convinced that it was just those two organizations. And that we wouldn't have a problem with excessive precedent.

After I read some of the papers from IGOs, they made some pretty good cases. It wasn't as clear cut as I thought. Okay now, you know, maybe I - we can still be convinced that it's not going to set excessive precedence.

But there are certainly those in the registries that aren't convinced on that. Any comments or questions on that?

Okay I'll go through it quickly. The second possible reason was lots of input has been received since the GAC request that makes it less clear that the list of organizations could be sufficiently narrow. Actually that's kind of another way to word Number 1 I think now that I look at it.

The third one is national laws vary regarding their implementation of international treaties including variances about what exceptions are made.

And Kiran you gave a nice response to that. And we've had some good list discussion on that. I'm aware of that. But I'm just sharing there are still those in the registries that have some concerns there. Things that could be worked out if we did a - we could work together on in a PDP.

Number 4, existing rights protection mechanisms can be used by the IOC and RC just like other organizations who have rights to names. And of course this was the original position of the reserve names working group with regard to not adding other reserve names to the list.

Number 5 was reserving the line...

Thomas Rickert: Chuck, excuse me. I think that - for that point we should clarify that where RPMs and DRMs are not accessible to these groups, they should be made available to them. You know, because we're not talking about trademarks, but about protection by virtue of treaties.

Chuck Gomes: Well I think that the rights protection mechanisms do have some provisions for things other than trademarks in the case of where there's international treaties and so forth. Somebody can correct me on that. But we can verify that.

Thomas Rickert: Yes.

Chuck Gomes: Okay, 5 is reserving the finite list of names recommended by the GAC opens the door to expanding that list to include acronyms, similar strings. And these become even more problematic from an operational and policy perspective.

Six was there are organizations besides the IOC and RC that have legitimate rights to some of the GAC recommended strings. We've talked about that one in the group.

Seven, the complexities of this issue warrant a thorough vetting in a GNSO multi-stakeholder bottom up PDP. And because of the complexities in competing interests, a PDP may not be able to be completed before new gTLDs are delegated.

Actually I think, we I don't know whether it can or not. That's one of the things that makes J. Scott's alternative approach kind of appealing, at least to me personally.

I think probably all of us can come up with more reasons, and in fact you have stated some other reasons yourself Thomas that I'll let you express.

Thomas Rickert: Well I think that, you know, if you're happy with that we might add this one point after verification of the RPMs and the DRMs that for this proposal must be insured that the RPMs and DRMs are available to the two organizations.

And I think it would also do no harm to, on a voluntary basis, encourage applicants or new registries to voluntarily put those names on the list. Chuck would you be okay with adding that to your proposal?

Chuck Gomes: Sure. In fact I think what we should do Thomas, in my own personal opinion is that let anybody that wants to make suggestions for those lists. And then let's try and refine it as a group if we go this direction.

Thomas Rickert: Yes. Thank you. So we're running out of time. So I would, you know, having heard no further opposition against the details of the proposal for registry stakeholder group, I would like to wrap up and conclude by saying that we have now narrowed down the list of options quite substantially.

I would like to ask staff to incorporate that into an updated version of the paper that Brian has originally circulated. As next steps I would like to propose that after having the next call in two weeks time, we move to weekly calls as long as we need to in order to be able to, you know, so that we're ready for Toronto.

Is that's something that you would agree with? Or let's put it the other way around. Is there opposition against shortening the intervals between the meetings?

Chuck Gomes: This is Chuck. I think we almost have to. Otherwise it's just, we're going to drag - this thing is going to drag out too long and nothing's going to be done. And I don't think we can afford to do that.

Thomas Rickert: That's great feedback. Thank you. I share that fully because I think we need to come back with a response as soon as we can.

With this I would like to give you the opportunity to make final remark and...

Brian Peck: Thomas this is Brian.

Thomas Rickert: Yes.

Brian Peck: Just, I just want to clarify in terms of where we're left, you know, in terms of the proposals that are left standing. And that is basically it's a combination of 3 and 5 and/or 5 by itself.

And then 3 and 5, there's a variation would be of with the registry's proposal that Chuck has outlined.

Thomas Rickert: Well we have 3 and 5, or I should say 3a, 3b and 5. We have the variation of 1 and 5 or 5 plus 1 as Chuck now said. And then there's still the option of 5 in isolation because I understood Chuck wanted to keep that up.

Chuck Gomes: So just a, well me make clear okay. The registry proposal that was to start out with - my modification was to start out with Option 5. Provide a rationale for that, why we think that's necessary.

Communicate that to the GAC. And then ask the GAC for, you know, a response to, you know, if we've missed some things to point it out to us so that we could revisit it.

Now then after that it could go back to 3, if they showed where we missed it. So it wasn't 3 and 5. It was 5 basically.

J. Scott Evans: Well this is J. Scott. I think what we need to do is look at Chuck's proposal which is the registries that start at 5. Then my proposal and then circulate that to the group because - and see if we can get a consensus around that. Because at this point I don't think we've done anything but narrow it down.

And I'm not even sure with the few people we have here today that we can claim that we have consensus with regards to the narrow list. I hope we can.

Chuck Gomes: This is Chuck. I'm comfortable with that approach. Like I said, I'm willing to take both of these things back. The attractiveness of J. Scott's proposal is that if the PDP does take too long, and it might very well, there's some coverage there.

At the same time, if a PDP says no, we shouldn't reserve these names, they could be - the reservations could be stopped. So it has some attractiveness to it. But I like the idea of taking those.

And J. Scott, I think you're right that there may very well be those not on this call that would not be in agreement of narrowing the list. Like you, I hope that that's wrong. But it's a possibility.

Thomas Rickert: This is Thomas. I share this hope. And as I said, we can only make suggestions. Everybody can - everybody's free to bring back other proposals. But I very much welcome the idea to shorten the list to two suggestions rather than having three.

And with this, it's already five past nine in my time zone. I would like to conclude this call. Thank you all for your attendance and your valuable input. We're looking forward to receiving the updated document.

And hopefully we can have a vivid discussion and exchange of thoughts on the mailing list, which I think is imperative to properly and adequately prepare for the next call so that we can make quick progress.

I think we can end the recording now. And thanks everybody and good night or good afternoon.

Man: Thank you.

END