

**ICANN
Transcript
IGO-INGO Protections Policy Development Process (PDP) Working Group
31 October 2012 at 18:00 UTC**

Note: The following is the output of transcribing from an audio recording of the IGO-INGO Protections Policy Development Process (PDP) Working Group Teleconference on 31 October 2012 at 18:00 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/gnso/gnso-igo-ingo-20121031-en.mp3>

on page
<http://gnso.icann.org/en/calendar/#sep>

Attendees on the call:
Alan Greenberg – ALAC
Gregory Shatan – IPC
Wolfgang Kleinwachter – NCUC
Chuck Gomes - RySG
Kiran Malancharuvil – IPC
Jim Bikoff – IPC
Cintra Sooknanan - NPOC
Wilson Abigaba - NCSG
Stephane Hankins – International Committee of the Red Cross
Christopher Rassi – Red Cross
Catherine Gribbin – Canadian Red Cross
Brett Faussett - IPC
David Maher – Ry SG
Donna Austin - Ausregistry

Apologies:
Jeff Neuman - Registry SG
Avri Doria – NCSG
Osvaldo Novao –ISPC
Debbie Hughes – Red Cross
Iliya Bazlyankov - RrSG
Mary W.S Wong - NCSG

ICANN Staff:
Brian Peck
Berry Cobb
Glen De Saint Gery
Julia Charvolen

Coordinator: Excuse me, I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. This is the IGO/INGO Protections Policy Development Process Working Group call on Wednesday 31 of October.

On the call today we have Alan Greenberg, Wolfgang Kleinwachter, Chuck Gomes, Jim Bikoff, Cintra Sooknanan, Wilson Abigaba, Stéphane Hankins, Christopher Rossi, Catherine Gribben, Brett Fausett, David Maher.

We have apologies from Avri Doria, Osvaldo Novoa, Jeff Neuman and Debbie Hughes.

From staff we have Brian Peck, Berry Cobb, Margie Milam, sorry, Glen de Saint Géry, Gisella Gruber-White and myself, Julia Charvolen.

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

Brian Peck: Okay thank you very much. Hello everyone. As mentioned my name is Brian Peck and I'm with ICANN staff. And at least to get the meeting started I'll go ahead and try to give some introductions until hopefully perhaps we can have a chair and other leaders as needed elected.

The purpose of this meeting, just to clarify, and we apologize for any confusion in the invitation that went out. Given the nature of the PDP and in the motion that was adopted by the Council last month in Toronto - or excuse me, earlier this month in Toronto, we're trying to get the PDP completed on an expedited basis.

And so as a way of doing that we thought it would be helpful to kind of merge the two steps of forming a drafting team first and then to come up with a charter and then form a working group after that and to try to merge the work of those two groups together on this initial call.

As you may know we have a GNSO Council meeting scheduled for November 15. And the normal deadline for submitting any documents for approval would be November 7, which basically is a week from today.

And so ideally if at all possible - and we'll see in the meeting today we have a draft charter as a starting point for discussion. Ideally if possible is we could get this group to adopt or approve a draft charter that could be submitted for the 15th of Council. We then of course move forward with the PDP process itself and that's really the task at hand.

So in terms of participating in this group, as I mentioned, it is with the goal of kind of merging the initial steps of the drafting team and the working group together. If you had the intention of only joining the drafting team certainly we'd welcome you input on that. And then of course you obviously have the option to drop out afterwards but hopefully to continue your participation throughout the process.

So with that any questions on the scope of the - or the purpose of today's meeting and/or the initial work of this group?

James Bikoff Yes, this is Jim Bikoff.

Brian Peck: Yes.

James Bikoff Brian, do members of the former drafting team on the IOC/RC issue have to reapply at this point or is the drafting team still in existence through the November 15 Council meeting?

Brian Peck: Sure. Thank you, Jim, that's a good question and appreciate the opportunity to clarify that. The drafting team - the IOC - the current IOC Red Cross drafting team that has been working on the specific proposal for second level protections of the first round of new gTLDs is still in existence and will continue to be unless, you know, there's, you know, one of the things that we thought could be open for discussion is the idea of merging the two groups or incorporating that drafting team group into this PDP working group.

But that's up for, you know, discussion amongst the two teams. As it stands now though it remains as a separate group working on its specific issue and will do so until, you know, decided further by the groups themselves.

In terms of reapplying as long as they remain a separate group, yes, technically you would have to reapply for this particular group. But again, you know, that also could be worked, you know, certainly process wise in terms if it's agreed among the members involved to be incorporated or to merge, you know, that's up to the two groups to decide.

James Bikoff So let me make sure I understand. So we should or should not reapply if our interest is in the IOC/RC issue only?

Brian Peck: If you want to participate in the work of this PDP, which would include, you know, the IOC/RC issue beyond the second level of the first round, which is what the current drafting team is working on then, yes, you should reapply at this point.

James Bikoff So that would be for the second round and on?

Brian Peck: That's correct, yes. The drafting team that's currently in existence is specifically - its proposal is specifically dealing with providing protection of the IOC and RC names at the second level of the first round whether it be through a PDP or whether if the PDP cannot be completed in time through

the temporary reservation of those names as in the current proposal that's out for public comment.

James Bikoff: Okay and how soon would we have to reapply? Any time before - any time, say, before November 15?

Brian Peck: Yes, I mean, you know, between now and when the, you know, hopefully, again, ideally the working group charter would be ready for adoption by the GNSO Council on its 15th of November meeting. And then of course the working group would be formally established to start working on this PDP.

James Bikoff: Thank you, Brian.

Brian Peck: Sure, thank you. Chuck, do you have a question?

Chuck Gomes: Just a comment, Brian. Thanks.

Brian Peck: Sure.

Chuck Gomes: There's quite a bit of confusion in the community; certainly there was in the Registries Stakeholder Group in terms of the merging of the - two tasks, by the way, which I fully support (unintelligible). But I would suggest that after this call that another message go out to all the places where you've sent the message about this clarifying that the working group is for the PDP and their first task will be the recommendation of a charter for the Council to approve.

Secondly because of the confusion and because of the short notice on this meeting you probably already know this but I think it's going to be hard for us to approve a charter in this meeting. I think we're going to need a meeting a week from now and if everybody knows that's going to happen that we might have a shot at doing that.

Brian Peck: Okay. I certainly agree. I mean, I understand, Chuck, and agree with your sentiment that I think we would need at least one more meeting besides today, you know, for, one, just, you know, get a chance for the people on the call today to take a look and digest what's discussed over the draft charter.

Also to give a chance to, you know, possibly revise it as necessary and as you say to also give other people who have already volunteered a chance to participate in the discussions as well. So I certainly agree with that and appreciate your suggestions.

Okay any - and we'll definitely send out a message after clarifying that as well, Chuck, thank you.

Alan Greenberg: Brian, it's Alan Greenberg.

Brian Peck: Sure, hi Alan.

Alan Greenberg: Yeah, two things; first of all whoever is changing the speaker request to microphones please stop doing that; it changes the speaking order and messes up the whole process.

The substantive comment I have is in your previous answer you implied that the work of this group - this working group for the Red Cross IOC is only second batch or second round and later. That's not the case.

The current recommendation from the IOC Red Cross Drafting Team is a temporary hold pending the results of this PDP, which would affect the first round also at whatever time it happened.

Brian Peck: That is correct. I appreciate you clarifying that for me, thank you.

Alan Greenberg: Okay thanks.

Wolfgang Kleinwachter: This is Wolfgang. I have a general question because, you know, I discovered that there is probably pending conflict between the, you know, our understanding of the role of the PDP and the working group and the understanding of the role of this group in the GAC communiqué.

So I think if you read the GAC communiqué then there was a certain, say, express, as I read it - a surprise that the working group and the PDP was decided and then they okay, in their eyes this is only for implementation. So the impression from the GAC communiqué is that there is already a decision and now the PDP should cover only implementation.

My understanding of - from the Toronto meeting is that nothing is decided. So that means we are still, you know, have to discuss whether we need special legal (standing) to get full understanding of the special role of a number of special organizations that may include not only in the governmental organizations but over in the - and nongovernmental organizations.

So that means - I just want to flag this that we have here probably, you know, a problem and we should, you know, take this into account if we move forward.

James Bikoff This is Jim Bikoff. I think - I think Wolfgang is correct in the fact that there is a lot of confusion because when I read some of the minutes from the meeting I noticed that Steve Crocker stated during the GAC Board meeting that it was not the Board's intention that the PDP cover the IOC Red Cross issue.

I may be somewhat mistaken but I remember reading that. And so I think there is confusion both on the GAC position and also on the ICANN Board position.

Wolfgang Kleinwachter: I do not ask for certain action I just, you know, wanted to raise this issue and so that we - that all members or the potential members of the working group understand, you know, the environment in which we operate.

Brian Peck: Okay I think we see Alan has his hand up and then Margie.

Alan Greenberg: Yeah, which got changed to a microphone again. I don't think there's any confusion; I think there's a disagreement.

Wolfgang Kleinwachter: Okay, yeah.

Alan Greenberg: The GAC...

Wolfgang Kleinwachter: Yeah, that's right.

Alan Greenberg: ...believes that no further work was done. The Board only asked for IOC - for the other IGOs to be looked at and IOC Red Cross are not IGOs. That is not what the Council decided. That's a disagreement, not a confusion. Now...

Wolfgang Kleinwachter: Yeah, right.

Alan Greenberg: ...if this working group ends up saying IOC and Red Cross should not have any protection ICANN will be in an interesting position. But that's an outcome which we don't have yet.

Brian Peck: Okay. Margie.

Margie Milam: Yeah, I just wanted to clarify at least what I understand from the staff perspective. This is Margie Milam. I think the - as I understand the Board resolution it was a temporary action until there was something else from, you know, the GNSO Council.

And so there's, you know, there's a little bit of uncertain there. And this PDP that is being kicked off wasn't kicked off as a result of a Board request. It's a GNSO Council request that stemmed from I think originally from some Mary Wong from the Non Commercial Stakeholder Group.

So, you know, whether the GAC, you know, disagrees with it is one thing. But, you know, at least from the staff perspective the issue report's clear; it's within the GNSO Council scope and the GNSO council asked for a PDP to include the Red Cross and IOC issue as well as the other IGO and certain INGOs. So, yeah, it sounds like there's a confusion among various, you know, parts of the community.

Brian Peck: Okay. All right any other questions or points before we move on? Okay just a basic housekeeping administrative matter, if you have not already the volunteers on this group, which we do greatly appreciate your time and participation, do need to submit a statement of interest.

And the link for that is on the - in the notes on the left hand side of the Adobe chat room there and also can be found on our Website. So we, again, ask if you are planning to volunteer and participate on this group and if you haven't already to please submit your statement of interests.

The other would just be as a reminder that, you know, as a working group in the PDP process we're normally expected to operate under the principles of transparency and openness so that all the mailing lists are publicly archived, the meetings are normally recorded as you know, at the beginning of this meeting. And as I said the statements of interest are required for the working group participants so we appreciate your cooperation with that.

The next thing we'd like to do, to the extent it's possible, is if we can see if the group can elect or choose a chair if necessary at this point additional leadership positions. And so with that do we have any volunteers or anyone that is interested in serving in such a role?

Any questions about the role? Chuck, you have your hand raised?

Chuck Gomes: I do, Brian. I'm not volunteering but I think there are too many people missing from this call to select a chair today. Again I think an announcement out to the list would be good for volunteers or nominations or something like that and hopefully that can happen in our next meeting. That's just my own...

Brian Peck: Okay.

Chuck Gomes: ...suggestion.

James Bikoff This is Jim Bikoff. I believe Chuck's correct that a lot of people are missing on this. The other thing is that when we received the notice for this first meeting it came, I think, on Monday. And we've been, on the East Coast at least, we've been saddled...

Brian Peck: Sure.

James Bikoff ...with a major catastrophic hurricane that has closed offices for two days and we're just getting back to normal now. So anybody on the East Coast I think probably has not had a chance to really review the charter work plan etcetera. And I think we need some time to do that before we - I would think before it's discussed.

Brian Peck: Okay, no, understood. I certainly appreciate the conditions that you mentioned, Jim, and Chuck, appreciate your suggestion and seconded by Jim there. So what we can do is when we send out the clarification notice after this meeting we'll include a call for either volunteers or nominations for the position of chair of this working group and proceed along those lines.

Okay. The next point we wanted to try at least, you know, introduce the members on this group to take a look at - as I mentioned staff has prepared a - initial draft working group charter to serve as a basis to initiate discussions.

You know, certainly open to comment, input, revisions as the group seems fit. But again just to start the discussions off. And so thought we could quickly go through it and certainly be open to any questions or comments or initial reactions that people might have.

You know, it's basically the standard format. You know, again the emphasis or the purpose - the focus of this - of the draft working group charter that we've put together was keeping in mind the request of the Council when it adopted this motion to initiate this PDP is to try to conduct the business and complete the business of the PDP in an expedient manner.

That being, you know, in practical terms of having recommendations, any policy development recommendations, that come out of this PDP process be ready or be completed in time for the GNSO Council to take action prior to the actual designation of any of the first batch of new gTLD strings.

Obviously with the concern in mind that if indeed this group does come up with any policy recommendations or developments for protections of any of these particular organization names for the second round that they would be in place so that it could be implemented in time, as I say, for the designation of the first round of new gTLDs.

And so with that in mind is how we kind of proposed structuring the working group as we have in this charter here. Let me scroll down to that. Again we proposed splitting this group, you know, it'd be one large group but having two sub groups to try to work on the two issues we see at hand from the adopted motion, you know, concurrently to try to get the work done as quickly as possible.

The proposed Sub Group A would be to develop, at a minimum, recommendations to protect the Red Cross and IOC names at the second level of the initial round of the new gTLDs and that's to incorporate, as Alan clarified earlier, that the current drafting team recommendation is to, you

know, propose or develop policy recommendations protecting the names of these two organizations at the second level of the new gTLDs.

And, you know, if absent any final PDP action that could not be done in time to have the temporary reservation of those names. So this group would be taking on the task of taking up the first recommendation of the current drafting team in working on developing policy recommendations, again, to protect the names of just these two organizations at the second level of the initial round of new gTLDs.

And this is in response to the Board request in its motion last month, in September, to do so by the 31st of January next year.

Sub Group B then would be responsible for developing policy recommendations for any special permanent protections for IGO and INGO names including the Red Cross and IOC names at the top and second level of all gTLDs so obviously new gTLDs but all existing gTLDs as well.

And again, you know, these groups would be working concurrently to try to expedite the process in developing policy recommendations that could be submitted to the Council, you know, in time for implementation of any designation of new gTLDs.

So that was kind of our initial, you know, overall structure of how we envision the PDP group could be effective in expedited-ly carrying out these tasks but certainly are open for suggestions or comments or any other input you might have.

Alan - oh sorry.

Alan Greenberg: Brian, the - splitting the two separate parallel groups seems to be making the assumption that there is really no overlap in the two questions. Is that something that staff believes that there are really things that may handle

independently without interactions, without some of the same footwork being done ahead of time and that they're really and truly two separate issues?

I'm not questioning that; I'm asking. Because...

Brian Peck: Sure.

Alan Greenberg: ...the presumption that one can split and have work done in parallel seems to imply (unintelligible).

Brian Peck: No I think, I mean, I think the staff views as well that the issues are obviously interrelated in terms of, for example, you know, the current issue that the - or what the focus is of the current drafting team is for the IOC and RC names is focused specifically in response to the Board motion of September and looking at providing protection at least at the second level of the first round of new gTLDs once they're designated or going online.

But obviously any policy development recommendations that come out of that would, I think - would play or have a bearing on what types of protections would be, you know, determined or recommended for, you know, future rounds as well as for existing gTLDs.

So I, you know, we agree that certainly, you know, the issues are related and the work of the two groups are related. We just thought that perhaps given the deadline that we have in terms of responding to the Board motion, you know, for the - again specifically for the two organization names at the second level of the first round by January 31 of next year we thought, you know, that they - one group could focus on that to, you know, because obviously that's a much tighter timeline than say, for example, a timeline that may be envisioned of having recommendations ready for implementation by early spring of next year.

So it was more of a - I guess - I'm sorry, that was a probably a long way - and I apologize - of answering. But, yes, the issues are obviously related. We just thought in terms of process and getting something that has kind of a shorter timeframe deadline, if you will, you know, could be better facilitated by having kind of a sub group working focusing on that.

But, you know, certainly, we'd, you know, would encourage, you know, kind of the intersection of the two discussions. And again if the group feels that it would be better to have one individual group we're certainly open to that. We're not - it's not because we felt that the issues are completely separate and should be dealt with in a vacuum of each other.

James Bikoff Brian, it's Jim Bikoff.

Brian Peck: Sure.

James Bikoff Is Sub Group B intended to be relating only to future rounds - second and future rounds?

Brian Peck: I would say initially when we drafted this yes although again, given, you know, as discussed earlier you had the GAC communiqué, you know, now saying that perhaps - or advising actually the Board that, you know, in the case of IGO names that a list should be developed that is based on the criteria of being able to register domain names under the DotINT domain or gTLD I should say, excuse me.

So, you know, that's kind of an open question I think at this point.

James Bikoff The second thing I was going to ask is when you refer to a Board request or a motion are you talking about a Board - the Board resolution?

Brian Peck: Yes, the one I'm - with regard to specifically the IOC and Red Cross names, you know, for the second level of the first round of new gTLDs that's in

response to the adopted motion by the Board in September which basically requested the GNSO if the policy work was not to be completed by the time - of January 31 to either provide advice if there were any concerns, again, over stability, security, DNS, you know, if special protections were to be extended.

So that's - yes, it's in response to that actual adopted motion by the Board back in September.

James Bikoff Okay.

Brian Peck: Okay. Might we have Chuck and Alan and Margie.

Chuck Gomes: Okay thanks, Brian. I'm not opposed to the possibility of dividing into the two groups if we find that that increases our efficiency and ability to work quickly. I'm not sure that's the right thing to do right out the gate. There are, I think, some general things that the PDP working group's going to have to agree on; of course the most obvious ones are the charter and the work schedule.

But also the Council has requested - or at least suggested - the possibility that some independent legal research be done. And that would be beneficial to both groups. So I guess my suggestion with regard to the charter - and I haven't tested this with the Registries Stakeholder Group and David Maher's going to be our primary representative in that regard and he's on the call so speak up, David, if you need to.

But - and we will test it with him. But I wonder if the charter should be modified a little bit to make that suggestion as such a suggestion in terms of the way it could be organized if the working group decides that that's the most effective way to go rather than kind of - the charter right now, as I read it, says this is the way it's going to be done.

Brian Peck: Okay. Okay. Thank you, Chuck. Alan.

Alan Greenberg: Yeah, Chuck said pretty much what I was going to say that splitting may be a decision that we want to take later. I wouldn't...

Brian Peck: Okay.

Alan Greenberg: I actually wouldn't make it in the charter because I think that's a decision the group is going to have to take. And certainly the work plan decision on what kind of external research to commission and perhaps review of that research are things that need to precede it.

So I'm not 100% sure that dividing, you know, I'm sure at some point when we get close to the end division is going to be required. I'm not sure it's something that we understand well enough right now to make the decision on when that happens immediately and certainly not put it in the charter, which essentially casts it in concrete.

So I'd like to keep it more open-ended. I understand the staff desire to have this completed quickly but quality also counts. And I think we don't understand the issues well enough to make those decisions today. Thank you.

Brian Peck: Okay. Thank you, Alan. Margie.

Margie Milam: Yeah, this is Margie. A couple points. I think when Brian answered Jim's question regarding whether this is only second round I'm not sure that's 100% clear. I mean, theoretically the working group could produce recommendations that are possible to implement before the first round is over.

So - and I think we - Brian was maybe focused on - and maybe, Brian, you can clarify - was the IOC Red Cross as opposed to the broader issue because the IOC Red Cross issues are essentially, you know, addressed in the Applicant Guidebook already and would be - if the Council doesn't

respond and - by the 31st of January so there'd be something that relates to the second level in - with respect to the first round.

But - so in other words it's still possible but, you know, given the timeframe it's probably likely that the recommendations are more likely to affect later rounds. But I just wanted to, you know, at least clarify my perspective on that issue.

And then on the separate issue with regard to the legal request that was a discussion but it hasn't been a formal request yet. And so, you know, and given the timing if you want a response by January 31, for example, you know, or before that so the working groups can sort it out and evaluate it and understand it we, you know, as staff we need a formal request. And that hasn't been asked for yet.

So that's something that, you know, perhaps once we get the, you know, either through this working group or through the Council would like a formal, you know, request so that we can take that to the legal team and get, you know, the information that the working group is looking for.

Obviously we've been socializing it internally so it's not like this is a - this is going to be a surprise. But we do need the formal request.

Wolfgang Kleinwachter: This is Wolfgang. May I clarify the former questions? I think - my understanding from the Toronto meeting was there was a consensus that we need such a legal clarification. But how to start the process that we will have to formulate what and to send it to whom. Is it the GNSO Council? Is it this drafting team? The working group or the - will it be Jeff or, you know, Jonathan? Or, you know, who has to send what to whom?

Margie Milam: I think it - and so my perspective a chair either of this group, which we don't have yet, or the Council chair if, you know, if we're not able to quickly decide who's, you know, who should be chair and get some sort of communication.

But I think that's what we're looking for. I mean, you know, it was a discussion item but it wasn't a formal request.

It doesn't need to be a motion, you know, at the next meeting; it doesn't have to be that formal. But just a sort of email from, you know, the working group chair or the Council chair, from Jonathan, saying, you know, given the, you know, the discussions in Toronto this is what we're looking for and spell out exactly what's being sought because that's the other part.

I think in the wrap-up meeting for the Council members we talked about asking for clarity on exactly what is looked for. I know there's the request to evaluate the legal basis for the IGO and the Red Cross protection but there was also a mention from I think the Registries that they wanted also to have a look at, you know, the Registry role. And so that's what we were looking for is that clarification.

Wolfgang Kleinwachter: Okay we shouldn't (abuse) time and start as quick as possible. And somebody has to push for this.

Chuck Gomes: This is Chuck. The - I'd like to suggest that maybe the first action of this working group today is to make that formal request regardless of whether we have a chair yet or not.

Now if that doesn't work I suggest that Wolfgang, who's on the Council, request that Jonathan, the new Chair of the Council, make that request formal if that's necessary.

Like Wolfgang said, timeliness is really important. And I appreciate the fact that staff fully recognize that. That's what you're proceeding quickly like you are so thanks for that. But, you know, and finding - getting that kind of information in January is too late because...

((Crosstalk))

Wolfgang Kleinwachter: Okay I fully support. Chuck, unfortunately, as I said earlier, I have to leave to conference call now. But, you know, if you decide that, you know, this would be the best way then let me know via email and I will send out the request to Jonathan tomorrow. Thank you very much and bye-bye.

Chuck Gomes: Thanks Wolfgang.

((Crosstalk))

Chuck Gomes: So, I mean, everything we do is contingent upon that getting information. So unfortunately we probably need it in an unrealistically fast manner. But we need to avoid any delays in that work happening.

The GAC obviously has an opinion that a PDP isn't even needed because international law is clear as a bell on the Red Cross and IOC. Others in the community aren't quite so clear on that. So it would be really helpful to us to get that advice if we can very quickly.

So, again, I suggest that this group, today, if there are no objections, initiate that request and then, Margie, you can - we need to obviously get you more information and we need to do that.

Brian Peck: Okay I have Alan Greenberg and then David Maher.

Alan Greenberg: Yeah, thank you. I'm getting very confused. There seems to be a discussion going on now that this group is going to come to recommendations in time for the January 31 Board deadline. And if so you all have better time machines than I do because that's not going to happen given the timeframe we're looking at and the minimum requirements for any PDP.

So my understanding was the legal - the request for additional legal research was on the longer term issue not to meet the short term request, which I

thought the drafting team was addressing with the recommendation - the draft recommendations currently out for comment.

So I think we're mixing the two things. And I'm getting a little bit confused. And with regard to asking for legal opinion right now I'm not sure we know what the question is sufficiently well to go and, you know, request that ICANN spend probably several hundred thousand dollars or certainly a big chunk of money on a question that I'm not sure we phrased yet.

So I - it sounds like we're getting a little bit ahead of the game unless I've missed something badly. Thank you.

James Bikoff This is Jim Bikoff. I agree with Alan. I think it is a little confusing especially given the fact that the rights that have been asserted by both the IOC and the Red Cross with the subject not only of GAC opinion based on research but also the letter from Council, ICANN Council, who went over this and the letter that was released late with the redactions made it clear that Council for ICANN had verified that no one else seemed to have these protections that were asserted.

So I'm wondering whether you're going to have that research done over again or whether - is that the recommendation and who's going to do it? Is it going to be Council or is it going to be Council in every country or is it going to be some international Council? I mean, these are things that I think need to be discussed by a working group.

Brian Peck: Okay. David Maher.

David Maher: This is David Maher.

Brian Peck: Maher, I'm sorry, excuse me, David. I'm sorry.

David Maher: Okay. I agree with Alan and also with the last comment that I don't understand exactly what is being asked for in the way of legal research. If the research involves the whole concept of protection of trademarks under international treaties this could take a year. It's an enormous task.

I'm sufficiently familiar with these treaties to know that they vary in important respects. None of them cover every nation in the world. At least some of them do not apply in major nations as an impact on the operations of the Internet. And I am not at all clear what we should be asking for at this point.

Brian Peck: Okay. Chuck, you have your hand up as well?

Chuck Gomes: Yes, I did. Thanks, Brian. First of all in response to one of the things Alan said I see no added value in assuming that we can't get anything done by January 31. I fully recognize that that may be what happens. Nothing can be gained by assuming that. So I question that.

Secondly, I don't think the question needs to be asked from the point of view of legal research is all that unclear. And there was a pretty good discussion on that in the Council meetings in - on the weekend in Toronto.

Basically it's this in my understanding, which may be wrong but it's my understanding. The GAC and the Red Cross and the IOC have maintained that the research has already been done and the legal basis for protecting the Red Cross and IOC names shouldn't even be considered; it's done, it's handled by law. And if that's the case then we don't even need to have any GNSO policy; they can just handle it through legal means.

If that's not the case - and there are people in the community that have made pretty strong argument that it's not that clear, IGOs in particular - then we need to know that. And we need, in terms of who should do it, obviously it needs to be somebody different than has done it for the GAC or the ICANN staff.

They were obviously pursuing an issue from the point of the view of the Red Cross and the IOC. And they may be right. But it'd be really nice to hear an independent source confirming that or telling us that it's not quite that clear.

Now with regard to trademarks, David, this isn't about trademark protection it's about protection for names of international organizations. And I think that's quite a bit different than protecting trademarks.

And there are international treaties that deal with these organizations. But I'm certainly not an international law expert, not even a law expert. So I don't know who to believe. And it's going to be very hard to proceed on this PDP if we don't get clarity on that.

James Bikoff Chuck, it's Jim Bikoff again. Just one thing you left out, of course, was the fact that ICANN Council - and we didn't know this while the drafting team was having our weekly meetings in the past - but that ICANN Council had already verified that no other organizations seemed to have this type of protection that was asserted by the two groups.

I think that's an important piece because, unless you discount ICANN...

Chuck Gomes: Are you still there, Jim?

James Bikoff Yeah, I'm sorry. But, I mean, when we received that letter that had the redacted content showing that ICANN's Council had studied this issue and had confirmed that no other organization - organizations - appeared to have this protection I thought that really was, again, an independent opinion that seemed to confirm what the GAC's position was.

Chuck Gomes: No I read - this is Chuck again. I read that too, Jim. And I respect that, okay? I'm not saying one - supporting one way or another. But there have been

others in the community - and particularly from the IGO community - that question that advice.

As a PDP we need to look at all - in a PDP working group we need to look at all sides. And that's what I'm suggesting. Let's do that. And we may find out that the ICANN General Counsel's opinion was right on target. But there are those in the community - not me - that have questioned that. So shouldn't we look at that?

James Bikoff Well, I, you know, I'm - all I can say is the people that I've spoken to from IGOs have given me the impression that they're not challenging the IOC RC protection but they're saying that they also are entitled to protection based on the treaties that affect their organizations not that we are not - not that the IOC and RC are not entitled to protection but that they additionally should have a protection.

Chuck Gomes: Agreed, Jim. This is Chuck again.

((Crosstalk))

Chuck Gomes: No, I totally concur with you on that. But then that brings into the question is the statement that the IOC and Red Cross are the only organizations that should have protection? Is that a true statement? And maybe it's not; maybe it is. But we need to determine that.

James Bikoff Well I can tell you this: I don't think that - and I can only speak for IOC - I don't think that we're saying that the IGOs are not entitled to protection. And I think the two questions, you know, not necessarily - I mean, the IOC and RC I think have established, in my mind, that they're entitled to protection.

Whether the IGOs are or not is I think a question that needs to be looked at in more detailed working group.

Alan Greenberg: Point of order. It's Alan. We seem to be having the working group discussion now somewhere in the middle of it.

Brian Peck: Okay. Yeah, let me - first of all let me take care of people who have their hands raised. And, Alan, I'll get back to your point here in just a minute. So I have Margie and then David.

Margie Milam: Well as you can see - this is Margie - from the discussion this is why we're asking for clarity on what the issue should be that gets looked into. I do recognize the concerns that everyone's raised about the timing of it and whether it would even, you know, be available and early enough to deal with the January 31 deadline.

I mean, that's certainly, you know, something that the group should decide whether it is realistic to have that information available in order to respond to the Board request. So, you know, this just, you know, explains why we wanted to kick off the process very quickly to start getting folks thinking about what the issues are so that we can get everything in order in order to meet some of these deadlines.

And so - and to clarify another thing, you know, we talk about the working group as a drafting team and, you know, from a staff perspective as Brian indicated, we've tried to essentially merge those so it's not as, you know, it's not the traditional process in the sense that, you know, we only talk about charter and the drafting team.

And then we only start working on the PDP issues until after the charter is approved because of the expedited nature and the operating procedures that the GNSO Council follows there's flexibility there. So, you know, there's nothing wrong with talking about those things. I think Alan mentioned that in the chat.

And, you know, maybe you're (all) not comfortable in talking substance right now because the charter's not signed yet. But that's not a GNSO rule it's just, you know, really comfort level within the working group.

Brian Peck: Okay. David.

David Maher: I think that this group needs to make a decision before January 31 on the question of protection of the IOC and the Red Cross. And I don't think that calling it a legal decision is appropriate. I think it's going to be a policy decision because this group is not in a position to get enough legal advice within a reasonable time period about the legal effect of the various treaties that give protection, whether you call it trademark protection or anything else, to the IOC and the Red Cross.

But we ought to focus, first, I think, on getting the job done with the IOC and the Red Cross by January 31. And the rest of the issues involving other IGOs are fundamentally policy issues. We can be informed as to the legal effect of the various treaties but we still have to make our own determination about policy which is our job.

Brian Peck: Okay any other questions or comments? Okay I think - are there any questions or other input? And just to recap with regards to the working group charter itself I heard two suggestions; both I think with the same objective but in terms of format.

One would be is in structuring the VP one is to just either, you know, instead of saying (shall) suggesting a possible structuring of the PDP working group could be separating the two sub groups or to leave that, you know, to leave no suggestion and leave that up to the working group itself once the charter has been adopted.

Is there a preference one way or the other leaving it as a suggestion or leaving any sort of suggestions out at all and just leaving the objectives,

which I think everyone agrees on. We have two. Basically one is dealing with the IOC and Red Cross names in particular by the January 31 deadline. The other is the broader question of, you know, names for these organizations at both the top and second levels for all gTLDs.

David Maher: This is David Maher.

Brian Peck: Yes.

David Maher: I think we - we can't make the decision today on the separation or non-separation of the two groups. And we have to put that off until the next meeting or some subsequent meeting.

Brian Peck: Sure. Well I understand that. I think - I guess my question would be - sorry, maybe it wasn't clear - is that, you know, do we leave the - this in as a suggestion in the draft charter for people to review or do we just take it out completely leaving just the two primary objectives, which I think everyone agrees upon, and let the working group decide once the charter's been adopted?

You know, I guess should we still include as a possible suggestion for people to consider or do we leave that out completely...

David Maher: I think we should include it as a suggestion.

Brian Peck: Okay.

David Maher: I think it should be open to decision by the group.

Brian Peck: Sure, okay. Anybody - Alan, you have your hand up.

Alan Greenberg: No I agree with that. I think it should be listed as a possible alternative and the group can make the decision when and if as it deems appropriate.

Brian Peck: Okay.

Alan Greenberg: I see no harm and probably it's a good thing to put it in.

Brian Peck: Okay, thanks. All right. Any other questions or comments on the charter itself? And again we will - we'll send that out, we'll revise it accordingly and send that out, again, with the clarifications and a call for volunteers or nominations for a chair.

Brett Fausett: And do we have a deadline? This is Brett Fausett. Do we have a deadline for responding and providing comments on the charter?

Brian Peck: Thank you, Brett. I think that ties into the - with the remaining time we have left and that is to decide on a date and time for the next meeting of this group. And then, you know, we could accordingly set a deadline for any comments or input on the draft charter itself.

Our suggestion, again, would be a week from today which would also coincide with the deadline of submitting the charter in time for the November 15 Council meeting.

So, you know, we would suggest around the same time, same day, or, you know, a week from today. If people have other suggestions certainly for that but keeping in mind that indeed November 7, a week from today, is the deadline to submit the - any draft charter for adoption by the GNSO Council.

David Maher: This is David Maher. I would suggest we schedule it a week from today.

Brian Peck: Okay. Any other - anyone have any other suggestions? I mean, it would give a week's time which then hopefully would give people enough time to review the charter and have any possible input or suggestions that we could then communicate in an email prior to next Wednesday's meeting.

Included with that we also would have - would suggest or would request that you - and it's up on the screen right now - staff had also prepared a draft working group plan and timeline again keeping in mind some of the deadlines that we're facing on that.

And again just - as open as a suggestion but as a way to open up - or a basis of discussions and again to be taken into account with, you know, with the charter. But if I don't hear any objections then I think we can go ahead and schedule our next call for November 7.

And in between hopefully members of this that are on the call today, as well as other members that have volunteered, can have a chance to review the drafting - the working group charter with the revisions that have been suggested today.

Stéphane Hankins: Excuse me. I'm sorry, this is Stéphane Hankins, RCRC - Red Cross. I can't open the - I can't put my hand up.

Brian Peck: Oh okay, I'm sorry.

((Crosstalk))

Stéphane Hankins: I wanted to - I just want to make a couple of points. One of the points is, you know, we're obviously - we have a timeline element that we have discussed, which is the 31 of January deadline.

I would like to clarify in view of the November 15 Council meeting a little bit where we stand with regards to the moratorium because I - it has been brought up - of course it's - it has been underlined that it's distinct from the terms of the document we have before us.

But I'm a little bit unclear now what the decision is in regards to that. We feel, in the Red Cross Red Crescent team, of course that, you know, this is highly important and that we shouldn't let go of that. So that is a first point.

The second one is it has been mentioned in the discussion today that it is important to work and to clarify the legal question. So I - the legal questions. So I suppose that of course that will be the first issue for the working group and whatever sub groups are created and whether the sub groups are created or not to determine.

But I think here there might be work that can already be done. I think it's important to do that. I do want just to recall once more, you know, that in our view the issue of the Red Cross Red Crescent designations, you know, only partly fits - and all of you have heard this before - but only partly fits the international organizations - intergovernmental organizations and international nongovernmental organization paradigm.

You know, the - that's not the primary reason why these designations are protected. They're not marks; they're protected as the designations of protected emblems and so on and so forth. And this has been highlighted many times before.

So I think it is important, you know, that the questions be clearly outlined. And I would like to reiterate once more another point which is it is highly important that in the work of this working group we do, from the very outset, make sure that we will treat the respective designations on - on their - and their protection - on their own merits for the reasons that I've mentioned.

I know that I've - and this has been mentioned a number of times before but I - it is really of the essence of the issue. And maybe what one last point is obviously we are - if the working group will be working towards the January 31 deadline in regard to the Red Cross and IOC designations.

But once again that distinction between the issues which, you know, the Sub Group A was to look at and Sub Group B is artificial of course because the legal grounds for the protection of the designations, Red Cross Red Crescent, obviously are not going to change by the 31 of January and the global public interest which has been recognized by the Board in the initial moratorium for first level names in the first round - in the first round.

That public interest of course will continue and will be carried obviously beyond the 31st January deadline as it be. So these are my only remarks. Thank you.

Brian Peck: Thank you. I have David and then Chuck.

David Maher: I'd just like to respond to part of what was just said. I strongly believe that this working group is not competent to make legal decisions. If there is a law that can be enforced by some court that has jurisdiction over ICANN that's a legal question that is out of our hands.

We are a policy-making group under the GNSO. And we should restrict our work to the policy area and let the courts and the lawyers who are dealing with ICANN decide whether ICANN is subject to any legal obligation with respect the IOC, the Red Cross or any other international governmental organization for that matter.

Brian Peck: Okay. Chuck.

Chuck Gomes: Yeah, totally agree with David on that one. In fact that's why I was really hoping we could get some legal advice if it's possible to get any so that we know. Anyway I'll leave that alone.

The - with regard to the January 31 request that the Board made the drafting team has already made some recommendations that provide the Council

content for communication if the PDP is not done in time for the introduction of new gTLDs.

And if the Council accepts that recommendation from the drafting team then they have what they need to communicate to the Board on January 31 regardless of where we're at in this working group.

Brian Peck: Okay thanks, Chuck. Okay we're coming up to the end of our scheduled time. As I said we will send out a revised version of the working group draft charter, confirmation of the next scheduled call, which will be for next Wednesday at this time, although we will schedule it for two hours, a call for nominations and/or volunteers for chair of this group and again a clarification of, you know, what the initial objective is of this group and that is to adopt a charter that can be submitted to the GNSO Council for its 15th of November meeting to the extent that's possible.

Chuck Gomes: Brian, this is Chuck again.

Brian Peck: Yes.

Chuck Gomes: A quick question on the work schedule. How come it starts off with charter drafting team number one and charter drafting team number two? That's not two separate teams is it?

Brian Peck: No, no that was I think just...

Chuck Gomes: Okay.

Brian Peck: ...the number of meetings. Sorry about that, yeah.

Chuck Gomes: Yes, that's fine. That's fine, I just wanted to make sure.

Brian Peck: Sure, okay. No, thank you for clarifying that. Okay. Any other questions or comments before we close? Okay again thank you very much. We really appreciate your volunteering to participate in this we think a very important group that obviously is a high profile issue and for the time that you dedicated to that. And we look forward to working with you.

And we'll be in touch by email prior to the next scheduled call next Wednesday. So thank you very much, everyone, for your time.

Chuck Gomes: Thanks, Brian, for chairing.

Brian Peck: Oh sure. Thanks. Okay. Bye-bye.

David Maher: Bye.

END