

**ICANN  
Transcription  
IGO-INGO Protections Policy Development Process (PDP) Working Group  
Wednesday 09 January 2013 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of IGO-INGO Protections Policy Development Process (PDP) Working Group on the Wednesday 09 January 2013 at 19:00 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-20130109-en.mp3>

On page: <http://gnso.icann.org/en/calendar/#jan>

Participants:

Lanre Ajayi - NCA  
Alain Berranger - NPOC  
Jim Bikoff – IPC/IOC  
Mason Cole - GNSO Council Vice Chair - RrSG  
Avri Doria – NCSG  
Elizabeth Finberg - RySG  
Chuck Gomes – RySG  
Alan Greenberg – ALAC  
Catherine Gribbin - Red Cross  
Robin Gross – NCSG  
Stephane Hankins – NCSG  
David Heasley – IPC/IOC  
Wolfgang Kleinwaechter - NCSG  
David Maher - RySG  
Kiran Malancharuvil - IPC/IOC  
David Opderbeck - IPC  
Christopher Rassi - Red Cross  
Thomas Rickert - NCA - Working group chair  
Jonathan Robinson - GNSO Council Chair - RySG  
Greg Shatan - IPC  
Ken Stubbs - RySG  
Claudia MacMaster Tamarit - ISO

Apologies:

Paul Diaz - RySG  
Osvaldo Novoa - ISPCP  
Iliya Bazlyankov – RrSG  
David Roache-Turner WIPO

ICANN Staff:

Brian Peck  
Berry Cobb  
Julia Charvolen

Julia Charvolen: Thank you very much. Good morning, good afternoon, good evening.  
Welcome to the IGO/INGO Protections Policy Development Working Group  
call on Wednesday, 9 January, 2013.

On the call today we have Jim Bikoff, Avri Doria, Elizabeth Finberg, Chuck  
Gomes, Alan Greenberg, Catherine Gribbin, Robin Gross, Stéphane Hankins,  
Wolfgang Kleinwachter, David Maher, David Opderbeck, Christopher Rassi,  
Thomas Rickert, Greg Shatan, Ken Stubbs, Claudia MacMaster Tamarit,  
Alain Berranger, Jonathan Robinson, Mason Cole.

We have apologies from Paul Diaz, Osvaldo Novoa and Iliya Bazlyankov.  
And from staff we have Berry Cobb, Brian Peck and myself, Julia Charvolen.

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

Thomas Rickert: Thank you very much, Julia. This is Thomas Rickert speaking. I'm chairing  
this working group and I'd like to welcome you all to this first call in the year  
2013 on this subject. I wish you all a happy New Year and I hope that you  
had a great festive season.

Before we dive into the next agenda item I'd like to ask you whether there are  
any updates to the statements of interest?

Lanre Ajayi: Thomas?

Thomas Rickert: Yes. Is that Lanre?

Lanre Ajayi: This - yeah, this is Lanre. I didn't hear my name so - on the roll call so I just  
want to say that I'm on the call.

Thomas Rickert: Great. I'm sure that Julia will add you to the list. Thank you, Lanre, welcome.

Jim Bikoff: Thomas?

Lanre Ajayi: Thank you.

Jim Bikoff: Thomas?

Thomas Rickert: Jim, please.

Jim Bikoff: David Heasley and Kiran are here too.

Thomas Rickert: Great. Welcome to the three of you. Let me ask again are there any updates to the statements of interest? Okay hearing none.

Before we move to the next item, which is the review of the work package spreadsheet initial results I'd like to briefly discuss a question - or a couple of questions that have been asked by Claudia on the mailing list. And I would very much like to give Claudia the floor for a second to ask a question here and then maybe we can find a common answer to that. Claudia.

Claudia MacMaster Tamarit: Hello. We have been concerned that the language of the charter - that if the language of the charter imposes some restrictions on eligible international organizations that these restrictions be read on their face. And specially I'm referring to the language defining international organizations as an international governmental organizations, IGOs and international nongovernmental organizations, INGOs, receiving protections under treaties and statutes under multiple jurisdictions, etcetera.

If the language of the charter requires some kind of treaty protection as necessary for an international organization to qualify, okay, for special protection then a plain reading of this requirement should include reliance on any treaty.

Some IGOs and NGOs have relied on treaty protection of their graphic symbols as criteria pointing to the need to protect an alpha numeric term or name. So likewise other INGOs, for example, with multinational trademarks protections might rely on the Paris Convention, the Madrid Agreement or the TRIPS Agreement.

So that being said, from our position I don't think that such treaty protection is necessarily at the heart of what makes it important to protect certain international organizations names in domain names. Better I think the focus should be on the composition of the organization, for example, that the organization is constituted by member countries and designed to serve, by its very nature, a public and international good.

And it is - these organizations that I think are particularly vulnerable if they have to divert important and often public funds from their international public work to tackling abuses of their names and domain names. So that was, I think, the message in my first email. And I sent a second email just briefly to say that of course when we are integrating spreadsheets that we should strive to make sure that all statements are either - either go unattributed or equally attributed and are copied in there full.

Thomas Rickert: And Claudia, let's get back to the spreadsheet in a moment.

Claudia MacMaster Tamarit: Yes.

Thomas Rickert: I wanted to limit this first item to the scope of the charter and I want to ask the group whether there's anybody volunteering to respond to that question. And I see Greg, please.

Greg Shatan: Well I think that the - this aspect of the charter is, to some extent, traces back to the IOC/RC drafting team which is somewhat the predecessor of this group. And I think to be - in that group and for those organizations that were

being considered there the criteria that were considered were to have both treaty protection and also statutory protection in multiple jurisdictions.

I think that for those two organizations or two federations of organizations that were being discussed there that made sense or may have made sense. I think that applying that now to IGOs and INGOs is a vestige and I think a troublesome problem.

I think that reading it on its face - and we did have some discussion about the meaning of the word "and" or whether "and" should be read as disjunctive or conjunctive in this aspect. And I think, to be honest, in looking at the predecessor organization it was intended, in this case, to require that both criteria be met for eligibility.

However we've never discussed the justification for that. And I think that it is one that I have also been deeply concerned about. And I think that we either need to consider revising the charter so that this distinction, which I think is arbitrary and could exclude, you know, worth organizations just based on kind of the nature of their history and the way in which they were constituted or might find protection regardless of whether the treaty they're referring to is one that constituted them or not.

So I think we either need to revise the charter or decide that regardless of the charter that we will consider in terms of eligibility whether either or both of these eligibility criteria are appropriate eligibility criteria or rather I should say disqualifying criteria for IGOs and INGOs. Thank you.

Thomas Rickert: Thanks, Greg. We have indeed discussed this a little bit earlier on but I thought that still it might be worthwhile briefly touching upon it. My understanding of our previous conversation was that there weren't any limitations. But I think it's important for us to go on record with the understanding of this group.

I have Alan next and I see this queue getting longer and longer so can I ask you to make your statements brief so that we can move to the next agenda item as quickly as possible. Alan.

Alan Greenberg: Thank you. I'll be very brief. The ALAC, I believe, would strongly support the more liberal interpretation that was being referred to. And in fact the ALAC has, a number of times, come out very strongly in saying that the organizations it believes are most deserving of the kind of protection and most needing the kind of protection we're talking about are those organizations which, in fact, are not protected by explicit treaty but are ones which suffer greatly from the kind of problems we're looking at here. Thank you.

Thomas Rickert: Thanks, Alan. Chuck.

Chuck Gomes: Thanks. I wanted to point out, Thomas, some of the history in the PDP because I think it's really relevant here. There were two very, very conscious agreements in the PDP work that went on for new gTLDs. One of them was the criteria would be objective and we'd minimized subjectivity in it.

And the second one was because of the international nature of the Internet and the DNS and of gTLDs in themselves that it was important that we base any criteria on international law rather than just any one single jurisdiction.

So I personally believe - and others are on this call that also participated in the PDP - that the language in the charter really is consistent with very conscious and deliberate decisions that were made by the PDP working group at that time. And I just wanted to point that out because I think it's very relevant to what we're talking about here.

Thomas Rickert: Thanks, Chuck. I have Claudia next. Claudia, are you on mute maybe?

Claudia MacMaster Tamarit: Hello. Yes, I was, I apologize. Just to be very brief just one last point to be clear. If we do decide, in the end, that both treaty and multiple jurisdiction protection is required I just want to make sure that we do read that those treaty protections and multiple jurisdictions protections shall include any treaties or any national legislations including IP-related treaties, including IP-related legislation not just treaties or legislation that necessarily specifically name an organization.

Thomas Rickert: Thanks, Claudia. Avri.

Avri Doria: Yeah, thank you. This is Avri. A couple things; one, I think that if we go beyond the disjunctive meaning of "and" which means it's either one or the other but not, you know, then we have a problem. I think that it has to be both.

Now - and if it isn't then I think we need to go back to the GNSO Council to ask them to either reinterpret what they wrote or decide on a different but I don't think we can decide to change "and" from being something where you have both to something where one or the other.

I think, at this point, we should not be giving blanket approval to any kind of theory - treaty that happens to mention a country or perhaps doesn't even mention a country. I think within the detail of the work we will look at what kind of treaties are relevant and what kind of treaties aren't relevant.

To say that all treaties, any treaty, counts is way too large. To sort of say that yes there's a subset of treaties that are relevant to this issue and we need to figure out which ones they are I think that does make sense. Thank you.

Thomas Rickert: Thanks, Avri. David.

David Maher: I'll just say that I agree with Chuck Gomes and I also agree with Avri.

Thomas Rickert: That was, indeed, brief, David. Thank you. Any more contributions to this question? I have Claudia - Claudia is your hand still up or - no.

Brian Peck: Thomas, this is Brian Peck from staff.

Thomas Rickert: Brian, please.

Brian Peck: If I may quickly just reiterate some of the history on this. Two things, one is the consideration that both criteria required is consistent with the original GAC established criteria. In addition this was the scope that was proposed in the final issue report, which was adopted by the GNSO Council for this PDP.

And the reasoning for that limitation was, again, you know, the concern that there could be literally thousands of international organizations that could otherwise qualify under such criteria. And so part of the purpose of limiting the scope and again being consistent with the GAC advice and criteria was to try to limit the number of organizations that could possibly qualify under other such criteria that could be established.

Thomas Rickert: Thanks, Brian. Greg.

Greg Shatan: I think that the GAC was really focused primarily on the IOC and the Red Cross. And again those were good criteria for them. And one might say even criteria that helped to distinguish them from many other equally worthy organizations. One might even say that they are kind of the one-eyed, red-haired man with a limp kind of characteristics because it really does, I believe, arbitrarily disqualify the - a large number of worthy organizations.

And I think that the idea that mere (numerosity) is a reason to find a qualification when organizations are worthy of protection would have been, you know, similar to limiting the number of new gTLD applications because they would be too many to handle.

So I think that, you know, while it is, you know, certainly part of the history of the PDP that it got in there finding a substantive justification of why organizations that might not qualify under both of these - both criteria is anything other than arbitrary is really conspicuously absent from any of the discussion unless somebody wants to point out to me a substantive reason why those organizations should not receive the same level of protection as organizations that are otherwise similarly situated.

And finally I think with regard to the treaties I think the issue is clearly, you know, treaties that aren't applicable aren't going to apply. But I think that, you know, what we're talking about here with something like the Paris Convention which protects IGO names as a class and protects them in a way that is other than a trademark protection is, you know, at the heart of what we're discussing here.

And that again if, you know, we need to - we may need to look at treaties but I don't know that we can exhaustively look at every treaty to decide whether it's in or out so the idea is that, you know, that if there is a treaty that protects the name of an entity or protects that entity directly or indirectly, you know, that should be sufficient. Thank you.

Thomas Rickert: Thanks, Greg. David.

David Maher: I just - I don't think that our charter empowers us to determine who is worthy and who is not.

Greg Shatan: I certainly agree with that.

Thomas Rickert: Thanks, David. What's that, Greg, please?

Greg Shatan: I say I would agree with that which is why I think that we, you know, arbitrarily deciding who isn't worthy based on arbitrary criteria, you know, should not be part of the charter.

Thomas Rickert: Okay. I have Chuck next.

Chuck Gomes: I want to agree with both David and Greg on the worthiness. We really need to avoid putting ourselves in a situation where we're going to decide who's worthy. That's why whatever criteria we come up with has to be based on some form of international law that we can hang our hat on and something that's objective.

And, Greg, I totally agree with you that if it applies to one organization any other organizations that meet the same criteria need to be included as well.

Thomas Rickert: Thanks, Chuck. Claudia.

Claudia MacMaster Tamarit: Yes, I just agree that I think that it is important for us to follow objective criteria and that includes not ranking treaty protections. If the Nairobi treaty protects graphic symbols then we shall look at that differently than also treaty protection that covers trademark names that directly relate to the name of an organization or is acronym.

And so I think we get into sticky water if we start already ranking certain treaties over other treaties if this is, indeed, a requirement. And I'm not saying that we have to except as a part of the international organizations that we're talking about well then we shall read this broadly and not say the treaty shall discuss only words or it shall only discuss symbols or it shall only discuss X.

It shall be any kind of treaty that we have the freedom to then discuss whether this shall be a part of our criteria or not.

Thomas Rickert: Thanks, Claudia. Ken.

Ken Stubbs: Can you hear me alright?

Thomas Rickert: Yeah.

Ken Stubbs: Okay fine. I just need a little clarification here. I heard - correct me if I'm wrong - but if we're referring to treaties we're not talking about a unilateral agreement involving just one state; we're talking about an agreement involving various sovereign political authorities. And - am I correct there?

Thomas Rickert: That is at least my understanding but I...

Ken Stubbs: Okay.

Thomas Rickert: ...I would certainly give an opportunity to the participants of this group to respond to that. Does anybody want to add to the answer to Ken? Please speak up...

Wolfgang Kleinwachter: Yeah and Wolfgang here. And I raised my hand. Can I make just a very brief comment?

Thomas Rickert: If it's on Ken's question, yes, otherwise I'd like to ask you for patience.

Wolfgang Kleinwachter: Okay.

Thomas Rickert: Does anybody not agree with the notion that we're talking - that Ken's assumption is correct that we're talking about the type of treaty that he mentioned? Okay so, Ken, I think you can consider your question answered, is that correct? Ken?

Avri Doria: Can he repeat his question?

Thomas Rickert: Ken, are you still there? I hope I'm not paraphrasing but Ken asked the question whether his understanding is correct that we're not talking about unilateral agreements but that we're talking about agreements between multiple sovereign political bodies. And I confirmed that understanding.

Avri Doria: Yeah, I'm not sure I understand what a unilateral treaty is.

Thomas Rickert: This is why I responded that it requires multiple sovereign...

Avri Doria: Thank you.

Thomas Rickert: ...political bodies, i.e. states. Okay I have Alain next.

Alain Berranger: Thank you very much. Can you - Alain Berranger here. Can you hear me?

Thomas Rickert: Yes.

Alain Berranger: Thank you. I wanted to - I'm a little concerned that we - that there would be onus on us to, you know, make a complete inventory of various types of treaties. And I'm not sure, you know, the international treaties, I believe, have generally meant that it's a number of governments that have signed to it. And that government is not the end of the multistakeholder model at ICANN.

So I was wondering if we should go to broader concepts, legal concepts. And one has been bandied around notably by me. And it doesn't have to be the only criteria it's just - is a criteria that should be part of the framework analysis. And that is the concept of very well established all legal concept of international legal personalities.

So in other words if - and of course I'm not a lawyer but that - there is a wide body of knowledge on international legal personalities. It was referred to by the Portuguese representative at the GAC meeting - at one of the GAC meetings in San Jose. And it was also referred to by myself in an NPOC statement to the GNSO.

It made - I'm sure it's not the only criteria we'll have to look at. But I suggest it's one we should, international legal personality. Thank you.

Thomas Rickert: Thanks, Alain. Wolfgang.

Wolfgang Kleinwachter: Two very brief comments. The first thing is just what Alain said, an intergovernmental organization is, by definition, based on a treaty because governments agree to form an organization; that's the treaty. So that means in so far one can be a little bit confused if we have the same criteria for intergovernmental organization and nongovernmental organizations.

From a legal point of view particularly under international law these are two different shoes. And we should be very clear about it. The second point is I can only agree with Chuck and others that we are not in a position to decide, you know, what is an IGO or what is an NGO or what else.

I always remember (John Postel) when he crafted the IFC on the ccTLDs that he said, you know, we - I'm not in a position to decide what a country is. And he was looking for another organization which has a procedure. And under this procedure it was recognized what a country in a ccTLDs context could be. And this was the ISO 3166 list.

But it means we should follow this approach and looking for already other organizations that have clear and defined what an IGO and INGO. If we start to say okay this is good, this is bad, this fits, this doesn't fit, then we ended up in troubled water and this will lead us to nowhere. We are not the group who decides, you know, what an intergovernmental organization is and what a nongovernmental organization is. We have to live - to base our recommendations on the work of others.

Thomas Rickert: Thanks, Wolfgang. I think that's very helpful. I have Avri next and then we need to close this.

Avri Doria: Thank you. This is Avri. The only point I want to add at this point to all these points that have been made is that I don't concede that we have no

discussion point between deciding on a treaty relating to a picture and a treaty relating to words and that we can't say one counts and one doesn't.

I believe that looking at that kind of categorization is indeed something that this group can and should be doing. Thank you.

Thomas Rickert: Thanks, Avri. I think that this is a very helpful discussion and as we move on talking about potential criteria to determine whether protection should be granted or not we should review those individually and test them against the charter as we move on.

So I think we can move to the next agenda item and that is the status of the general Council request. Brian and I - I'm afraid that we don't need too much time on this point, right?

Brian Peck: You are correct, Thomas. They are, you know, committed to trying to provide a completed response as soon as possible. Unfortunately the point person that's working on this has actually been out with the flu for the last several days. And so hoping to get back later this week and by next week if not have an answer at least a much more detailed status report on where they are with that.

Thomas Rickert: Thanks, Brian. Which now allows us to move to the next agenda item and that's the review the work package and the spreadsheets. And my question to the participants of this call is whether all of you have the latest version that Berry circulated on the list in front of you? If you don't have that document please speak up and we'll make sure that we send it to you individually because it's, you know, you won't be able to read it in the Adobe.

Okay that sounds good so everybody seems to have received that document. And just a few introductory remarks before we talk about the individual spreadsheets. First of all I'd like to thank all of those that have contributed to

the contents of the updated spreadsheet very much for taking the time to do so.

I understand that with all the holidays that it was a difficult task to provide input prior to the deadline. We thankfully received some of the comments after the deadline which is why I think it will be a little bit difficult for all of us to discuss every detail that's in there because some of the comments came at very short notice. So we need to continue our conversation after this call on this.

I would like to clarify one or two points that have stimulated discussion on the mailing list one of which is the attribution of comments to specific persons. While I understand that concern I think we should all remember that at this stage we are in the fact-finding phase. So the intention with this exercise until this point was to collect all the pros and cons of the potential criteria that we should include in our discussion so that we have every aspect of this big task in front of you to make it easier to digest.

So at the moment I, as a chair, am not that much interested in attributing certain statements to certain people nor does the content of the spreadsheet indicate that what's in there is common sense or consensus of the group. That is certainly not the case.

The intention was to collect all the various points and in the next phase we need to discuss, as a group, which of the points we think are relevant, which we think are not relevant and then we need to comment on those points that we think that are relevant to our discussion.

So in other words what I would like to do with you during this call is to have the rapporteurs or the leaders of the specific subgroups show us through the contents of the work briefly. I will then ask the members of this group to add points that are not yet in there.

And I'm not talking about comments necessarily. I just want to make sure that we have all the facts or the criteria, whether you like them or not, in the spreadsheet. And then we go through the points as time permits and maybe say okay this criteria doesn't seem to be one that helps us in our discussion and then maybe we can even eliminate some of the points, or to put in other words, maybe we can even create a short list of those points that we think are relevant to our discussion and then take it from there.

I would, therefore, like to dive into the first spreadsheet now, which is the Nature of the Problem Spreadsheet. And I would like to ask Robin to give us a little update on the work that she has done. Robin, over to you.

Robin Gross: Thanks very much, Thomas. Yes, I've had some additional feedback since the first draft had been sent around from Avri Doria and David Opderbeck and the Red Cross also submitted some comments to the group which have now been incorporated into the spreadsheet as well.

So if there are, again, are other views because this isn't a very large group of people who have sent in comments or contributed to this I'd like to encourage anyone else who'd like to add their views and their comments to this to say so.

Okay so on the Nature of the Problem Spreadsheet the first column there is the - what are the specific problems to be solved with protections of IGO/NGO names. And the first item is the cost of the defensive registrations. And then if you look down the row there's a column for IGOs and NGOs and for IOC and for Red Cross and recipients of IGO NGO services and Internet users generally.

And there's some duplication in responses to some of these columns. The ones that are specific organizations they generally say that many defensive registrations are unnecessary and the harms that are suffered are the same harms that all possible registrants suffer. So there was nothing unique or

specific about these organizations with respect to the issue of the cost of defensive registrations.

And then we had some additional comments that just came in from the Red Cross. Let's see - where they - let's see - the Red Cross designation should be protected preventatively in advance of abuse at both the top and second levels. I think that's the gist that - the point that they're trying to make here is that they are looking for preventative registrations and I guess that relates to the cost of defensive registrations.

Okay. And then there are some columns on recipients of IGO services and Internet users generally. And there's some talk of the - or there was some mention of insofar as IGO/NGO spends its money on defensive registration whether necessary or a case of overdoing it that money is not available for other purposes including services. The same could be said of potholes that cause the trucks delivering to blow their tires.

And then with respect to Internet users generally it says there hasn't been any adequate research on the harms in these cases. And the subject of this work is being encouraged by At Large and involve consumer issues. These are essentially consumer issues that could be discussed in a larger context.

And then there's a column - are these harms specific to the organization or groups affected? And the input that we received so far is that the harms and fees apply equally to each organization. And the assumption that this problem occurs in proportion to the degree to which the organization or group is involved in advertising and the degree to which it is engaged in merchandising and licensing.

And then there's a column do RPMs address the issue? What we've seen so far is for the most part yes. And then there's the column why are RPMs insufficient? What feature is missing or inadequate? There hasn't been a showing to be insufficient insofar as names that are not trademarks but may

be covered by an RPM there are insufficient insofar as there are categories of infringement that cannot use the RPMs.

And I think that this cell here begins to really get to the heart of what we're trying to reach here is what are categories of infringement that cannot use RPMs. And then there's another column, could an RPM be amended to address the issue to contribute to a solution? And then the thinking was RPMs could probably be amended; there's no reason to think an RPM couldn't be amended to address this concern.

And then there's a column, how could the problem be fixed otherwise? And again it says there hasn't been a problem that's been demonstrated that needs fixing. Would there be any negative side effects? And the response has been to fix the UDRP or other RPMs they only need to train people in the number of mistaken rulings.

And then there's the final column, should this factor be ruled out as a defensive - as a decisive factor for a workgroup recommendation? The inputs we received so far, there should be no decisive factors. Actual measure of harm is one valid component in making protection decisions. That was the first row.

Thomas Rickert: Yeah, Robin, I think we - that's a very good example of, you know, how you approached this and you've given some examples of the answers that you inserted into the cells. I think that, you know, we - in terms of time we can't go through each and everything...

Robin Gross: Yeah, I don't know how, you know, you want to do this.

Thomas Rickert: What I think is required though is that we might, you know, just go through Column Number 2 reminding ourselves of the fact that the nature of the problem spreadsheet or the whole subject was introduced to discuss the

question what the reason for granting special protections, if any, is and on the basis of what arguments one might consider special protections.

And then we had - we have split the target groups, if you wish, and tried to determine whether the harms are unique to these organizations opposite to harms that maybe everybody faces, which might not give sufficient justification to grant special protections.

And therefore, what I'd like to do during this call is, number one, ask the participants of this group whether they think that we need more columns to adequately reflect the discussion after, you know, we've originally put that format in place and now been using it.

And the second question would be whether we need more specific problems or more arguments that should be discussed in this group. And so the first point is the cost of defensive registration, which you just presented to us.

Then another argument that might speak in favor of - or that has been used speaking in favor of granting special protections was the cost of stopping infringing domain registrations and we now have some additional explanations in there.

The third point was taxpayers' money is used to stop abuse that domain names can be registered by unauthorized third parties, that domain names have been used for fraudulent or other illegal activity and that this cannot be stopped otherwise and that a public good is or has been infringed upon.

And I think that what we should try to achieve during this call is to see whether we need to add any further points for our discussion. I have some hands up; I see Alan, so, Alan it's your floor.

Alan Greenberg: Thank you. I think one of the things that is missing here is data and real information on the problem. You know, as an example we talk about the cost

of defensive registrations. Well, we know certainly for some commercial and noncommercial organizations the cost of defensive registrations is large.

But we also know in many cases that the vast number of those defensive registrations would not be - the need would not be removed by the kind of exact match protection that we're talking about here.

So I think, you know, for IGOs, for instance, there are some that I find it hard to imagine - now maybe that's my limited imagination - but I find it hard to imagine that there are people trying to, you know, take over their territory or masquerade as them. Others certainly there may well be a problem.

But so I think the - we're talking about some radical changes here to the nature of how, you know, the rules for registrations. We're talking about absolute blocking of names and I think that's a rather strong action we're taking.

And I think before we embark on that we need to understand - we've gotten this kind of information from the Red Cross and IOC but we certainly haven't from other organizations and I'm not even sure from them we've gotten a measure of the impact of direct exact match blocking and I think we need that because if we're going to put in place new policy which is different from the kind of policies that we've used for ever in the Internet and domain naming system we need to really understand what we're fixing.

((Crosstalk))

Alan Greenberg: ...from what we have here that we are anywhere near that answer. Thank you.

Thomas Rickert: Alan, I have a follow up question for you and that is even if we had that data would that help us is the question that I'm asking myself reading this whether defensive registrations can be an appropriate measure or criterion anyway?

Alan Greenberg: Well maybe they can't and that's a value judgment that we need to make but we don't even know the magnitude of the problem - of the overall problem and we certainly don't know the magnitude of the problem that will be fixed by us taking this kind of radical action.

Thomas Rickert: Thanks, Alan. Greg.

Greg Shatan: First just to respond to Alan's point I think that whatever the magnitude of the problem - and remember we're looking prospectively at what life is going to be like after the introduction of the new gTLDs so we're talking about, you know, a problem that's going to be, you know, 100 - several hundred times in magnitude whatever the current magnitude of the problem has been.

And, you know, whether an organization appears to be obscure and you might not imagine that it is being infringed or that it's, you know, name and identity in some way is being misappropriated I don't think that's the criteria or criterion that we, you know, should use if they're - because I think it's often hard to imagine that things that are - it all really depends on what your perspective is and where you're looking at it from.

So I don't think - I think that's another kind of a value judgment that we want to avoid making that somehow some organizations are important and others aren't. And I think that in terms of what our work is here I don't think that absolute blocking is the - that all we're doing here is engaging in an up or down vote on absolute blocking as the only possible solution.

While it is one that is certainly, you know, at the core of this organization's efforts it's not necessarily what we might end up recommending or the only thing we might end up recommending at all. There are alternatives that would need to be considered. So I think we need to kind of keep an open mind on those.

And, you know, while it would be nice to have data; not sure what we can do as a working group to go out and get that data and how long it would take and, again, what it would necessarily do for us.

And my hand was really up, though, to respond, you know, more generally to the chart. And I think it's a fine position paper but it's a completely one-sided document. And I don't - it's kind of like looking at MSNBC versus Fox. If you're an MSNBC type of progressive person you look at Fox and you think it's - you look at it in horror.

And if you're a Fox person you look at MSNBC in similar horror. I'm sorry for those who don't watch US TV. Maybe these things, you know, leak out of our borders like sewage. But it's - I think it's a - if this were a legal document there'd be a motion to dismiss and not a fact-finding document.

So, you know, maybe that's, you know, a failing of those who were not part of the subgroup that put it together to, you know, put more of a chorus of voices. But I really don't see or hear an attempt to kind of turn around and look at it from the opposite point of view. So I really think that what's in each of the cells is really deficient for that reason. Thank you.

Thomas Rickert: Thanks, Greg. I think that the time has been a little bit short for people to contribute and comment but certainly everybody's free in this group to speak up and make their points. And those that haven't yet contributed and commented on the spreadsheet - and I'm not only talking about this one but also about the other spreadsheets are strongly encouraged to do so so that we get a more holistic view of things.

I have Kirin next.

Jim Bikoff: Actually it's Jim.

Thomas Rickert: Jim. Please go ahead.

Jim Bikoff: Yeah, I just want to say on Nature of the Problem I agree with what Greg said. We have not had a chance to submit our comments. We had submitted numerous documents that are available which go through the information we've presented in the IOC RC group plus information that's been submitted to ICANN in the past.

But we will have specific comments it's just been, for us, difficult to get everything done. So before the - in the next few days we will have comments to Robin on the Nature of the Problem chart, which I think will maybe create a little more balance to what's said in there now. We'll have that.

And I just wanted to say that a question that we have - and this is maybe a little more general - is whether or not people who are making comments should be filling them out on the chart or submitting them separately. Because we've received comments on qualification - we're not up to there yet - but they haven't been integrated yet also because of time. We've just received things in the last 24 hours so they have not been added to our chart yet.

But are we - anybody who submits comments are they supposed to update the charts by placing those comments in boxes or are they just supposed to submit comments that the leaders of the chart will submit - will put in?

Thomas Rickert: Thanks, Jim. Let me take Stéphane first and then I'll respond to that.

Stéphane Hankins: Yes, thank you very much. Good evening. I'm afraid I'm not going to follow up on what Jim just said; I have a different comment to make. But I - should I go ahead?

Thomas Rickert: Yes please.

Stéphane Hankins: Yeah, I - to me when looking at this working package, Nature of the Problem, I was - I find it a little bit curious, to be honest. And I do find that raising the issue as, you know, specific problems to be solved almost begs the question to my mind which is, you know, should there be a protection or not and if so how, you know, how to implement and enforce the protection.

But if we take the Red Cross Red Crescent designations as an example the protection is required under universally agreed international norms under the laws in multiple jurisdictions as we sought to demonstrate and in our submission.

These are absolute prohibitions. So to me, you know, to raise, for example, the issue of costs of defensive registrations or it's almost bizarre. The protections should be preventive; that was the meaning of what we wrote in the square there - that was referred to earlier on - not reactive.

And there shouldn't be the need for the organizations concerned to use funds which - and thereby divert funds which are intended for their own - to serve the public good, quote, unquote, that they're supposed to serve.

So I must say I'm quite confused with, you know, what we're actually looking at. To my mind, you know, I almost would like to say, you know, is there not a problem in itself in - if that is established - if it - is it not a problem in itself that, you know, ICANN and, you know, at the second level - the registries and registrars be engaged in an activity which is - or be the agents of something that is, you know, prohibited in the case of the Red Cross Red Crescent designations under universally-accepted international norms.

So, you know, that, for me, is the problem. I mean, the rest, you know, with a, you know, it's costly for the organizations or is it now - I mean, these issues beg the question. Could these - the protections should be enshrined in the mechanisms and informed - and enforced, in our view, a priori of the violation or of the misuse or the abuse.

And, you know, that's what we tried to reflect in the first square which is in (due) color on the screen. Thank you. This is what I wanted to say. Thank you.

Thomas Rickert: Thank you, Stéphane. Let me get back to Jim's question that he asked earlier. Jim, I think that, you know, the original idea was that the subgroups would discuss the various points so that the subgroups would come up with - with an amalgamation of the various points mentioned in that subgroup.

Now, you know, maybe because of the lack of time people have been working on the spreadsheets and sending their comments directly to the list. But I think, you know, the original idea - and maybe we should go back to that model - is that those who are interested in a certain subject discuss within their subgroup and then provide Berry, who has accepted the task of, you know, creating one single action sheet, you know, to provide that amalgamated feedback to Berry so that he can incorporate that into the latest version of the spreadsheet.

Jim, I hope that at least sort of answers the question that you had?

Jim Bikoff: Well, it does in part. So what you're saying is we should send our input to Berry to be incorporated in the Nature of the Problem sheet?

Thomas Rickert: Well I think you should be - and this applies to other - to other subgroups as well - I think you should be talking directly with - or discussing with Robin, David and Avri on the subgroup's mailing list to discuss the various points and maybe come up with one spreadsheet that is then sent by Robin, being the rapporteur for this group, to Berry.

Jim Bikoff: Okay. Well then we send it to Robin. But we're not a member of their subgroup and we've got comments on many of the sheets. But my thought

was we're not members of those particular subgroups but we should still send them to the subgroup I guess.

Thomas Rickert: I think that would be the easiest way forward in order not to have various people or various individuals working on various versions of the spreadsheet because that will cause a lot of confusion not only for me but also for Berry I guess.

Jim Bikoff: Okay then we'll send those comments to Robin.

Thomas Rickert: I think that would make sense, yes.

Jim Bikoff: To the subgroup, okay.

Thomas Rickert: Alan.

Alan Greenberg: Thank you. I just realized I made a comment to Stéphane on the chat and I realized he's not on Adobe. And I just wanted to make the comment verbally that what he says may well be true for the Red Cross but we're looking at a far wider scope here. And the legal and treaty protections and national law protections vary exceedingly widely over the different organizations. So he shouldn't feel this is all aimed at him. Thank you.

Thomas Rickert: Thanks, Alan. And I'd like to add to that that this specific point, whether there is any law preventing from registries and registrars carrying out registrations for certain strings that's what the general counsel is currently answering. So I'd like to support what you said, Alan, that we're looking at a variety of organizations with different criteria.

But having said that I think it's high time for the members of this working group to feed such input into the various mailing lists of the subgroups or discuss directly with Robin. And I think that we need to make sure that we have the relevant criteria on the table.

And I heard people say that defensive registrations might be a point if only we had the correct figures in place. And I heard Greg saying that - and I hope I'm not misrepresenting his statement - that even if we knew that might be perceived as being arbitrary and that, you know, therefore the mere fact that there might be cost of defensive registrations might not be a perfect starting point for discussing the question whether or not to grant protections.

So I think the organizations, and particularly the representatives of the organizations seeking special protection are asked to provide those arguments to us for our consideration or for the group's consideration, for the community's consideration that they think are decisive. And for - at least for defensive registrations I think that would not be a consensus position.

So are there any - is there any immediate feedback from the group as to what additional criteria might be suitable to be a basis for discussion of special protections? So is there any further line that we should add? Hearing and seeing none I would like to encourage those that don't want to speak up now to think about this as quickly as possible because I think we need to move on after the - and close this fact-finding phase as soon as we can.

And with that I'd like to - I'd like to move to Alan again. Alan, please.

Alan Greenberg: Yeah, sorry. You - I didn't answer when you asked because I had already made my comment. I think some information - some real data and particularly on IGOs which are new issue that we have not investigated at all, you know, in the previous drafting team or things like that are not well represented on this group, I'll point out, I think are relevant.

Greg is right that what happens in DotCom and DotNet and DotOrg and all the other current TLDs is not necessarily a measure. But if there's been no need for defensive registrations in those we have to, you know, we can't - we

can't find protections for any harm that one could imagine might happen in the future so...

Thomas Rickert: But, Alan, let me be the devil's advocate then. Why not drop the cost of defensive registration criteria on - as in appropriate for our discussion?

Alan Greenberg: I don't think it is inappropriate. That's my opinion; other people may. You know, if we're going to try to fix the problem I want to make sure we know what the problem is and that's lacking at this point I believe.

Thomas Rickert: So, again, let's take this as an encouragement to those seeking protection that they provide us with necessary fact base so that we include that in our discussion.

Alan Greenberg: I would certainly advocate that. And, as I said, most IGOs that have asked for this protection are not represented in this group so that's a problem we may need to fix proactively.

Thomas Rickert: Well if you have an idea to get more people on board I would very much welcome that. You know, we have this invitation sent out to the community so I'm - I think we - you're correct in saying that we need more community representation from various sites. But I'm lacking ideas as to how to get more people on board instantly. Greg, please.

Greg Shatan: I agree with Alan that the lack of participation from, you know, more than a, you know, a handful of IGOs - I think we may have one or two here at most, you know, is troublesome. And either they are not participating in ICANN sufficiently.

And, you know, that's - if they're part of the ICANN community but not here, you know, we should, you know, make some sort of outreach to bring them in even as we're in midstream. I'm concerned, though, that there would be organizations that are out further.

And maybe we need to do some sort of - I hate to suggest some kind of data gathering or larger outreach to get data or concern or maybe find that, you know, if we find 1000 IGOs, if there are that many, that maybe 900 of them think this is going to be just fine and that, you know, this is a tempest in a teapot or they think opposite. We just - we don't know.

So I think that we may want to consider as an alternative to trying to get actual representation on this group, which I agree would be the best case scenario, some form of outreach for data to, you know, if there are organizations such as the UN that coordinate other IGOs or the like it's something to consider. Otherwise we're just all doing our best guess to project the problem, you know, for these organizations kind of in absentia, which is unfortunate. Thank you.

Thomas Rickert: Greg, let me ask you as well; what could these estimates - and they can't be more than estimates by people looking into the crystal ball, again, playing devil's advocate here - how could we use that information without being perceived to be arbitrary?

Greg Shatan: Well I don't think it would be arbitrary because I think, you know, hopefully at least, you know, we would ask the organizations to be - to not give us arbitrary estimates but to engage - you know, give some thought, you know, under, you know, one or more scenarios as to what - you know, how they've been responding to the problem up to this point in time and how they, you know, would think that they would respond to the problem in the future.

And if they do think that, you know, they would need to go into let's say 900 new gTLDs that are not closed or otherwise have limited eligibility that might exclude them from registration, if that's, you know, going to be one of our criteria, and have to, you know, to acquire 10 defensive registrations in each of them I think that that's at least a fair, you know, the most we can ask for is

good faith saying that that, you know, they would either consider that or they would believe that that's what they would need to do.

But that could detract from their mission in such a material way that they couldn't possibly do that and therefore would need to, you know, deal in enforcement which is on a one-by-one basis far more expensive and - than registering up front. But at least then you only know you're going after particular people.

So it's really a question of just trying to do, as many people are doing for a variety of different reasons, looking at the opportunities and at the challenges and risks that are associated with the new gTLDs. I mean, indeed, you know, we're asking - a lot of different concern has been stated about the, you know, potential economic harm to new gTLD registries but that is also a projection.

I trust that their projections are, you know, made, you know, through solid business cases so I would think that we should trust that if we ask for projections from IGOs and INGOs about what they perceive as the harm and how they would deal with it and what those costs will be that those would also be made, you know, through some form of a reasonable judgment and assessment. Thank you.

Thomas Rickert: Greg, sorry for asking another follow up question if I may; this is not to put you on the spot but just to repeat some of the arguments that have been exchanged earlier in the drafting team's work, as you will remember, and that was that, you know, cost in itself would be something that not only hits the organizations that we talk about now but also trademark owners.

So even if we had estimates, again putting the devil's advocate hat on, could that be used as a criterion without being perceived to favor the specific target group over quote, unquote ordinary trademark owners?

So what I'm trying to stimulate here - and I hope that you'll take that type of discussion to the subgroups is that we try to find out whether certain criterion - and this is just an example - are actually good enough to be decisive for our discussion.

Greg Shatan: Well let me answer that. I think that in terms of the specific question you asked I think that certainly the economic harm to trademark owners should not be minimized. And, you know, indeed I think it is substantial and significant and others may disagree for whatever reason or think that that's just the cost of doing business or should be the cost of doing business.

I think that there is a difference for IGOs and INGOs versus trademark owners, which is that they can't pass on the cost of doing business to consumers. And as bad as that may be a thing to do it is still an easier thing to do than to pass on the cost of doing business by being able to offer fewer services to fewer individuals or organizations or whatever that may be served by this.

I think that if like Fox News has to spend an extra \$1 million on defensive registrations - and that's not a real number, I'm picking that out of the air - well okay so Rupert Murdoch makes a little less money or advertisers pay a little more money. Not that those are great things but, you know, in a capitalist society, you know, we'll live with that kind of stuff.

If Amnesty International has to spend an extra \$1 million on defensive registrations that, I think, is a different kind of harm because it can't be dealt with in the same way by an organization whose intended good or intended obligation is to pass on as much of its funds as possible in services.

And as, you know, I'm sure most people on this organization know - at least, not for profit organizations in the US are ranked on how much money they return in services versus how much they burn in administrative fees and

others that don't go directly to their target. And the less you return and the more you burn the worse you're ranked.

So, you know, I think it is a different - it is a difference in kind when it deals with the funds that are available to organizations that are, you know, constituted for the public good.

Thomas Rickert: Thanks, Greg. And may I encourage you to feed such information into the group so that, you know, we get a more complete picture. At the same time I'd like to encourage the organizations affected to maybe come up with an estimate that can help the group to make a determination.

Alan.

Alan Greenberg: Yes, one quick comment and one suggestion. Increasingly over the last number of years we've been charged - we ICANN and the policymaking bodies - have been charged with developing fact-based policy. And I don't think we can afford for our credibility, if nothing else, to develop policy based on information - when there is hard information available not making sure we have access to it.

So that's issue number one. I don't think we can ignore it. We might decide to make a value judgment of how important it is but I don't think we can ignore the information.

Number two, we're on the issue of IGOs because a letter was sent to ICANN signed by one organization with the - cosigned by several dozen IGOs. I think at the very least we need to go to whoever sent that letter and ask them to pass back to their IGO friends that if they don't participate in this process then there's no one to make the case for it here.

We have been charged by the board with coming up with policy in this area. The GAC may not approve that we should have done that but we are. And

they need to understand that if they don't participate at all that impacts the potential policy that comes out of it. Thank you.

Thomas Rickert: Thanks, Alan. We'll - I'll discuss this with staff and see how we can best reach out to these organizations. Kirin.

Jim Bikoff: It's Jim.

Thomas Rickert: Jim, sorry.

Jim Bikoff: I just want to say that having dealt with some UN organizations I think if you go to the UN you're probably talking about months, if not longer, to get any response. The organizations that had signed on to that letter I believe will all understand what's going on here. And I'm surprised, as many are, that there isn't more participation. But I think, you know, the chance they have to make their case is here on this group and many of them are not present.

Thomas Rickert: Thanks, Jim. Chuck.

Chuck Gomes: Yeah, I just want to say that, you know, it would be great if they would participate in the working group. I support that. We should do what we can to encourage that.

But we can also go to these organizations that we know of, that signed on to that letter, and ask them to provide some input too. And I think that's another alternative we should use.

Thomas Rickert: Thanks, Chuck. I would like to move on to the next spreadsheet. I think that we've seen the - again, the complexity of this and the importance of discussing things. So again let me encourage you to add more points and thoroughly analyze the various points that we discussed.

You know, an observation that I'd like to share with you is that we talked a lot about the cost of defensive registration now but defensive registrations will also hit national non for profit organizations, right? So can that in itself be a determining factor? Or would the group rather favor a combination of various factors? So please do think out of the box and think what criteria could actually be decisive and useful for us to have a meaningful discussion on.

Robin, since we've been discussing a quote unquote your spreadsheet I'd like to give you the opportunity if you want to make some final remarks or comments.

Robin Gross: Okay thanks. Yeah, I would just say anyone - once again encourage anyone on this call to please send in further contributions, additional viewpoints. And I'd be happy to incorporate them into the spreadsheet. Thanks.

Thomas Rickert: Thanks, Robin. I would then like to move to the qualification criteria spreadsheet. I'm afraid that we won't be able to discuss everything but maybe the rapporteurs to this group being Kirin, Jim and David - I don't know who's going to take a lead on this - maybe you would like to give us a brief introduction on what you did.

Jim Bikoff: Okay. Thomas, it's Jim. I just wanted to reiterate that we sent in our sheet on Monday evening. We have had contributions since then. Some have been included; some are not. We also have comments on the bottom of our sheet because we felt that some of the additional suggested criteria were more appropriately discussed on other sheets.

But having said that I think we can run through it. I'm going to ask Kirin to give a quick run through on our sheet in view of the time issue.

Kirin Malancharuvil: Hi, Thomas. So I think that the traffic on the ListServe about this kind of adequately highlights the changes that we made from last week particularly

the stuff that's been attributed to people that made the comments for discussion have been added.

We wanted to, obviously, discuss those - concentrate on discussing those changes, which are kind of some information about INGOs from Claudia and the additional suggested criteria and how we interpreted those and included them.

And we understand there's some - there's some commentary about how we interpreted them and tried to best include them. And so we're happy to hear that on the call today and see what we can do to satisfy all of the group's concerns about that.

We just wanted to note that one of the reasons why we attributed versus non attributed was changes from last week to this week so any additional changes, things that were commented on were then attributed to whoever made the comments or were included - if it was like a dissenting viewpoint we included it as a note because I don't know how to satisfy a space issue on the spreadsheet. So I apologize if that was interpreted in a more nefarious way.

But so hopefully we can discuss those changes on the call today. And I don't really see the point of going through them each. I just figured we would welcome questions and comments and go from there.

Thomas Rickert: Thanks, Kirin. Is there - and thanks, Jim, certainly. Is there any immediate feedback from the group? I have Claudia. Claudia, please.

Claudia MacMaster Tamarit: Yes, I would just like to request just for the - on the issue of attribution that we agree then if there shall be no attribution to particular individuals or organizations for some comments and not for others that it shall be universal.

And I think the second point just in terms of some of the criteria - Thomas, you asked if there were some criteria that some representatives would consider perhaps the most decisive criteria. And I think from our point of view it does boil down to about two, some of which have been combined into other criteria highlighting the importance of separating these criteria.

And these two criteria would be, one, the composition of the organization pointing to the member countries, the way that it was structured and created; and, two, the public interest - the international public interest that the organization is, by its very nature, designed to serve.

And that leads into many different possible ways of satisfying certain presumptions whether that be a years of existence, whether that be a service in 150 different countries, whether that be service - a recognized service to individuals or organizations or INGOs or other IGOs, I think we have the freedom to discuss that.

But just to highlight that I think from our point of view those two criteria, the composition of an international organization and the public international interest that that international organization is by its nature designed to serve are the two most important, I think, eligibility criteria and they should be on this sheet teased out separately. Thank you.

Thomas Rickert: Claudia, I have a follow up question to you before I move to Greg and that is talking about the composition; what type of composition would you require then?

Claudia MacMaster Tamarit: I think one would be - one of the factors that we've looked at - not just suggested by myself but also suggested by others is, for example, the member countries. If an organization like our organization is composed of member countries the fact that at least two or three member countries have come together to create or to give input to an organization because of the

need to have an organization address an international concern speaks volumes about the special nature of that organization.

And it could be that it is a treaty organization that is composed specifically of governments or it could be that it is an organization that was created with governmental interests in mind or public interests in mind. So I think that that one criteria would be one that I think includes quite a bit of organizations in a nondiscriminatory way and really highlights what's the difference between these international organizations and other nonprofits - other trademark owners.

And it also speaks to why and how they are vulnerable in the sense that as they were created to serve a public good their resources should not be diverted to this sort of trademark infringement concerns but rather to continue for the very nature of the organization.

Kirin Malancharuvil: Thomas, this is Kirin. Can I just ask Claudia a quick follow up question to her original comment before we get too far away from it?

Thomas Rickert: Please do.

Kirin Malancharuvil: Hi, Claudia. So one of the reasons why I consolidated the criteria was based on your email from Wednesday, December 19 in which you consolidated into three headings and the put things underneath it. So I was wondering if you might be so kind as to send us a suggestion on how you would separate that then so that we can appropriately represent your criteria based on what you would like.

Claudia MacMaster Tamarit: Sure, Kirin, if I can give you an answer to that. I did group them into three sort of areas. There were 10 separate criteria some of which the criteria remained separate like a treaty protection or a national law protection or that an organization can use an RPM. Those remain separate in the left hand column of the Excel sheet.

And I just wanted to make sure that, for example, other criteria proposed under the scope of the work - there was three criteria that were included here - would each get a separate cell in the same way that treaty protection and national law protection membership composition (unintelligible) each should have a separate line.

Because of course the evidence in - the sources, in fact, in law will be different. We might have different opinions about whether there should be a restriction on how long the organization has existed and that might be different for the membership composition. That might be different for the treaty protection. So I think that the easiest solution would just be to give each box - each criteria its own column, it's own row.

Jim Bikoff: Claudia, it's Jim Bikoff. What - how do you propose that those answers be given by IGOs and INGOs? We haven't gotten really any contributions from them at this point. I mean, other than IOC and RCRC who have provided that kind of information would you be providing information on behalf of your specific organization or on behalf of others?

Because I don't think we have to many organizations who have yet responded on this issue.

Claudia MacMaster Tamarit: Well, Jim, I think that our contributions - at least as I understand from this working group - they are obviously influenced by the organizations that we represent so any of the statements that I make are influenced by that. But I think that I make these statements also with a view to creating objective criteria for all international organizations not just criteria that might suit my organization over another organization.

So in that light I will be providing, as to the degree that I can, more statements and comments and hope that they shall be, in their entirety, included in the spreadsheet. Thank you.

Thomas Rickert: Thanks, Claudia, Jim and Kirin.

Jim Bikoff: Okay - yeah, I was just going to say that we - in terms of how long an organization has been in existence, how many governments participate, etcetera, it seems to me we would need to get feedback from, you know, more than just the one or two that you represent.

And we'd have to have more participation in order to make it meaningful because I think having data from just a couple of groups is not really representative of the, you know, of the total number of IGOs or INGOs that are in existence.

Thomas Rickert: Okay thanks, Claudia, Jim and Kirin. I have Greg next in the queue.

Greg Shatan: I think bubbling under this chart are some of the concerns that we started our conversation on in terms of criteria or combinations of criteria that would be considered. I mean, I think it's good to do the fact-finding but, you know, we'll need to get, you know, under it.

I think that, you know, in being critical of those who did not contribute I'm more critical of myself than of anybody else on this call because I haven't contributed to these cells and believe, you know, I should have and apologize for not having done so so far.

But, you know, for instance the concept of (unintelligible). Oh, somebody seems to have lost a line here. Is everybody else there?

Thomas Rickert: Yeah. Please go ahead, Greg.

Greg Shatan: Okay sorry. I thought maybe I was the one who got disconnected. In any case, you know, protection by national law under Paris Convention I wouldn't say that no is the right answer because even though it doesn't require

enabling legislation to be - in order to enact the Paris Convention the Paris Convention is part of - becomes part of the national legal obligations of the entities that sign on to it.

So I think that's kind of just an example of one of the things that's going on here. But I think, you know, the bigger issue is, you know, if we answer no for most INGOs that they're not protected by a treaty per se then we've knocked them all out. If we're going for the must-have both criteria criteria unless like the Paris Convention there is a treaty that protects them wholesale.

And I think it would be, you know, a great concern, you know, if we were to say that (Medicin San Fran Pierre) or Doctors - or Amnesty International doesn't qualify because somehow they can't find a treaty.

I think - you know, looked at ex post facto, you know, the work of this group I think would be open to great criticism if the end result was that we decided that the only organizations that actually met the criteria were the IOC and the Red Cross or maybe some, you know, other limited number and left, you know, 95 or left the 99% of the, you know, shivering on the doorstep, you know, wondering how this all happened.

Now maybe we come up with the idea that nobody deserves any special protection in which case the qualifications really don't matter. But if we are going to decide that somebody deserves some - some organizations deserve some greater protection, you know, I think we need to be, you know, really careful about these criteria and whether they're not only objective but appropriate.

Jim Bikoff: Can I respond to Greg, Thomas?

Thomas Rickert: Please do, Jim.

Jim Bikoff: I just want to say, Greg, these organizations many of them are aware of what's going on here. I mean, do we have to chase them to get responses if they don't feel strong enough about their concern of protection, you know, for their names or some - or acronyms or whatever - how are we to deal with that if they don't come forward?

I mean, I understand that we can go to the organizations that signed the letter because they've already said something. But some of these organizations have not come forward, have not said anything; what do we do about them? Do we try to, you know, give them protection without them coming forward and asking for it?

Greg Shatan: I think absolutely - the answer to that question is yes. I think that this organization would be seen as completely driven by self interests and legislating only for those who show up if we were to do anything other than that. And I think that that would completely, you know, just shred credibility for this working group and for ICANN in general.

I mean, one of the great criticisms - and I don't think any part of it including - or the part that I'm part of - is, you know, immune from the idea that it's, you know, driven more by self interest than by, you know, interests in the greater good.

And I think that I'd much rather be part of a fact-finding and legislating organization than an axe grinding and self-protective organization. And it's a, you know, having been participating in ICANN for several years now and not in the inner circle but long enough to see what's going on, you know, as much as I feel I have to help protect, you know, organizations from the viewpoint that I'm here part of that is because if you don't do that then the tug of war rope just goes entirely to the other side.

So I think absolutely, you know, we should be looking at this not just as a pork barrel exercise to protect those who show up but very much as an

exercise to protect those who won't or can't show up. If we can't protect the least able to protect themselves then we really have lost our way. Thank you.

Jim Bikoff: Tell me how you quantify who are the least protected that deserve protection? I mean...

((Crosstalk))

Greg Shatan: I said the least able to protect themselves.

Jim Bikoff: ...how do you quantify that internationally? Maybe there are thousands of organizations or hundreds of thousands that are doing work in more than one country - how do you identify them all?

Greg Shatan: Well I don't think you need to necessarily identify them; they need to be able to have a way - and that's one of the implementation questions here is, you know, is the idea here that we're just going to publish a list of all IGOs and INGOs? They should need - there probably needs to be a way for them to step up and qualify themselves.

And those that - and there needs to be an outreach to those organizations so that they participate in that qualification process. You know, we're getting way - you know, to other parts of the spreadsheet and down the road here. But I think that we do need to find a way to bring them into the fold.

Those that are well, you know, well represented will, you know, be well protected, you know, to the greatest extent possible. I think that we need to, you know, make sure that this - that we protect those who are not necessarily well represented but who are, you know, who fit the criteria. So - and, you know, I think that is - it's a challenge for us, it's a challenge for the organization but it's a challenge we can't fail to meet.

Thomas Rickert: Greg, let me add to that that you will have heard me a couple of times making points that are not necessarily my views but that are arguments that are heard in previous discussions. And the intention is to enrich - hopefully enrich the discussion with all the arguments and viewpoints there are.

You will remember that there has been the work of the Reserve Names Working Group that made an intentional decision at the time not to grant special protections. Now this request by the board has kicked off our work and not only by the board but also by the GAC.

And I think that our mission should be to answer the question of potential special protections for IGOs and INGOs once and for all. And for ICANN, you know, whose mission it is to be globally inclusive I think it's only appropriate for us to make best efforts to actually reflect also the views of those that are not present or represented in this working group.

At the same time I do have an honest difficulties making their points or requesting or encouraging you to make their points without actually knowing what their needs are or what the facts are that they could bring to the table. So I hope that we will get more input from others.

But even lacking that input I think that we need to do what we can in order to very holistically answer the problem because - or the question. Otherwise this is going to be opened up again in a couple of years and I think that should be avoided.

Greg Shatan: I agree with you 100%. And let me just take a second to say that I think you've been a fantastic chair of this group to date and I think you've done a very good job of, you know, representing, you know, various, you know, points of view and making sure the points of view are represented.

And, you know, it's been, you know, a pleasure and an honor to have you running the group. So I think that - and I think that, you know, past chairs that

I've seen as chair have done equally well. My first chair actually that I was involved with was Chuck so, you know, I see him as the standard and I think you meet that standard.

So - and I agree with everything else you say except although, you know, on the Reserve Name Working Group I think it maybe to overstate the case a bit to say it was, you know, actively decided. It was somewhat between actively and sin of omission that we didn't quite get to the point we did. But that doesn't matter; we're here, we're now doing this.

And I think we do need to find some way to make outreach to the organizations because it is hard, you know, helping those who when you don't know exactly what help is they want; you don't want to be paternalistic about assuming, you know, too much or over-legislating for a problem that, you know, is not as grave as some might characterize it.

And I, you know, happy to, you know, look at these viewpoints from a variety of perspectives. I don't want to be sitting here only as an advocate for a particular point of view. I think that's - diminishes my role and each of our roles if that's all we try to do. Thank you.

Thomas Rickert: Greg, thank you so much for your kind words, you know, that's very flattering. And if we were on a video call you would have seen me - my face going red at this stage so thank you so much.

I think we need to move on to the next point, I think, the spreadsheet dealing with qualification criteria is too big of a task to discuss here. But let me encourage you to add further points or maybe a combination of points. I'd also like to encourage the potential beneficiaries of this discussion to specify which criteria they think are the ones that help the most.

Claudia has mentioned two criteria that she considers as appropriate and helpful to make a determination. And I would very much like to hear from the

other organizations as well what they think is the best criterion to be used to make their case.

At the same time I think we need to make an effort to rule out those criteria that we don't think are adequate. And, you know, listening to the conversation that we had we might face some difficulties with any criteria that have some figures in there, for example, the protection in 30 jurisdictions required criterion which you find in cell 2 - no, what is it - 6-2? No, 6-2 doesn't make sense.

Yeah, it's - yeah, protection, an X number of jurisdictions that is something that at least reminds me of the discussion surrounding the globally protected marks list within the framework of the IRT discussion. So, you know, that might be an argument that could be turned around or be perceived as being arbitrary.

So what I think the group needs to do is discuss the various points, maybe add missing arguments to the list but then also to rank them and maybe rule out some that you find inappropriate.

And before we move on to the next spreadsheet is there any immediate feedback or are there any wishes from the group in terms of criteria that we should drop immediately? And maybe if there were consensus on dropping certain criteria maybe we could even shorten the list during this call a little bit.

I have seen Alain's hand. Greg, your hand was still up, right, or is that a new hand? That hand is gone so, Alain, the floor is yours.

Alain Berranger: Yeah, I - this is Alain Berranger. Can you hear me?

Thomas Rickert: Yes, we can.

Alain Berranger: Great, thanks. I think we can get into vetting or not vetting on criteria such as membership compositions and years of existence. And the other criteria suggested by Evan on charitable status or direct communication.

This will be a nightmare down the road even if - it will be a nightmare right away for this working group and then it will be a nightmare down the road. We need to find more universal objective criteria than - we can't bury ourselves into the details.

Thomas Rickert: And, Alain, as a follow up question, what is your favorite criterion or...

Alain Berranger: My favorite criterion is going to create a lot of work for lawyers but it is the international legal personality criteria or at least that - an organization that would receive special protection would have to demonstrate that they possess international legal personality.

The issue that the notion of international - that we haven't got enough international lawyers working in the ICANN stakeholders; right now it's much more - although it is a universal concept it doesn't seem to get a lot of coverage in the US. It's at least a two (tier) concept and leads itself to - and is, by definition very broad and very objective.

Thomas Rickert: Thank you, Alain.

Alain Berranger: It is my - it is my understanding - it is my understanding.

Thomas Rickert: Thank you. Please make sure that you inject that into the subgroup's work. Before we move on to the next spreadsheet I'll give the final word on this one to Jim, David and Kirin if you want to; you don't have to.

Jim Bikoff: Well we'd be happy to receive comments from everybody who has spoken and those who are not on the call so that we can make changes before the next call. But I would like people to send us comments in writing rather than

just some of the things we've gone over so we can have - make sure that we have the correct comments that people want to be included and then we'll go from there. So, you know, I'd like people to get stuff to us pretty quickly so that we can turn these around and have something out well before the next week's call.

Kirin Malancharuvil: Hi and, Thomas, this is Kirin. I would just also request that you be as specific as possible about what you want to be included and how so that we can avoid some of the confusion that I think happened and that regrettably happened in this version. Thank you.

Thomas Rickert: And thank you. We can skip the eligibility process spreadsheet because as you will remember we have put that to sleep until we get there and know what exactly is needed in terms of eligibility unless Alan wants to make some comments at this stage, which I don't know.

Alan Greenberg: No.

Thomas Rickert: Okay thank you. Which allows us to move on to the admission spreadsheet and that has been kindly led by Avri with the help of Chuck and Mary. So, Avri, may I ask you to maybe briefly introduce your work? Is Avri still with us? Avri, are you on mute maybe?

Avri Doria: This is Avri. I...

Thomas Rickert: Hi, Avri.

((Crosstalk))

Avri Doria: I put myself in silent mode when I tried to talk, now I'm in talk. Okay in terms of this - of the three people that are there in this subgroup what is written there is, I believe, an agreed-upon between the three of us. Obviously it's still open to other comments and other suggestions.

But we started out with individual statements, then they were massaged by Chuck into possible common statements and then we had a conversation where we talked about them, edited them some and what is there is what was agreed between the three.

So what we weren't on - in terms of the admission criteria is that we thought that there would be a multiplicity of admission criteria. In a sense at various appropriate times any of these could fit into an admission control calculation of some sort not trying to predict what the process would be.

We had many types of concerns beyond just the type of the organization or the treaty that might be, you know, there was a notion that there would be other types of criteria and that anybody that - and the organization that managed to get admitted and as it came for admission control would go through a set of criteria done in some way where, you know, you had to have at least one from Column A, two from Column B, one from Column C, etcetera. And, you know, certainly not trying to determine what those were.

We felt very much that the rest of the discussions here were going to point to the kind of criteria that were talked about whether those criteria, you know, from the last big - a discussion, for example, ended up, you know, degree of defensive expense versus charitable expenses or whatever.

And I'm not saying that is one but those are the kinds of things that we'll be talking about in all the other groups. And at the end of the day there'll be some set of these that they'll fall into several natural sets; some of the might be treaty type, some of them might be financial type, some of them might be, you know, RPM accessible or not RPM accessible.

Some of them might be DNS threat level, uniqueness of name, etcetera. There could be any number that those - that that multiplicity in general will be something that is used as admission control to the protection mechanism.

So in that maybe Chuck or Mary or - I guess Mary's not on the call - no, Mary is - whatever - they may have something to add. But that's pretty much it. I don't think we want to go through the - all the questions at this point. The answers are fairly simple. We do invite people to read them and comment and talk to us.

And we also tried in the - the only thing I want to point out is in the first line - and of course I'm just seeing the RCRC stuff so that hasn't been integrated. The - we tried to put an answer - and it's there in my copy in blue bracketed language for any of those of you that came out of ITU land and love bracketed language - we managed to answer each of the questions with bracketed language in Column 2 to the extent that we were able to.

The last thing is when it comes to things like number in bracket in some of these questions we had a very, you know, large concern about degree of number. If we're talking about, you know, numbers in - of Degree 1, of Degree 2, of Degree 3, are we talking about thousands or are we talking about scores? So that's something that was certainly of importance.

And the other thing was just sort of definitions of various terms. What do we really mean by infringement? That's something that's being talked about in the other groups. What do we mean by DNS threat here? If DNS threat is a cause, fine, we need to understand what we mean by it.

If financial issues are a cause well then we need to understand those. I think I covered it, thanks.

Thomas Rickert: Thanks, Avri. Are there any follow up - any questions to Avri? So I give you a second to think of your questions and while you do so I would like to ask one; Avri, you touched upon the difficulties that you had with numbers.

And you will remember that I asked a couple of questions during this and during previous calls in terms of how to make sure that whatever quantitative criterion we come up with for them to be - to be adequate or not perceived to be arbitrary.

So my question to you is whether you, Chuck and Mary have discussed the question of whether quantitative elements should go into our assessment at all or whether, from your experience and the thoughts that you had we might be able to come up with potential solutions without using quantitative criteria?

Avri Doria: I don't think we actually talked about it much. I think we looked at it and we accepted that number was a reasonable criteria perhaps but I think that we looked at it, as I said, in terms of orders of magnitude. In other words we didn't look at it and say, yes, 10 wouldn't be enough but 11 would be.

We looked at it more are we talking about an issue where there are hundreds of infringing domain registrations? And that would mean somehow proving infringement domain registration. Are we talking about thousands? Are we saying that to have just one or two is enough?

So I think that we accepted number; we didn't talk about to have number or to not have number to a great degree. I think we accepted number as possibly a reasonable criteria. Where we had concern was how would we determine what order of magnitude is fine, is tens fine, is hundreds fine, is thousands fine? You know, how do we determine that order of magnitude. But we thought in terms of orders of magnitude not in terms of single digits.

Thomas Rickert: But even using orders of magnitude do you have any approach - you know, I'm digging a little bit deeper on this one because that question also relates to other spreadsheets. Any ideas as to how to even approach this in a fair manner?

Avri Doria: I think I would go back to - this is Avri again - I would go back to some of the things that others have said which is these are things that are probably good to have evidentiary stuff on it, you know, for any number of types of organizations.

You know, let's not worry about which types we accept but let's come up with various types of organizations. How many cases do they have in a year? How many have there been historically? How have they been resolved? Which ones have been accepted, which ones haven't been accepted? To what degree, you know, when there was an ability to challenge were those challenges?

How many can they document that there were historically over numbers of time? And not just in DotCom but let's talk about DotMuseum; how much infringement did we see in DotMuseum, in DotCat and in other kinds of names. Looking at those figures then we perhaps can start to extrapolate what kind of numbers make sense.

I mean, one thing I think we'd be clear on is DotCom is the aberrant example because it owned the world and to a large extent it still does. We're talking about the future here when DotMuseum, DotCat, DotInfo, DotBiz are better examples of the kinds of issues we'll be running into.

Thomas Rickert: Thanks, Avri. And I'd like to encourage the rest of the working group to look at the work of Avri, Chuck and Mary and comment on it or add additional points. I would also like to encourage the three of you to maybe think of a set of questions, you know, things that you just mentioned, Avri, and maybe put those questions to the list so that we can provide you guys or help the organizations affected to provide the data that you deem relevant for making a determination in order to do this clustering of magnitude.

Claudia.

Claudia MacMaster Tamarit: Yes, Thomas, just very quickly if we do decide on particular numbers whether or not that is appropriate but if we do decide on particular numbers we might want to consider the using presumptions.

For example, if we use the number 15 for any particular criteria we might say it is presumed satisfied if you show membership of 15 governments, for example, just coming up with a number there - but not having it be a static number that is a presumption that can be satisfied but can be overcome if other evidence is shown. Just an idea.

Thomas Rickert: Thanks, Claudia.

Avri Doria: Can I respond to that?

Thomas Rickert: Please do.

Avri Doria: I think that that fits very much and - with the implicit assumption we've had that everything is one of many criteria that can get balanced and weighed against other criteria. So, yes, I think that that totally fits with the way we were looking at things.

Thomas Rickert: Good. Unless you, Avri, would like to make some final remarks on your work I'd like to move to the last item, which is the protections. But, David, I think not too much has happened on that because you were the first one to deliver and there only has been one change to that spreadsheet. And maybe you would like to say one or two sentences about that but I think we can move on very quickly can't we?

David Maher: Yes, thank you, Thomas. Actually there were two changes. The other David made a very useful suggestion which is incorporated in the chart. And the group - our SCRC - I'm sorry - I'm finding it difficult to read this - RCRC made comments.

It's - one of the problems of this chart is that because of the length of some of the statements they don't seem to - they're not readable in the chart and I'm not sure what to do about that. But I think at this point the chart does cover the waterfront on the types of protection that can be considered.

Thomas Rickert: Thanks, David. Claudia, is your hand still up or did you want to make a comment on this?

Claudia MacMaster Tamarit: Oh, sorry, left it up.

Thomas Rickert: Okay. So I suggest that we all take a look at the Protection spreadsheet and the changes and comments that have been made to it. Hopefully there will be more changes and comments. Berry asked me to hand over to him for a minute to say a little bit about the way he would like you to feed into the spreadsheet so, Berry, would you like to comment on that?

Berry Cobb: Great, thank you, Thomas. Pretty much carrying on what you had briefed the working group on. The process remains the same. If other working group members do have input to a particular work package I do ask that you work through the team leader. The team leader can be identified as the first name that's listed on Cell Alpha 4.

So work through them, submit comments. The team leader will be responsible for updating their particular spreadsheet. And then at our due date the team leaders can send me any changes that they have and I'll incorporate into the master.

One element about communicating these particular changes or suggestions you may have it is true that subteams do have mailing lists for each group however if you're not a member of that particular list you're not going to be able to email to that list.

So from this point forward I'd recommend if you have suggestions or changes go ahead and try to coordinate that on the master list. Just call out the particular team leader that you're interested in contributing to and work that way through the master list. Otherwise we just have to add every working group member to every sub list and then we would just have six mailing lists.

So I know it'll be a little bit confusing seeing some of the subteam traffic on the main list but I think it'll help in terms of transparency and the other working group members seeing what's going on.

The last thing I'd like to bring up for the team leaders if you can have any changes that you have submitted please try to send those to me by close of business next Monday so that I can incorporate those and make sure and get them out to the list so that everybody can review prior to the call. Thank you.

Thomas Rickert: Thank you, Berry. And I'd like to echo one comment that Kirin made in the chat and that is thanking you for your excellent work on that. Also I'd like to extend that thanks to the other staff members who are an excellent support with this difficult task.

We have one minute to go and I would like to suggest that we leave the work plan as it is for the time being, that we hopefully, after the holidays, have a very intense discussion on the various subgroup mailing lists and the main list to advance our conversation and then maybe come up with some interim conclusions during next week's call which will take place in one week at the same time for two hours.

Just to let you know there will be a call by the GNSO Council and I will try to sort of give an interim report on the status of our work to the Council so that they know what we're currently doing. And at the same time I will encourage the Council members to reach out to their respective groups and encourage them to join our group and help.

Unless there are more remarks from the group I would like to thank everybody for taking all this time and for the valuable contributions. And I will read you on the mailing list and talk to you next week. Thank you so much.

Alan Greenberg: Thanks, Thomas.

Jim Bikoff: Thank you, Thomas.

Robin Gross: Thank you. Bye-bye.

((Crosstalk))

Man: Thank you.

END