

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 16 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 Wednesday 16 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-20130116-en.mp3>

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

Attendees:

Wilson Abigaba - NCSG
Donna Austin - AuRegistry
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
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
Greg Shatan - IPC
Claudia MacMaster Tamarit - ISO
Mary Wong - NCUC

Apologies:

Iliya Bazlyankov – RrSG
David Roache-Turner WIPO
Cintra Sooknanan - NPOC

ICANN Staff:

Berry Cobb
Brian Peck
Julia Charvolen

Coordinator: Thank you. Good morning, good afternoon, good evening. Welcome to the IGO- INGO Protections Policy Development Process Working Group call on Wednesday, 16 January.

On the call today we have Wilson Abigaba, Donna Austin, Lanre Ajayi, Alain Berranger, Avri Doria, Elizabeth Finberg, Chuck Gomes, Alan Greenberg, Stephane Hankins, David Maher, David Opderbeck, Christopher Rassi, Thomas Rickert, Greg Shatan; Claudia MacMaster Tamarit will be able to attend only for the first hour; Mary Wong, Mason Cole.

From staff we have Berry Cobb, Brian Peck and myself Julia Charvolen. And we have apologies from Iliya Bazlyankov and David Roache-Turner. May I remind all participants to please state their 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 and I'm the Chair of this working group. And I'd like to ask the group whether there are any statement - any updates to the statements of interest. Hearing none we can move to the next agenda item and that is the status of the General Counsel request. And as usual I'd like to ask you Brian to give us an update on that please.

Brian Peck: Thank you, Thomas. This is Brian Peck from ICANN staff. I checked with the General Council office earlier today. They wanted to provide a brief update on the status of their work. They are continuing to coordinate the research among counsel multiple jurisdictions.

And to be honest, it has turned into a larger project than they first expected. They are trying to address the specific questions posed and as they're working with multiple jurisdictions counsels and want to provide - plan to provide an update on the expected delivery date as soon as one is available.

Thomas Rickert: Okay. Thank you, Brian. Which allows us to go to the next agenda item, agenda Item Number 3, which has hasn't been in the - on the agenda that you received by email. I see Avri's hand up. Avri please.

Avri Doria: Yes. I just have a quick question. So we're going to at some point get a projection on when the date for receiving the answers. Do we have a projection on when we might get that projection?

Brian Peck: Thanks, Avri. This is Brian. I asked that as well and they're - they weren't prepared at this time. They realize, you know, there's the issue and as I say, I think they were - it's gotten to be a bigger project than they originally expected. So they are working as hard as they can to get it completed as soon as possible. But that's as much as I was able to glean from them today at least.

Avri Doria: Thank you.

Thomas Rickert: Thanks for the question Avri. And thanks Brian for answering it. I'm sure that Brian will keep us in the loop as soon as he gets some more substantial feedback from General Counsel.

Now as regards the newly introduced agenda Item Number 3. I have given Alan Greenberg a heads up earlier. We - since we are now discussing the status of the responses to our input request and the only written statement that we received so far is the statement from ALAC.

And I'd very much like to invite Alan to show us through the main points of this statement because I, you know, after having read it I think there are a couple of points in there that could inform and stimulate our discussion on the spreadsheet later on. Alan, over to you.

Alan Greenberg: Thank you very much. First note that there were two versions sent to the working group. One was the final version and one was not quite the final

version. And they came in the reverse order. The one that is the correct one came directly from me. I also provided a direct link to it in an email today. And it's going with a short preamble paragraph before start going into the questions themselves.

Can't see - I don't know if the one on the screen is the right one. It is the right one.

Thomas Rickert: Alan, before you proceed, I see that Berry's hand's up. Berry, would you like to say something now or wait for Alan to have finished?

Berry Cobb: Hi Thomas. This is Berry. Thank you. Just real quick I'd like to just advise the working group that yesterday was the deadline for input requests from the SOs, ACs, SGs and Cs. We did send out another email to each of the chairs of those organizations advising them and asking if they will be providing additional input.

We didn't apply a new deadline date but we're hoping to at least receive responses as to whether these groups intend to send anything in and hopefully we'll receive other feedback from the groups as soon as possible for use by the working group.

And just one other point that the registry stakeholder group did say that they are working on their response as well and I don't recall the exact date but I believe maybe next week in the rough timeframe as to when that may be available for review as well. Thank you.

Thomas Rickert: Thanks, Berry. That's certainly very helpful. So just for you to bear in mind, go back to your respective groups and should you wish to respond to the request for input, please do so as soon as you can and we will make sure that we incorporate the feedback and consider it as we move along.

But we that since time is of essence that we shouldn't give another one, two or whatever the amount of weeks should be for people to respond because we thought that would unduly hold up the train.

Greg, do you have an intervention related to this?

Greg Shatan: Well yes. I just wanted to orally confirm that the IPC is preparing responses and I think the next week timeframe conceivably this week but I don't want - I'd rather under promise and over deliver than the reverse. So I would think that IPC should have its comments response in next week. Thank you.

Thomas Rickert: Thanks, Greg. That's good news. And unless more interventions or hands up to comment on the general approach or to announce more feedback, I'd like to hand over to you Alan to give us - Mason. Mason, I see Mason. Please.

Mason Cole: Just - yes. Thanks, Thomas. Just to let you know the registrars will have their reply in in the next few days as well.

Thomas Rickert: That's good news. Thank you. Thank you, Mason.

Robin Gross: This is Robin Gross. Can I get in the queue real quick?

Thomas Rickert: Sure. (Unintelligible).

Robin Gross: Yeah. I just wanted to let - thanks. I just wanted to let you know the non-commercial stakeholder group is also working on its response and will have it to you within the next few days.

Thomas Rickert: Thanks, Robin. And now Alan please.

Alan Greenberg: Should I wait for the next interruption? All right. I'm not going to - this is a long statement and I'm not going to try to read it verbatim. I'm just going to try to hit the high spots and hope I remember them.

The preamble essentially reiterates what I said at the last meeting that blocking in within the domain name system is a rather strong action, one that we have refrained from taking in the past in most cases.

And the At Large feels it's exceedingly important that if we're going to do this we understand why we're going to do it and we understand - and that we have some belief that it's going to fix the problems that we're - that are perceived. And I will be following up with an email on some of the specifics that I think this workgroup can do to try to hit that target.

In terms of the questions, the first one asked about what kinds of entities should receive special protections at the top and second levels. We do not believe that there is any need for a top-level protection. If - the objection processes that are in place should be more than sufficient to address any real harm that could be done through this.

And if indeed the four current objections do not meet that target, then I think that's an indication that we need a specific type of objection for the next round to make sure. But to block names universally does not seem to be reasonable. And I think we need to make sure that our processes - make sure that names are protected but not simply by putting them on a forbidden list to begin with. And, you know, we'll be going into some detail on this later.

At the second level it's far more complex because we don't have a long complex drawn out objection process and evaluation process for second level names. And I'm presuming by the way that second level means the level at which registrations are taken, which is third level in some cases.

And we feel pretty strongly that second level protection if it's going to be taken has to be taken because it's addressing a real problem and that it addresses it by fixing it. And we have not seen a lot of evidence of the kinds

of problems and the kinds of harm that we're talking about in the exact match world that we're looking at.

And there's plenty of evidence that - certainly anecdotal evidence that this is not the case. So again, we're looking for - if there's going to be second level protection, we need to make sure that it's done for a reason and we understand it.

Question 2 is looking at...

Thomas Rickert: Alan, sorry. Before you move to the next question, Chuck did you have a question regarding Alan's intervention so far?

Chuck Gomes: Thanks, Thomas. I did with regard to the preamble. In particular Alan you mentioned - you talked about blocking. Are you using blocking synonymously with reserving names?

Alan Greenberg: Yes.

Chuck Gomes: Thanks.

Alan Greenberg: Yeah. I mean reserving names essentially says you're not going to allow anyone to register them ever. And I think the two are synonymous.

Chuck Gomes: Thank you.

Alan Greenberg: Now - and I've been using the term blocking specifically because we've had long debates in various groups but whether we should call it reservation or limited reservation or, you know, we've played around with the name for that. And I didn't want to try to use a technical name, which might have specific meanings that are narrower than the general concept.

Thomas Rickert: But Alan, I think that's a very helpful clarification because as you would surely know, the term blocking is used for different scenarios in the DNS as well.

Alan Greenberg: There's been - I think certainly within ICANN we specialize in having at least three or four meetings for every word. So I'm not pretending and I've avoided that here. I was just trying to avoid one problem and probably generated another.

The Question 2 talks about treaties. And our comment is relatively short that we believe if we're going to block names, reserve names, whatever, based on treaty and national laws that the treaties must explicitly say the names are protected and that must be backed up by the national laws. And there must be a significant number of national laws that do this.

And I'm not going to play the game of saying 33 is not enough but 37 is or setting whatever the threshold is. Clearly in our minds three or four is not sufficient, 150 would be impressive. You know, so we're talking about that kind of measure. Exactly where the demarcation is is not clear.

But, you know, if we're going to use treaties and national laws then they must actually offer the protection that we're saying they do. We do not believe ICANN should be in the world of generating brand new protections that don't exist anywhere else. We're in a rather privileged position of dictating global use of terms and forbidding global use of terms is an onerous issue.

Okay. Three. We believe, as I said in the previous one, if we're going to use treaties and national laws then it has to be, you know, a substance body of legislation or treaties that indicate it. We however believe we don't need that and we understand that the train has left on the treaty and national law direction and because of GAC advice we're not likely to drop that.

But nevertheless, we do not believe it's really necessary. We believe that protection should be granted based on the merits of particular cases. That it

should not be universally granted to a wide class of organizations. That protection should be granted because there's evidence of harm or potential harm. And there is a strong argument that the public interest is served by offering this protection.

And the document goes into some specifics. And particularly that the harms should be harms to the public interest or to the organization but they should be significant harms. And an organization for instance which doesn't have a real persona on the Internet other than having a couple of explanatory Web pages doesn't interact with users, you know, doesn't collect money, doesn't have other activities going on with users.

It's certainly going to be less prone to fraud issues than an organization, which does have those characteristics. And we think any policy we come up with should be cognizant of those issues.

Question 4 is are there differences between the Red Cross IOC and IGOs? We feel very strongly there are differences. There's a difference between the Red Cross and the IOC and certainly IGOs come in many, many flavors.

And more important we feel that there are IGOs that are not protected by treaty and now we're talking about them, you know, how we're going to interpret the charter words. That we feel there are organizations that are worthy of protection, which don't have treaty protection. So there's a lot of different flavors in these kind of things.

Three I don't - three, we believe was already address - or five rather. Should the protections be at the top level - at top and second level? This again is we've reiterated that we believe there should be protections under certain terms but they shouldn't be granted across the board.

The Question 7 said should the current protections that are in place or the ones that might be in place - should they be maintained? And we believe they do not fit the model that we were talking about and should not be maintained.

And lastly, do we feel that the existing right protections mechanisms are sufficient? And our answer to that is no. Certainly for IGOs for whom - which cannot use the UDRP at all right now because they are not trademarks, you know, and there was significant discussion in ICANN about providing a separate or a modified process for them that we didn't go forward on.

That's a position that we this workgroup I do not think can leave. We have to make sure that the existing right protections are available in one form or another to all the organizations we're talking about.

And there may indeed be - we may be in a situation where the right protection mechanisms, which were largely designed many, many years ago and have to - and have generally been maintained through the new gTLD process are not sufficient and in which case I think we need to look at it on a general case not only for these organizations but, you know, making sure that the (engine) is a healthy place for corporations and governmental organizations to exist.

And we have one last note, which is out of scope for this project - for this working group. But we believe that anything that we recommend ICANN should advocate; cannot legislate but should advocate for ccTLDs because if it's important in gTLDs, it should be equally important in ccTLDs.

And that's a quick summary. I'll certainly be willing to take questions now or when people have had the time to read it more carefully and digest it.

Thomas Rickert: That's most welcome. Thank you very much Alan. Are there any questions for Alan?

Wolfgang Kleinwaechter: Yes. This is (Wolfgang). Do you make a difference between in the governmental organizations and non-governmental organizations? And what is your position to the recommendation in the GAC advice to use the .int criteria for defining what an intergovernmental organization is?

Alan Greenberg: If the group were to end up saying that we want to grant global protection to a large class of IGOs then having a list that the GAC derives based on the .int specification is a reasonable way to go. However, we do not believe that we should be granting global protection to large number of organizations without some evidence that indeed we're fixing a problem or that they - and that it's a problem that needs fixing or that is a problem and that it will fix it.

And we don't - we haven't seen the evidence of that. If there is sufficient evidence of it, then yes, that's a reasonable way to go. But based on what we know right now, no, we do not think that we should be going that way.

Wolfgang Kleinwaechter: Okay. Thanks, Alan.

Alan Greenberg: You know, but that's a two-pronged question that if we go that way, yes, that's a reasonable path to take to get to the end.

Thomas Rickert: Okay. Thank you, (Wolfgang) for the question and Alan for the answer. Are there more questions for Alan? I see Chuck's hand up. Please Chuck.

Chuck Gomes: Thanks, Thomas. And thanks Alan for the very effective summary. I know you guys have - the ALAC as well as At Large people have probably talked about this question a lot. But it's a critical question and the direction that I think the ALAC is recommending. How do we measure harm? Or how do we measure worthiness?

Those are challenging questions. And as you know, the new gTLD recommendations really emphasize being able to develop objective measurable criteria and avoid subjective decisions as much as possible. We

talked about this a little bit on the call last week in terms of measuring worthiness. You have any response with regard to those questions?

Alan Greenberg: Yes we do. It's not a wholly satisfactory response I'll grant you. Following those kind of guidelines to the letter I think we'll end up with us either recommending not protecting and blocking names, which really do warrant protection, or granting protections to a very wide number of character strings where there is really no defensible reason to do it other than that's the path we took. Tough. We couldn't come up with anything that was more fine grained than that.

We believe there is going to have to be some objective decision making if we're going to do this without going into the concept of blocking on a very wide level because I have no illusions. If we do this for a large number of IGOs, they're not going to be the last ones to get in line saying we want it too.

You know, so I think we're starting on a path that we don't want to go down. So yes, I think and we think that there is going to have to be some subjectivity involved. It is up to this workgroup and the implementers after it to try to put some words in place, which describe what we're talking about.

And then you're going to need to go to some outside panel -- it's not going to be a judgment of ICANN staff -- that will evaluate the applications and make judgments on it. And, you know, with a PO and things like that if necessary. There are plenty of learned, you know, knowledgeable people around who can make those kind of judgments.

Courts of law make judgments all the time. All sorts of bodies make judgments, you know, based on wording and then they have a subjective view of them. And I think this is a situation where we're going to have to do the same thing.

Thomas Rickert: Thanks, Alan. I have Alain now.

Alain Berranger: Thank you. Thank you very much Thomas. I wanted to reiterate the feeling our - reiterate the feeling that there seem to be different levels of privilege considered for government versus NGOs.

In that sense, I - the second point I would make is that the onus to demonstrate the needs for protection should go on the - should go to the applicant or to any organization that requests a special protection. And so therefore I'm in agreement with the suggestion made that we would need a process where we can make a judgment on the validity of the request.

And going back to the first point, I think making sure we have - we care about a delicate balance between public, private and civil society organizations. It's more critical than ever at ICANN. I think I believe that. And I sense that it's not always the case and I wouldn't want to with this in a direction where IGOs - it's easier for IGOs to demonstrate the need for protection than it is for INGOs. Thanks.

Thomas Rickert: Thanks, Alain.

Alan Greenberg: Can I reply? It's Alan speaking.

Thomas Rickert: Alan, please.

Alan Greenberg: Yeah. I support what Alain says completely. The situation right now is we are in a position if we follow ahead on the direction that some people indicated they want to go. And certainly the GAC was. We are going to point blank give protection to a large number of IGOs with no evidence that they need it at all and absolutely refuse it to a large number of NGOs that could probably demonstrate the merits and their need for it.

And that's exactly the opposite to where I believe we should be going. And I think Alain was supporting that direction.

Alain Berranger: Yeah. Absolutely.

Thomas Rickert: I have - I see Chuck's hand up. I don't know whether it's an old hand or a new hand.

Chuck Gomes: It's not. Thanks, Thomas. It's a follow up to Alan Greenberg answer to my previous question. Alan, did the ALAC try to apply its recommended criteria - the need criterion to the INT names as recommended by the GAC for IGOs? And if so, is it your expectation that all of those would apply or just some subset or none? I don't know if you can respond to that or not.

Alan Greenberg: I - well I can't give you a definitive answer and we haven't done a careful study. In the email that I did promise going into a little bit more on some metrics and, you know, the fact based decision making, I will go into a little bit more detail with a couple of examples.

And I admit these are - they're going to be examples that are easy picking. They're low hanging fruit because they were so easy to analyze. But they demonstrate that, you know, it's not clear there are harms right now. And it's not clear that there are harms that people need to fix.

Now we don't know what the new gTLD world is going to be like. I haven't even seen an analysis -- maybe there is one somewhere - of how many of the perspective new gTLDs are really going to be open for general registration without strong qualifications as to who is eligible. I haven't seen the count of that. I assume it's more than a few hundred and probably under 500.

But that would be an interesting number because it really tells us the magnitude of the group we're looking at. So yes we have talked about it. We have not done any great analysis. You will see a bit of very rudimentary

examples, not analysis, in what I'll be sending out to the group later on. But yes, the current IGO list is a mixed bag of a lot of different things.

Chuck Gomes: Thank you.

Thomas Rickert: And thanks Chuck and Alan. Now that leads us smoothly to the fourth agenda item, which is the review of the work packages spreadsheet. And you will have noticed that we have been talking about evidence of harm and I think that easily translates to the nature of the problem spreadsheet.

And that is also the reason why I invited Alan to describe a little bit what - how they came up with the statement and what the main points of the statements were. Because as we go at the nature of the problem spreadsheet and also when we come to the qualification criteria later on, I think that the ALAC statement, and I'm sure that this will be the same for other statements that we're going to hopefully receive in the coming days, actually stimulates questions that haven't been asked specifically in the same manner.

And, you know, reminding us that ICANN has been quite hesitant to grant special protections and, you know, bearing in mind that Chuck has also provided us with some historical data on the PDP where, you know, where RPMs were asked for but then in the Reserved Names Working Group there was this intentional discussion not to go beyond what the recommendations were.

I think the question that we might ask ourselves is have we asked the same - have we asked the right question for the nature of the problem spreadsheet or do we need to refine that a little bit.

Alain Berranger just said a couple minutes ago that the burden is on those that are requesting protections to provide some sort of fact base for that. I think that I would phrase it a little bit broader namely that in the light of the

history that Chuck and others reported to us, I think we need to make upfront, and maybe this is the reason why it is the first spreadsheet in the Excel file.

We need to determine first whether there is an issue that needs fixing. And my question is, and I'm really having difficulty answering that question is what more data or evidence should we be asking those that are requesting protection to provide us with to give us sufficient fact base to actually make a determination whether that is sufficient harm or not.

And I quote from the ALAC paper. It reads we need to make sure that there are real harms; if we do not so and that the protections will in fact prohibit such harms. At the moment we have little evidence of such harms particularly for IGOs. And we have little evidence that protecting exact matches only will be of significant help.

So I'd like to ask those that are representing potential beneficiaries of this work to maybe give us the most critical point that they would like to derive their protection from because, you know, if you look at the spreadsheet, what you see is that the mere cost of defensive registrations are very much debated or controversial.

But maybe there are other points that we can introduce that where more common ground can be found or not depending on what the points may be. So I'd like to open the floor to the working group participants to spell out what their primary concern or parameter to evidence harm might be.

I see Alan. Alan please.

Alan Greenberg: Yeah. I'm going to give an example in the outside of the world we're looking at. I did a check, and I don't remember the exact number, but I did a check of the number of registrations that Microsoft owns. And it's some number, 300,000, 500,000, a lot.

And I've got to believe, although I haven't seen the definitive list of all of those, that many, many, many of those are not exact names but are typos and are names used in conjunction with other things. And my gut feeling is that that's the case for the kinds of organizations we're looking at also.

I certainly know it is because of the examples the Olympic - International Olympic Committee gave to the previous drafting group. And I've seen similar ones from the Red Cross that the protections we're talking about are just the tip of the iceberg. And although I have absolutely no qualm with the statement saying defensive registrations are expensive. It's not clear to me in any case that this is going to change the situation markedly.

So I think that's the kind of thing that we need to look at. Not just a global statement that defensive registrations are expensive. That's true. But it's not clear that what we're looking at is going to fix that. Thank you.

Thomas Rickert: Thanks, Alan. And maybe to elaborate a little bit more on the scenario, what I've seen, and this is closely related to the protections spreadsheet. I think what we need to focus on as we move along is to determine what special harms there might be between the current status - either status with the new RPMs introduced and the absence of the outcome of this PDP or the absence of new protections.

And what jumps to mind is that the gap between, you know, reactive and proactive you may remember that there has been criticism by those requesting protections that the RPMs as they stand would only be reactive while they would need proactive protection.

So we would need to look at the proactive side as a starting point and then work on what harms are cost of the organizations. And maybe the points are already in the spreadsheet. Maybe financial damages are the primary concern.

But what I'd like to hear from the group is what points or what, you know, if it's a quantitative point, how can we approach this in order to make a determination. Or alternatively, are there any points in this list that you think are not helping our discussion? So that might - maybe we can remove it from the list.

But I think that as we move on, now that we have officially declared the fact finding mission closed, I think the primary arguments that have been made are on the table and we need to prioritize them and hopefully cut some out so that we can short list the ones that are more relevant and then gather supporting evidence from the affected organizations.

Maybe you don't have an answer but maybe you have a statement or comment on the questions that I've asked. You know, I'm not...

Alan Greenberg: Thomas, it's Alan. (Kirin) asked the question in the chat you may want to look at.

Thomas Rickert: Just reading it. Yeah. I think that, you know, for those who are not on the Adobe, let me read out (Kirin)'s comment. Thomas, are you asking the IOC and the other organizations present to make a statement about why we think we need protections even if it's just for exact matches?

Yes. That is the question. I'd like to get some views and enter into discussion with you what your primary concern is. And if we learn as a group what the primary concern is then we might be able to find appropriate quantitative parameters where we can ask you to provide us with more basic facts to learn whether there is a real harm or actually a problem. Because (Kirin) as you mentioned exact matches, looking at the charter we are looking at names and acronyms of organizations.

So the task that we've been mandated with is looking at exact matches to the names and the acronyms.

Jim Bikoff: Thomas.

Thomas Rickert: (Jim), please go ahead.

Jim Bikoff: I just want to say we have tried to do that in the comments that we have prepared and filed yesterday. We can try to go into more depth in response. But I think the primary thing that - I mean I can't speak for all the organizations.

But I think all the organizations that seek protection are viewing this as a diversion of resources, diversion of funds as well as time and effort against cybersquatting and phishing and other types of wrong doing by domain name registrants.

And that's the primary harm that funds that could be used or would be used for public good are being diverted toward trying to go after people who are wrongfully registering domains that will likely lead to confusion for other damages.

Thomas Rickert: (Jim), I certainly saw that you commented in a lot of fields. However, what I'd like to learn and hopefully the other working group participants are also eager to learn this from you and from the other organizations who presented it is, you know, you made comments to many points. But I think what we need to do is sort of a ranking.

Maybe there's common ground that, you know, financial disadvantages -- let me put it that way -- are the top priority issue that we need to look at. And maybe we can then neglect or completely delete from the list other points that have been made because even you as the affected organizations don't regard them as being decisive.

So as a sort of a question the financial damage incurred with the IOC would - is your primary motivation to request special protections. Is that correct? I'm just reading that (Kirin), (Jim) and David got cut off. So let me ask Stephane to comment. Stephane you had your hand up. Please.

Stephane Hankins: Yes. Thank you very much. Stephane Hankins, International Committee of the Red Cross and Red Cross Red Crescent Movement. Yes. I'd like to - well first of all of course each organization has a different case to be made.

But I think it's a little bit misleading, and this is reflected also in this table, really to simply reduce the issue to the financial damage question. I mean at the base of this it's a reputation prejudice that we're looking at. And then of course flows from that the need for the organizations concerned to - and the need for international law to protect these designations.

To me the square in the table that counts really is probably the last one, which is the public good global public interest I mentioned. And of course, you know, that will be assessed in different ways for different organizations.

But I mean if - I will take the case of the Red Cross Red Crescent designations here. But obviously the protection on the public international law and these universally agreed Geneva Convention, I mean what they intend to do is to protect these designations.

These protection - these intrinsic protections. The purpose of this is dual. One of them is related and I'm going to repeat myself again. It's related to the protective function of the emblems that are designated by these names in armed conflict, protective emblems of the medical services of armed forces.

The assumption is that if these names are misused, including in peace time, or associated to purposes or other organizations which do not work and do not abide by the values that these emblems and these designations where

present that this will damage the protective function of the emblems themselves. That's number one.

Then there is the indicative function of the emblems and the designations, which there relate more clearly also to the object of this working group, which is designations of specific organizations.

And here of course the concern is that the designations of the organizations concerned -- I mean here the organizations that are part of these National Red Cross Red Crescent Movement -- that the reputation of these organizations not be damaged by misuse of the designations by organizations which do not share the same values and the same fundamental with principles by which we seek to abide.

It's clearly a reputation issue. And the law is very, very clear. If you look at international law, the purpose is to protect the reputation, the image and the functions of these designations. That's where the public good lies. And I think that's the prism that we have to look at.

The question of the fund, you know, of the financial consequences for the organization's concern to fight it out and which is shared by all. You share I think all - each or all organizations share the reputation concern. And the share, you know, the concern of the costs involved.

But I think the basics, what we're looking at is the global public interest. And that's the primary consideration. Of course there are financial costs and of course we're putting them forward. But, you know, let's look at this - the last square that counts. Thank you very much. This is what I wanted to say.

Thomas Rickert: Thank you, Stephane. Before I move to (Kirin) and (Jim), let me ask you a follow up question. So if my understanding is correct and you've been using the different terminology here. I'd just like to have absolute clarity on that.

Your top priority would be the public good. You then mentioned the global public good. And I think the essence of what you said is referring to the global public good including the reputation of the organizations or what you see the global public good and the reputation as two separate parameters that should be looked at.

Stephane Hankins: Well to me global public good I - in my mind equals this concept that I have that I think is familiar to the ICANN processes, which is the global public interest concept. Right.

I think - as I said, if we just look at the Red Cross Red Crescent, you know, case, I mean the global public interest to me you're - and it is the rationale for the international protection in the first place is two things.

The protection of the protective functions of the emblems and their designations in armed conflict. So here we have a direct and very - it's a very unique case because here we're talking about designations of emblems that have, you know, a direct bearing on the protection in armed conflict, you know, it's really at the heart of the international law or rule we're talking about, which I find in the Geneva Convention. That's number 1.

And then there's the reputation question, which of course, you know, is also very simple because the - if you just take the Red Cross Red Crescent organization, they enjoy an international mandate under international humanitarian ought to provide assistance and protection to victims, et cetera.

So, you know, it's a dual public interest in this instance. I don't know if I've answered your question.

Thomas Rickert: I guess you have and you will find out in the moment because my proposal is that we add to the table two points, one of which is the global public interest and another one being the reputation of the organization. Then let the group comment on that.

You know, this is just to make sure that we know your top priorities and I take good note that this is a top priority for the RCRC and that financial considerations would rank lower on the priority list.

Alan, before I move to you I have (Kirin).

Claudia MacMaster Tamarit: Just - Thomas, can I get in the queue? It's Claudia.

Thomas Rickert: Yes you can. I have (Kirin) now, then Alan and then Claudia.

Stephane Hankins: Thomas, this is Stephane Hankins. Can I just say one word?

Thomas Rickert: Yes please.

Stephane Hankins: I did not mean to say that it ranks lower. I am just - I'm - because - I'm not going to, you know, I'm not - I didn't want to make them into, you know, provide a hierarchy of concerns. But my comment was essentially directed to identify the global public interest. But of course, you know, the other squares in the table are as relevant to us. Thank you.

Thomas Rickert: Thank you, Stephane. (Kirin).

Jim Bikoff: It's (Jim).

Thomas Rickert: (Jim). (Jim), sorry. Please go ahead.

Jim Bikoff: Right. I was just going to say we got cut off when you asked the questions. And I think - I didn't want to give the impression that we're talking about financial interest. We're talking about diversion of funds that would be used for public interest going to enforcement measures.

But I don't think that's the most important. I think in ranking these things I think the legal protection whether by treaty or national laws would be the first and most important from I think our standpoint. The second being, you know, as Stephane said, we agree with that. The reputation and also the public interest points.

So I just wanted to make clear the financial is part of diversion of resources because if you get - if you get \$100 and you have to put it into cease and desist letters, et cetera, instead of devoting it to some environmental cause in Gambia then that's something that is against the public interest I think.

Thomas Rickert: Thanks, (Jim). Let me maybe clarify. I would separate the discussion surrounding the nature of the problem or the existence of a problem as ALAC mentioned it in the statement from the question of legal protections.

I'm not saying that, you know, that this is a point that I could personally (unintelligible) but having followed this discussion for quite some time, this is a question that has been asked by the community. And the question is is there a real problem that we're solving.

And even if there were treaty protections and I know that I'm paraphrasing now. Even if there were treaty protections but if there were no threat scenario at all for the organizations being granted these protections, I think that wouldn't be or that might not be good enough reason for the community to grant extra protections.

Kiran Malancharuvil: Right. Thomas, this is (Kiran). Can I just clarify our point? Very quickly. I just wanted to say that we believe the violation of national laws is part of the problem.

So while we understand that examining what the laws protect and the scope, et cetera, et cetera, it falls clearly under qualification criteria, we also believe that a violation of a national law, which has been enacted to address some of

the other harms that are in the nature of the problem spreadsheet is in and of itself a harm that this group should address.

Thomas Rickert: Thank you, (Kiran). That's a helpful clarification. But I hope you understand why I'm bringing up this question because I think that we need to inform the community about the threat scenario and why we are - or at least the question has been asked what are we trying to solve and what's the problem.

I have Alan next and then Claudia.

Alan Greenberg: Thank you. I think the last speakers have demonstrated just how complex this problem is. You know, I understand Stephane going over the mandate of, you know, why the Red Cross has treaty protection. But I don't think anyone's going to argue with those things.

But the question that might come up is but does having a Web site with the name Red Cross in it harm the battlefield protection of soldiers. You know, and, you know, what is the direct link? (Kiran)'s recent statement that if something is protected in national law that it follows directly that we should be stopping domain name use for it.

Well there are many countries that outlaw so many things. You know, to use the classic example of .xxx, you know, we should have banned that a long time ago because it's outlawed in some countries. And there's a whole bunch of objections on new gTLDs that some countries have said but we have laws against it. Therefore maybe you shouldn't have that at all.

So it's the linkage between all these things that is far from clear. And I think we need to try to build a logical argument for why we jump from protection of a word in three countries to why we should be outlawing it globally. And in my mind, and I'm not speaking on behalf of ALAC. I suspect that would agree. These connections are not easy to make. So thank you.

Thomas Rickert: Thanks, Alan. I have Claudia and then Elizabeth.

Claudia MacMaster Tamarit: Hi Thomas. Just to answer the question about what is that - the harm that we seek to protect. I think from the viewpoint of some INGOs that are looking at the future of new gTLDs rolling out and they're being possibly thousands and if not millions of domain abuse situations in second levels and in third levels and possibly in top levels further on down the road.

The risk for them is very much at the heart of what they do. In other words, organizations that were by their very mandate, by their very composition, the purpose that they exist, the reason why they have national, international recognition to do international work is that they have been structured and support financially sometimes but much more than just finances but by international participation to address a particular issue or a particular policy making area.

If all of a sudden these organizations have to now decide well either we devote more funds and more resources, more personnel from our organization to fight these domain abuses, we might find ourselves in a position of being swallowed up by this kind of an activity or then risking then great harm to our reputation.

So I think that the public interest is absolutely at the heart of this (discussion) from some INGO's perspectives. It's true that diverting public funds or funds that have been dedicated to the public interest is obviously a natural consequence of organizations having to then protect their reputation, a reputation that can serve the public and even their day to day tasks.

So the financial part is an aspect of it but it's also very much a reputational part. And it's also very much a mandate aspect. Organizations that have been created to serve a public interest are not poised to have to go after domain name enforcement for abuses of their names and acronyms.

So we really sort of lie in a conundrum here. Do we end up attempting to divert significant resources to protecting our reputation at the risk of then suddenly finding ourselves well outside of our mandate? It's a very sort of precarious situation.

What happens is then the organization itself sort of finds itself at risk. And it finds itself in a sort of a - between a rock and a hard place kind of. I hope that made sense. I apologize. It's a bit of a complicated day over here.

Thomas Rickert: Sure Claudia. One quick follow up question. Would you see the global public good that you have referred to and the mandate as two separate issues or would the mandate be the global public good?

Claudia MacMaster Tamarit: Yeah. I think that we have to look at the specific mandate. I think that's one of the comments that we've talked about is this case-by-case analysis. We have to look at the specific mandate. Organizations have different ones.

And some organizations, some INGOs for example have a mandate that is to serve the public good and we can see that evidenced in how their work can affect absolutely every aspect of our lives from consumer protection to product safety to trade barriers being brought down.

So depending on an organization under a case-by-case analysis if their mandate is to serve the public good and we might look at that by looking at how many countries does that organization serve. What kind of an impact does their work have on an international level? What kind of, you know, this is we're getting into more of the criteria, yes.

But we can answer that question of what is your mandate? Okay. Your mandate is to serve a public interest. Okay. That means that your organization is structured to handle that. It's not like a trademark corporation, a trademark owner that's a private corporation that can, you know, pass on its

cost to the consumer that's structured in a way to take on this sort of overhead.

Organizations like INGOs that are meant to - and structured to serve the public good they're not always - they're not structured to deal with this proliferating domain name abuse as the Internet continues to expand.

Thomas Rickert: Thanks for that clarification Claudia. I have Elizabeth Finberg next.

Elizabeth Finberg: Hi. Elizabeth Finberg, PIR. I wanted to sort of follow up to your - what I think was one of your early questions Thomas, which I think goes to the heart of what we're being asked to do. And that is to address a real existing harm to see if we can reach consensus about whether there really is a problem and then how do we address it.

And I think when (Jim) was speaking and he said well, you know, if we have an organization like the IOC that has \$100 that they could, you know, spend to serve the public good but instead they're spending it on cease and desist orders, I would be very interested to see the empirical data that would help us, you know, to inform us and help us to evaluate that and make that a part of our deliberative process here.

And somewhat on the same note with respect to Claudia's remarks, I think if we're talking about prospective harm, you know, we're really on a slippery slope in terms of what could we do to the Internet to protect against any eventuality.

And the answer is, you know, we're never going to be able to come up with something that's going to protect against every possible harm. We can only evaluate what is real and then, you know, respond with our recommendations accordingly. Thank you.

Thomas Rickert: Thank Elizabeth. (Kiran).

Jim Bikoff: This is (Jim).

Thomas Rickert: (Jim).

Jim Bikoff: I want to just say that my - in my belief I think Elizabeth's point is very good. I think that - and I'm not saying that it should be just the laws and then, you know, reputation and diversion of resources. I think there has to be some harm that's shown because otherwise every organization would claim that it's entitled to protection- special protection.

I think - the question is how do you show harm. And I think one of the best ways to show harm is what's happened in the existing 22 TLDs. If - I mean everything else is speculative. We don't know what's going to happen with the addition of whether it's 500 or 800, whether there's going to be harm for the first time to some organizations or not.

And I think by showing what's happened now before the introduction of the new gTLDs is an indication of what may happen with the new ones. Because if a organization has existing issues with many cybersquatting incidents on a monthly, weekly basis then they're likely to have many more if you add 500 new top level domains.

If in fact they've had none up to now in top level domains like .com and .net and .info and so on, I'm not sure it's realistic to believe that they will have problems when the new ones are released. So that's just - and I think we have to maybe focus on what has to be shown to indicate that there's harm.

Thomas Rickert: Thank you, (Jim). And that's - the question that you just asked is exactly the question that I at least wanted to answer - to ask. Maybe I haven't been clear enough.

But the - how do we - how do we evidence harm? What type of advice does the group offer in terms to get an answer to that question? What quantitative measures should be apply and try to get empirical data on to help us answer the question? That's exactly the type of discussion that I was trying to stimulate.

And before I give the word to Alan, let me share a secret with you. You know, as Chair my hope was that we might get rid of quantitative aspects to demonstrate or to discuss harm because that would make our lives far easier.

So if we had other parameters that we could be looking at that might be much easier to even get consensus on. Because as we heard, you know, the sheer figure - number of, you know, or costs imposed on organizations are deemed high but some are deemed low by others are going to be sliced by those criticizing potential protections by saying okay these costs are relatively low.

So there are difficulties with whatever quantitative parameters we come up with. And this is why I would like the group to discuss how we can fence that in. This is why I ask you to prioritize the points that are of relevance for you and then maybe try to boil it down to parameters where we have an easier time coming up with facts and answer the question. Alan please.

Alan Greenberg: Thank you. I recognize that some of the numbers that are going to come out of this kind of discussion are going to be hard to analyze. But I think (Jim) put - hit the nail on the head that at the extreme ends they're not hard to analyze. We may have trouble deciding where the line of demarcation is.

But an organization, and there are some because I found them easily, that have not felt the need to register a single defensive domain. And some of them are available so they could have, clearly does not have the same level of problem as someone who has 300,000 domains.

Now yes, all of those aren't exact matches. But the parameters are just so different that we may not get a definitive answer by looking at metrics only. But they're going to start to show us the range of kinds of problems or lack of problems that we're talking about. Thank you.

Thomas Rickert: Thanks, Alan. And you have indicated earlier that you're going to send some more information on this to the list.

Alan Greenberg: Yeah. The research has taken me longer and I've been diverted by a number of PDPs that have required statements in the last week or two. But unfortunately this is not the only group. You will be getting something from me hopefully before - well before the next meeting.

Thomas Rickert: Thanks, Alan. I think that, you know, this was a good starting point of an intense discussion about the merits of the individual points. Just to remind you, we've used this spreadsheet to bring the main parameters on the table and now we need to look at the merit of the individual points and see which ones can be used better and which ones we might be able to take off the list.

So my request to you is to take a look at the issue of the nature of the problem and provide your input and your ideas to Robin who's the leader of that subgroup so that we can hopefully come up with at least some questions that we need to ask the organizations that are asking for protections to further inform our discussion.

I would like to use the remaining time to talk about qualification criteria. So this is your last chance to comment on the nature of the problem issue before we move on. Okay. I see no hands up. So let's move on to the qualification criteria point.

And there have been - I think the spreadsheet accurately reflects the arguments that have been made in the course of our discussions regarding

qualification criteria. There are a few more points that we can take from the ALAC statement, which (Kirin) might want to add to the spreadsheet later on.

I'm particularly thinking of the point that has been highlighted by Alan during his presentation of the statement and that is the point of how - to what extent does the organization in question actually correspond to users via the Internet. Alan, I hope that I'm not misrepresenting this point. But I think that at least that point is missing from the criteria spreadsheet today.

When I analyzed the comments that have been made, I thought that we should discuss a little bit the very first point because that caused some discussions already. And that is the criterion of protection by treaty.

You will remember that during last week's call we had another I should say discussion about the (remit) of this group or the charter and the question whether for organizations to be legible we would need treaty protection and cumulative and protection in multiple jurisdictions.

And this has been at least by some of the participants - I think it were - the majority of participants who spoke up that said that those criteria need to be present cumulatively because of the history of the PDP but also based on the documents that have been published both by the GAC and the ICANN Board.

But taking a closer look at it I think the question or the criterion of the protection by treaty needs to be looked at more closely. Because we, you know, I'm not going to give a full report on the details of that. But there have been arguments like these - that a certain treaty does not protect a certain name like in the case of the IOC where the five rings are protected as a symbol, not the word.

Then another point was the protection granted by treaty or whether an organization needs to be - needs to have been created under a treaty. So I

think there is quite a lot of - yeah, there are a lot of issues under this point that needs - that need to be discussed.

And I would like to use this forum or this call to maybe elaborate on that a little bit further because what I think is needed for the group to decide whether protection by treaty needs to be present inevitably. And if so, what type of treaty protection is needed? And if we need any additional parameters then we would need to decide what parameters need to be present in addition to protection by treaty whatever that might look like.

Now that has been quite a broad of a - quite a broad question. But maybe there are participants in the group that are brave enough to kick off the discussion here. I saw a hand for a microsecond. No. Alan please.

Alan Greenberg: I think it may be stupid enough to kick off the discussion, not brave enough. I guess I want to see those kind of - that kind of information also. But it's got to be real information, not hand waving. And I'll give you an example and forgive me, I'm directing it at one particular participant and that's the Olympics.

To say that various names are protected in multiple countries is not as helpful as saying we want this particular character string because we're talking character strings here. That's what we're going to - that's what we're going to block or stop the use of or reserve.

You know, the real salient information is going to be this particular character string. Specific characters is protected in how many different countries? You know, simply saying that one of the many character strings is protected in 50 countries doesn't really say about how global the protection is for any given string and why we should do a global worldwide protection of it.

And I think it's that level of specificity that is going to allow us to understand the nature of the problem and the nature of the remedies that we're proposing. Thank you.

Thomas Rickert: Thanks, Alan. I suspect that seeing (Kiran)'s hand, it's (Jim).

Kiran Malancharuvil: It's not. It's (Kiran) this time. Surprise.

Thomas Rickert: Sorry for that. (Kiran) please.

Kiran Malancharuvil: That's okay. Just in response to Alan's point, you know, we're working in a spreadsheet that has a cell that stops us from inputting a number of - a certain number of characters. But let me just clarify by saying that we say various names are protected in multiple countries.

The word - the strings that we're discussing Olympic and Olympiad are universally protected by all of the statutes that we cite in what we submitted to ICANN and multiple locations over many years.

The reason why we say various names are protected is because a vast majority of that legislation also protects things like Citius, Altius, Fortius, which is the motto of the Olympic movement.

So we don't want to limit ourselves in general to try to misrepresent the statutes is only protecting the words Olympic and Olympiad, which are on the table here.

We're happy to discuss the specifics but we've already done so and then resubmitted and made that information available to this group. So you've seen a statute table. You've seen submission from us in the form of letters. You've seen things come from the GAC, which we gave to them at - by their request.

All of this has the information with a level of specificity about the statutes that we're citing. It's an enormous amount of paper as you can imagine and we

can't put it in a spreadsheet. But we're happy to resend it to the group if you need it again. (Unintelligible).

Thomas Rickert: Thanks, (Kirin). I'm not sure whether it's needed that you resend the documents to the group. You know, with this discussion I rather wanted to spot some of the complexities that we faced. And before I give the floor to Alan, I'd like to ask Brian if Brian is still on the call - Brian, are you still there?

Brian Peck: Yes I am, Tom.

Thomas Rickert: Yeah. Because Brian has been one of the drafters of the issue report of this (unintelligible) and he's quite extensively worked on the legal side of things. And in the preparation of this call I had a chat with Brian because I was looking for, you know, maybe easier solutions that make it easier for the group to come up with answers.

And he's in a much better position to maybe share of the complexities that he has faced during this research. So Brian, could you help me out at this stage please?

Brian Peck: Sure. I don't know Thomas if you would find it to be helpful to just provide a summary of some of the different, you know, positions that are being - have been taken on this account or I'm not - you guide me on the - what would be most helpful at this point for you and...

Thomas Rickert: Yes. I think that would be helpful. We've talked about different interpretations of treaties, of potential limitations of the scope or the protection level the treaties and, you know, maybe you could highlight a couple of points for the group.

Brian Peck: Okay. Sure. I think - I mean I think the challenge here for the group an for whatever final policy determinations or recommendations are devised is that

as we've seen in the discussions here, you know, each group has advocated, you know, a certain level of treaty that provides protection.

But again, as we've seen, there's been different interpretations of those treaties whether it be the (unintelligible) treaty for the IOC and, (as is pointed out). And, you know, I understand that there's the interpretation that, you know, making the, you know, the connection between the actual protection for emblems versus the names of the IOC.

The IGOs of course advocate that our fixture of the Paris convention protects their names. But I think it's well recognized that certain countries don't agree with that interpretation of automatic protection.

And there are certain provisions within the Article 6ter would limit that protection based on, you know, any unlikelihood of public confusion and/or because, you know, limited protection only when the use of those names are associated with the use of goods.

So, you know, I think it's recognized that although each of the groups have treaties that they allocate as, you know, justifying the protection of their names, there are different interpretations among member countries involved.

I think it's also important to point out that, you know, there's the question of distinguishing between INGOs such as the Red Cross and Olympic IOC and IGOs. And again, not that the PDP Working Group is bound by the GAC advice but the GAC itself has taken different (tacts).

You know, as we talked about, the GAC has criteria for INGOs is basically protected by treaty and also domestic laws in multiple jurisdictions. As we've seen in Toronto Communique, the GAC has taken a different approach for IGOs. And rather than basing - at least based on the language of the Toronto Communique, rather than basing criteria such as protection on Article 6ter, they're looking at the criteria of the .int registration of domain name.

And if we look at that it's not being protected by a treaty per se but rather that the organization is created by a treaty and that the organization has a distinct international legal personality.

So the criteria there the GAC is leaning on or, you know, kind of at least leaning towards in terms of coming up with a list that it would recommend to protect for IGOs is again not based on treaty protection of the IGO names but rather that the IGOs or any organization would be established by a treaty and again having distinct international (personalities).

I think that's an important distinction to look at perhaps as a way moving forward and trying to determine what type of criteria if you're looking at treaties and multiple jurisdictions to move forward on in the discussions.

Thomas Rickert: Thanks, Brian. That's very helpful. Are there any questions for Brian? Any comment. I have Lanre. Lanre please.

Lanre Ajayi: Yes. (Unintelligible) criteria. We think that (it's another process) on their protection by treaty and protection by national law. But then from INGOs that are generally (unintelligible) but (unintelligible) by public treaty or national law. (Unintelligible) and many other one. I'm sure (unintelligible) want to be protected. They also want their names protected. And they are (unintelligible) treaty or national law. And I think they also (do that) from kind of concentration.

Thomas Rickert: Thanks, Lanre. Lanre, I had a hard time understanding what you said because at least for me the line was not too good at times. Brian, if you could fully understand what Lanre said, maybe you would be as kind as to repeat the question and maybe give a response to that.

Brian Peck: Sure. And Lanre, please correct me if I misunderstood. I also had a little bit difficulty hearing. But I think if I understand you correctly is, you know, you

have certain INGOs such as Oxfam. That would not fall within the criteria such as, you know, being protected by international treaty and also domestic laws in multiple jurisdictions.

Where, you know, if indeed those criteria were to be, you know, to be maintained, what would, you know, how would those type of organizations be considered for protection? Is that correct Lanre?

Lanre Ajayi: That's right, correct.

Brian Peck: Thank you. Again, this is I think one of the challenges the PDP Working Group has to deal with and that is if indeed you maintain the criteria that has been set by the precedent for example the previous new gTLD PDPs work and/or the GAC criteria that it was established to protect the IOC Red Cross Red Crescent names.

You know, then, you know, indeed those types of organizations would probably not be able to qualify and so that's something for this group to consider is do you maybe change that criteria to an either/or or do you expand the criteria to allow for such organizations to be considered? I don't know if there's anything more that I can say at that point - beyond that point.

Thomas Rickert: Are there any more thoughts on that? Or let me put it the other way around. Maybe I can ask (Kim) - sorry, (Jim) and (Kirin). Do you think we can discuss the treaty issue on the basis of the information that we have at present or would we need to maybe go into more detail there to come up with a sound answer? (Unintelligible).

Kiran Malancharuvil: Well, this is (Kiran). I guess I don't understand what you mean by proceed on the basis of what information we have now.

Thomas Rickert: Let me try to clarify. The qualification criterion as it's now stated is that we - that, you know, it's called protection by treaty. And I have opened this up for

discussion because following the discussion particularly in the last week but also before that I'm not sure whether protection by treaty as a criterion as such will really help us solve the problem.

The question is wouldn't it be more appropriate to get to the details of that and, you know, maybe say protection by treaty that created an organization or the beneficiary organization or do we leave it at the protection level? You know, just to give two examples of how, you know, even the treaty criterion can be applied in different manners.

Kiran Malancharuvil: Well Thomas, in our email from yesterday, which as directed towards (Ricardo) but then also the entire group I think that way that we advocated that the treaty would be used to similar to how the GAC used it, which I understand isn't (presidential) for this group but might be at last helpful.

Which was that the evidence of a treaty supporting intellectual property of an organizations shows that it has special international status and is worthy of protection but may not necessarily direct specifically to the intellectual property that we're discussing this group.

Thomas Rickert: Yeah. I noticed that in the email you used the word worthy. The word worthiness has also been used in the ALAC statement yet during last week's call I think there was at least some agreement inside the group that it's not for the working group to decide which organizations are worthy and what not. So I have some difficulties understanding what the best approach for that might be. Greg.

Greg Shatan: Thank you. I think, you know, we've inherited the treaty criteria or criterion from, you know, our predecessor drafting team and from, you know, various efforts prior to this working group.

I continue to think that it is a troublesome criteria especially, you know, given, you know, as Brian pointed out; even if you assert that there is a treaty

involved, there are, you know, arguments that could be made that the treaty may or may not apply or it may apply in ways that are not, you know, so simple to parse out.

Yet and furthermore, you know, especially if we somehow come to the conclusion that, you know, Article 6ter and the Paris convention generally does not, you know, bring into the fold, you know, IGOs then - and certainly we have, you know, we have - we would have found a vast majority of IGOs and INGOs; certainly INGOs would tend to be excluded from this whole exercise, which I think would be a bazaar result.

I think we can, you know, there may be other reasons why, you know, we would want to determine that some organizations should or should not be, you know, given whatever protection we ultimately decide to offer if any or that some may receive one level and some may receive others.

But while the treaty may be indicative of a international stature of some sort, it's not an exhaustive or singular way to find that an organization has, you know, has brought international reach and, you know, serves the public good and is a whatever, you know, is an INGO that's not unworthy.

I mean, you know for - so, you know, (medisanson Pierre) or Oxfam or WaterAid or whatever it may be all, you know, could find themselves on the wrong side of the fence here. Whereas, you know, the accident, if you will, of having a treaty founding, you know, forming which would be, you know, applied I think, you know, almost - may apply to IGOs fairly comprehensively but apply to INGOs on a arbitrary and not very comprehensive basis at all.

You know, really I think it may just not be helpful at all to our - to the exercise here. I know that we've kind of inherited it. I don't know if - but I don't really think that, you know, living with it and using it to inform what our end result is here is going to result in a - an end result regardless of our conclusions that,

you know, will really look like it's been, you know, looked at with kind of the right objective set of criteria. Thank you.

Thomas Rickert: Greg, a quick follow up question. What would your favorite criterion or set of criteria be?

Greg Shatan: I'd have to give that a little bit more consideration and review, you know, all the criteria that have been established. I think that certainly, you know, would look for criteria that would point to organizations that have broad international outreach that are not merely functioning in a single country or a small group of countries although, you know, there are arguments given that, you know, a small group of countries could cover, you know, all of North America and Central America, whatever it might be or all of North and South America.

You know, kind of nose counting exercise I think is a dangerous one. But that, you know, clearly in organizations that, you know, have meat there and own national criteria for being non-governmental organizations that are, you know, international in scope and that, you know, meet - whether it may be the World Bank or United Nations definition of what an NGO is, you know, should be sufficient what specific criteria we could use to kind of cut those out.

And more importantly I guess the other way to look at it is, you know, what - why do we want certain INGOs and IGOs to fail the criteria? What should be our - you know, look at it the other way around. Who do we want to fail, why do we want to keep them out, what is - what do we believe is, you know, puts an organization on the wrong side of the fence here?

You know, if we're trying to exclude rather than include, which is, you know, two sides of the same coin. But why do we want to exclude certain organizations and what do we think makes them insufficiently or inappropriate for whatever protection we decide.

You know, we're not just talking about blocking protections but there may be other flavors of protections. And, you know, the question too is whether organizations will qualify automatically or will need to apply such that many organizations may not care to apply or feel that it's worth, you know, looking into this issue.

But I think that's kind of - I realize that's somewhat vague and I apologize. But I think that's kind of the sense of the criteria that I would be looking for. And also really trying to think about this from the other side of who are we keeping out and why. Thank you.

Thomas Rickert: Thanks, Greg. I think the idea of maybe introducing or at least discussing negative criteria is a good one. And may I encourage you to give this more thought and maybe come up with a proposal to the list. I have Alan...

Greg Shatan: Absolutely. I think just to say that I'm not just thinking just of negative criteria but just of also that idea of failing to meet positive criteria. So failing to meet a treaty I would or failing to have a treaty established is not a negative criteria but the question then becomes why is that a criteria that if you meet it it's you're in and if you don't meet it your out? Thank you.

Thomas Rickert: Yeah. Thanks for that clarification Greg. Alan please.

Alan Greenberg: Yeah. I no longer remember why I put my hand up. But I like the way this discussion is going now. So I support it and I think it's completely in line with the kind of suggestions that ALAC was making in its statement. Thank you.

Thomas Rickert: Thanks, Alan. Alain.

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

Thomas Rickert: Yes.

Alain Berranger: Okay. I want to - of course definitely what we do with the recommendation that organizations that would benefit from special protection would have to demonstrate the needs for protection. If we just go back to the international treaty requirement, that's a pretty - it has its complications but it - for IGOs it's pretty straightforward.

Again, walking away from the discussion that, you know, why would there be automatic qualification criteria like that. That for INGOs of the type that we discussed before like Amnesty International or the Conservation International or the Nature Conservancy, et cetera, very, very large well established, truly international organizations.

It would be - it would be important to add the criteria, and I've made this argument before, of demonstrating that that organization possess independent international legal personality. That that is - the onus would be on the applicant to demonstrate that it has that personality.

And in fact it corresponds to the - it corresponds to qualification Number 3 in the IANA eligibility qualification for a .int domain. I know that they're not being effective right now but that concept is - would actually meet both the - in other words, if the motivation of the applicant for special protection was high enough, you would have to - he or she would have to justify the need for protection as well as to meet that independent international legal personality.

So in a way the - if we only (leave) treaties or then it favors - it unduly favors the public sector stakeholder in general to the detriment of the private and/or the not for profit stakeholder as only a government can enter into treaties with other governments.

So if we want a robust and balanced (unintelligible) stakeholder model at ICANN then we are trying - have to try to get it into every little nook and cranny. And that's why I advocate this qualification.

The test of establishing that you profess independent international legal personality is extremely arduous to make. So you'd have to be really, really motivated. And it would - if passed there would be little doubt that the applicant would be a very, very worthy truly international organization.

I believe there for instance the Red Cross would have not difficulty besides the arguments they already have to establish an independent international legal personality.

So I think if we are trying to limit the numbers - the number of special protection, I don't know if that's an objective, then certainly this criteria would close the floodgates.

And so I think that even very large national NGOs that work in 7 or 8 or 12 countries would not be able to establish an independent international legal personality at all.

So it may be something worth thinking more about. I might - as I said before, I'm not a lawyer so I'm - I rely on the lawyers to either confirm or denigrate this suggestion of the - for qualification.

Thomas Rickert: Alain, thank you very much. Before I give the word to (Kirin) or (Jim), let me ask you whether you have any views on the criteria for the other types of organizations. You know, you were referring to the INGOs. Do you have any - do you have a view on the criteria or legal requirements for IGOs, IOC and RCRC?

Alain Berranger: Sorry. What was the last part of your question, IGOs?

Thomas Rickert: IGOs, IOC and RCRC, which are the other fields in the spreadsheet that we're discussing.

Alain Berranger: Well, you know, certainly less on - I feel that international IGOs there's really a, you know, there's a very limited number of treaties. And these are generally very large organizations. You know, like for instance Future Harvest, which used to be called the Consultative Group on International Agricultural Research.

Well, you know, there's a number of them and they hold the key to the (gene) banks of all the key food that feed the world; rice and cereals and potatoes, et cetera. And they have no difficulty in also meeting the criteria of the global public good that Stephane was referring to.

But no, I've let my position known with my MPOC hat on in San Jose that we were in favor of the first level anyway, special protection for the Red Cross. And this was about truly representing our members since the Red Cross is a MPOC member.

But I think I would limit my comments to the - I'm a little bit more confident that the independent international legal personality would be a balanced qualification for the larger NGOs. Now do we want to favor larger NGOs in this process? That's another issue.

So sorry to not have a crisp answer for you Thomas.

Thomas Rickert: Not to worry. Thank you, Alain. And I don't dare to guess whether it's (Kiran) or (Jim) now. So either of you please speak up.

Kiran Malancharuvil: Hi Thomas. It's (Kiran). I just wanted to clarify the - in respond to your comment a while ago about worthiness.

I think what we meant to convey in the letter or the email from last night was that a treaty demonstrates a certain conclusion of the international community regarding the organization, which we believe is more valuable than a - and very different from what we had - maybe not more valuable but very different

from what this group was discussing in regard to value or worthiness, which was some sort of subjective consideration by this group of charitable value of an organization rather than kind of overall worthiness and some sort of protection, which would have included many variables.

So I hope that that clarifies that for you. Thank you.

Thomas Rickert: Thank you, (Kirin). That's indeed very helpful. I mean if this group chose to even have worthiness as a criterion, we would need to make the best out of that. I was just spotting that during the last call I got the impression more or less that worthiness is nothing for us to decide and then the (charity) showed up. But this was very helpful for you to provide us with, you know, with some more background information on.

(Kirin): Yeah. Well I think that that was poor word choice on my part and certainly not what we meant to convey. And we wanted to make sure that we separated our mistaken use of the word worthy in our discussion of the treaty with our general opposition to the criterion of charitable worthiness or charitable value, which we do oppose within the context of this group's consideration. Thanks.

Thomas Rickert: Thank you. And I have Alan.

Alan Greenberg: Thank you. I just wanted to make something clear. I don't think anyone is suggesting, at least I hope not, that this group decide on worthiness of a particular organization. I think and ALAC thinks it is reasonable for this group to decide on what the parameters should be that someone then makes the decision on at a later time. Thank you.

Thomas Rickert: Thanks, Alan. And talking about you Alan, you've - I'm certainly glad to hear that you like the way the conversation goes because it picked up some of the ALAC points and that is primarily because your group was the only group to provide a written statement so far. And there's no value judgment behind that at least not from the Chair's perspective.

So had the other groups contributed in time, we might have been discussing the (remit) or the merits of their statements. And having said that, I'd like to encourage you again to provide input for this discussion.

Certainly at least to me our discussion today has shown and still shows that basically the longer we discuss, the more questions pop up. And I think we need to make sure that we structure our work in a manner that allows us to come up with responses in a timely manner.

Having said that, please do contribute to the specific or the various subgroups. I think it's of utmost relevance that you share your viewpoints with your colleagues. I think that will help us to advance our work and come to a conclusion or to consensus call earlier.

In terms of next steps, as I mentioned earlier, I think the fact of - I see Chuck's hand up. Chuck please.

Chuck Gomes: Thanks, Thomas. I don't know if this is helpful or not. I think it would be helpful for me. But because of all the great input that is being - happening to all of the subgroups' work, it's becoming increasingly difficult to stay on top of everything.

So I'm wondering whether it would be possible, it may not be, for each of the subgroups to try and consolidate, or maybe abbreviate is a better word, the input that has been given. I'm not saying reach consensus. That's nice but I doubt if it's going to be possible in a lot of cases.

But if it would helpful for each subgroup to abbreviate what they have including all the input that's been give so that we have a more concise look at where we're at. That doesn't mean we can't have more input. But I know I'm trying to track everybody's input but it's really challenging.

Thomas Rickert: And I couldn't agree more. Thank you very much Chuck. That's very helpful. And as if you were reading my mind, my proposal in terms of the next step is that the subgroups would continue what I tried to stimulate today namely to prioritize the various points that have been discussed.

Maybe short list and by deleting some of the criteria or the arguments that you find less relevant. And then actually leave the Excel format and get to a report or Word document or - not Word document but to a text document format that would allow us to put more substance in there.

So the idea is not necessarily to get short in terms of characters but to narrow the number of action items that we need to work on that we narrow them down and then where necessary discuss the individual points in more depth as it's surely needed for the treaty question for example.

Can I get some views on that? Do you like the idea of, you know, amalgamating the spreadsheets into a more (concise) in terms of points document and continue on conversation on the basis of that? Let me do the - let me ask the question the other way around. Is there any objection to proceeding that way? Seeing none, I'd like to proceed that way.

I'm not sure whether it's feasible for us to have the text ready by next week. So I will try to highlight some of the points that need further discussion for next week's call so that we can pick individual questions that we discuss in more depth. And then my proposal would be that we have sort of the interim report, if you wish, ready for the call in two weeks. Berry and I will be working on the timeline in more detail that we will publish on the list.

As regards next steps or the work plan, since there has been no objection to changing the format of our work, we will come up with a suggestion of an amended work plan between now and the next meeting.

As you may know, there will be a GNSO Council call tomorrow. And we have decided although there is no, you know, although we didn't make substantial progress in terms of result or interim results, I will be allowed a five minute slot to discuss or to explain to the Council what we're doing, what the status of our work is and maybe encourage more people to participate.

I see Stephane's hand up. Please Stephane.

Stephane Hankins: Thanks very much. I just wanted to ask a little bit how we will proceed with the other worksheets because last week we didn't get to discuss Worksheet D for example. And so I - are we concentrating at this stage on the criteria worksheet and the problem worksheet or the others as well?

The reason I say this is for example in Work Package D for example on protections, today it came up, you know, that an exact match protection might not do it. This has appeared also in one of the written documents that was submitted.

So I just, you know, I was just wondering, you know, when we will get to Work Package D and it's a comment I wanted to make last week, which is, you know, would the string similarity review not fit into this for example. That's a comment that I have.

But I'm not quite sure, you know, how we - when we will get to these elements or whether we settle the criteria question first. Thank you.

Thomas Rickert: Stephane, that's something that I will take a closer look at. I have focused on the more controversial points and the points where I saw discussion on the mailing list. Regarding the eligibility, you may remember that we parked or shelved that project for the time being. But and for admission and protections, I haven't seen any progress that we could discuss.

So I would like to encourage you to feed your observations and comments into the protection subgroup if you have any. And just be the need to discuss then, you know, discussing the protections may be one of the questions that we put on next week's call's agenda. Is that okay for you?

Stephane Hankins: Yeah, that's fine. Thank you.

Thomas Rickert: Any more questions or recommendations, observations? Hearing and seeing none, it's four minutes to the hour so I think we will be able to end this call even a little bit ahead of time.

I thought that this was a very informative and interesting discussion and I hope that you share this view. I'd like you all - to thank you all for your patience and your expertise and your input. And again, please do communicate on the list. There's far too little traffic on the list to my liking. So please continue the good conversation. Keep up the momentum.

Have a great day and I talk to you next week. Thank you. Bye-bye.

Man: Bye-bye.

Man: Thank you.

END