

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 30 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 30 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-20130130-en.mp3>

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

Attendees:

Jim Bikoff - IPC/IOC
Chuck Gomes - RySG
Alan Greenberg - ALAC
Catherine Gribbin - Red Cross
Stephane Hankins - NCSG
David Heasley - IPC/IOC
Debra Hughes - NPOC
Evan Lebovitch - ALAC
David Maher - RySG
Kiran Malancharuvil - IPC/IOC
Christopher Rassi - Red Cross
Thomas Rickert – NCA –Working group chair
Greg Shatan - IPC
Claudia MacMaster Tamarit - ISO
Jonathan Robinson - GNSO Council Chair - RySG
Mason Cole - GNSO Council vice chair - RrSG

Apologies :

Mary Wong - NCSG
Lanre Ayaji - NCA
Wolfgang Kleinwaechter - NCSG
Alain Berranger - NPOC
Iliya Bazlyankov - RrSG
Donna Austin – AusRegistry
Avri Doria - NCSG
Osvaldo Novoa - ISPCP

ICANN Staff:

Berry Cobb
Brian Peck
Julia Charvolen

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

Julia Charvolen: Thank you. Good morning. Good afternoon. Good evening. Welcome to the IGO INGO protections policy development process working group call - sorry - on Wednesday, January 30th.

On the call today we have Jim Bikoff, Chuck Gomes, Alan Greenberg, Stephane Hankins, David Giza, Debrah Hughs, David Maher, Kiran Malancharuvil, Christopher Rassi, Thomas Rickert, Greg Shatan, Claudia MacMaster Tamarit and Mason Cole. We have apologies from Mary Wong, Lanre Ajayi, Osvaldo Novoa, Wolfgang Kleinwaechter, Alain Berranger, Iliya Bazlyankov, Donna Austin and Avri Doria.

From staff we have Berry Cobb, Brian Peck and myself, Julia Charvolen. May I remind all participants to please tell your name before speaking for transcription purposes? Thank you very much and over to you.

Man: Sorry. This is Evan Leibovitch. I'm here too.

Julia Charvolen: Thank you.

Thomas Rickert: Hello Evan. This is Thomas Rickert speaking. I am the chair of this working group and before we start with the agenda, I would like to say that I hope that my voice doesn't fail on me because I have a bad cold. And should you not hear me, that's not because I don't want to talk to you but I might be coughing and having my microphone on mute. So let's hope for the best for the next two hours.

And I'd like to move to the second item on the agenda which is the status of the general council request. And as usual I'd like Brian Peck to give us an update on that.

Brian Peck: Thank you Thomas. This is Brian Peck from ICANN staff.

I do have some initial research findings from the general counsel's office. They received some of the research results yesterday and have been able to provide kind of some preliminary findings which they've asked me to report to you today at the group.

These are some of the initial findings based on the number of jurisdictions - about ten or eleven - that they have received some results so far. The trend of the research confirms that for at least the International Olympic Committee and the Red Cross Red Crescent Movement that there are frequently national legislations or laws that - while not directly mentioning top level or second level domain names - have been or could be used as the basis for challenging registration of domain names referring to the IOC and the Red Cross or Crescent names.

These jurisdictions vary in terms but the exact words are emblems that are protected under the statute. But that's the trend at least of the research done to date. For IGO's more generally the research has been focused on those listed on the article six list of the Paris convention. The research has not yet uncovered any statutes or legislation that addresses top level domain name approval or second level domain name registrations.

However the possibility of actions against these registrations of these names particularly of the second level remains. Again, although the basis of actions may vary across jurisdictions, some of the possible causes of action are trademark, unfair practices, duties of care, possible criminal violation, jurisdiction for unlawfully using a document, establishing official capacity or an insignia regulated by a public authority.

These are some of the ways that the names of IGO's could be protected. It's also possible - based on the research - that these same types of causes of action could be used with regard to the IOC and Red Cross - Red Crescent names as well.

The general counsel's office is still waiting for additional research to come in from some other jurisdictions. They promise that they'll continue to provide an update which I can relay to you - to the group - as it's received. They're also trying to work with the other outside councils that are working on this project to identify a date by which they hope to have all the research completed by.

But, you know, based on the trend at least, you know, they've seen so far, at this point they expect the additional research will yield some results. They've also promised that if they come across any outliers - if you will - that vary from this current trend that they would inform us and bring it to our attention immediately. So that's the update I have from the general council office.

Thomas Rickert: Thank you Brian. And I see that on the chat the question has been asked whether we're going to get these findings in writing.

Brian Peck: Eventually, yes. As I mentioned, these research results came in yesterday. And so, you know, to be honest, the general council office - the attorneys here are still reviewing and assessing as well as waiting for the additional research. So at that point they'd be able to provide, you know, the findings in writing. But given that these just came in yesterday, they realize, you know, that the working group has been very anxious to hear, you know, an update and but they still need time to kind of fully assess and review the research they received yesterday. So at that point then they would be able to provide something in writing.

Thomas Rickert: Okay. I'm going to translate some of the questions that I see on the chat to the telephone line because I know that this time we have numerous participants that are not in the chat.

Alan Greenberg says wasn't the question whether there is a prohibition on registering the names, not using the name.

Brian Peck: Yes and I think - I mean again, for the initial responses - I mean the general council has been very careful to manage the scope of the research based on the questions posed to it by the working group, you know.

For example in the IGO issue, you know, they've looked up the jurisdictions where there might be some possible causes of action that would prevent, you know, the registration of the names at the second level in particular. So I think they are, you know, they have been looking at that question. And again, you know, once they have a better chance to assimilate all the information they received, I think we'd be able to address the questions directly or in a more eloquent manner than I have been able to.

Thomas Rickert: Well I hope I'm not paraphrasing what Alan asked but it is also my understanding that the question to general council was whether it is purse illegal to register those domain names for registries and registrars. And what I heard you report so far gives the impression that registrations by a third party may be challenged by the respective organizations by taking actions against the registrant.

Is there a separation of the questions in the general council's work?

Brian Peck: I'd have to confirm with them to see. I mean again, my understanding is that they tried to focus the scope to directly answer the questions but I can certainly go back and, you know, ask them to confirm that or to better - as I said - you know, address how that particular question has been responded to or how the research is being directed in that direction.

Thomas Rickert: Okay because and I opened this up to the group. I guess what we need to learn as a working group is whether participating or allowing for registrations of certain designations would be an infringement of applicable laws for registries and registrars. And if that were the case - if they were illegal actions by registries or registrars - that would actually be something that would facilitate our work potentially.

While if the laws only - quote, unquote - allow for illegal action against the registrant, that would be a different answer, right. And I'm not sure whether the impact on our work would be as severe or as strong as if the first question was answered and t affirmative.

Brian Peck: I will confirm that with general council.

Thomas Rickert: Okay. Let me just ask the group - I see Stephane raising his hand. Stephane, please.

Stephane Hankins: Yes, good evening. Stephane Hankins here with (unintelligible).

Yes, I - my understanding was that there was also the issue of the responsibility - legal responsibility - of the various stakeholders beginning with ICANN to actually import the projection. So the question of, you know, which registries - I mean the second question. The first question is also whether ICANN has itself responsibility if I'm not mistaken but I don't have the chart before me - whether ICANN has a responsibility of this to enforce these protections stemming from the law. Thank you. That is all.

Thomas Rickert: Thank you Stephane. Before I move to Kirin or probably it's Jim, let me say that I would like to keep the discussion on this particular question quite brief because I think that a lot of that will depend on what the actual from general council would be. But again - just giving you my read of the general council request - I have not construed that request to general council as a general

question in terms of the role for ICANN to enforce existing laws. I think that that would be a new facet to it.

But maybe I can ask those who want to comment on that from the group to raise their hands or give me an audio signal so that I can put you in the queue. Kirin or Jim?

Is your microphone on mute maybe?

Jim Bikoff: Oh, I'm sorry. Is that better?

Thomas Rickert: That's much better. Hello Jim.

Jim Bikoff: Alright, sorry about that.

I wanted to second what Stephane said because I think we're in agreement with that position that he's expressed. But in addition we've been going over - in terms of the spreadsheet we've been working on, we've been going over some of the specific legislation - it might be helpful for (Barry) - when he goes back to general council. There are two statutes specifically so far that we've found out of the first seven or eight that specifically mention the internet. So this may be very helpful.

In Brazil for instance under the act number 12035, it covers Olympic, Olympiad - various other designations - but then it says even those also that perhaps will be created in any language including those of electronic domains and websites.

And then in the Greek statute, it says after mentioning the different names - and we're only here concerned with Olympic and Olympiad. There are other names mentioned. But then it says and any other relevant terms in Greek or any language - the relevant prohibition is also extended in the use of these

terms as domain names on the internet. So, you know, those may be helpful for general council in the analysis.

Thomas Rickert: Jim, would you be as kind as to send those references to either Brian directly or to the list?

Jim Bikoff: Yes, I would be happy to do that.

Thomas Rickert: Great. Thank you. Brian, is there anything that you wanted to add to that?

Brian Peck: No. I was just going to express my appreciating to Jim and certainly we'll forward that to the general council. So, thank you.

Thomas Rickert: Thanks Brian and thanks Jim. I have Alan next.

Alan Greenberg: Thank you.

Let me try to be as clear as possible so we don't get a misunderstanding. My understanding was exactly as you - Thomas - as you said. And to put an example in it - form the list that I sent out the other day, we know there are second level domains of Red Cross and Olympic and a variety of the IGO names that have been registered and in some cases monetized or used for other applications.

The question we're asking is did the registrars or registries violate any laws in registering - not did the registrant violate any laws or are they prosecutable or reprimand able for but did the registries or registrars in registering those names violate any laws? I think that was what we were asking.

Thomas Rickert: Thank you Alan. I see no more hands on this particular question nor have I heard any wishes to contribute to this specific question. So I - I see Greg now. Greg, please.

Greg Shatan: Just quickly I think we should go back to the - to our original - to the council because my recollection of it is different than Alan's. So probably one of us may be wrong. I'm not sure who. Or maybe both of us are slightly wrong but I don't think registrar liability or registry liability was the limit or even necessarily the focus of what we asked.

Thomas Rickert: Thanks Greg. Let me propose the following.

I know that Osvaldo only has limited time to present to us the ISPCP template. And I would like to ask Osvaldo to guide us through the input and open it up for questions. And while he's doing that so maybe (Barry) or Brian could dig out the original language that was sent to general council so that maybe we can clarify the confusion right on the spot.

Okay. Osvaldo, can you hear me?

Osvaldo Novoa: Yes. Hell Thomas. How are you?

Thomas Rickert: I'm fine. Thank you. Osvaldo, thank you so much for making it possible to talk to us. I know that you only have roughly half an hour of time to be on this call because you have another commitment today and therefore I'd like to ask you straight away to maybe give us a brief overview of the responses by the ISPCP to the input template or to the input request. And after that we will give the other participants of this call the opportunity to ask you questions.

So Osvaldo, over to you.

Osvaldo Novoa: Okay. Thank you very much. I'm sorry I cannot participate but I am in an intersession on meeting in ICANN here in Los Angeles.

So just a rough view of our answers. And our position is that although we tried that, we think that ICANN should be - should take everybody's equally. We think that in the case of international organizations, since some

governments have hid in these international organizations with special protections, ICANN should do the same.

In these regards we think that the international organizations feel it's governmental or nongovernmental organizations if they have some kind of protection of special disguises in sufficient number of countries because an international organization can be determined international by just one country. So we don't have an agreement on the number of countries. I put ten in the document but that's not an agreed upon number. It could be from three to - I don't know - whatever number the APDP reaches.

But if you're a sufficient number of countries, they clear that the international organization has some type of protection. That should be translated also to ICANN in the DNS - in the domain name systems. And the thing would be there would be some kind of objective number and objective set of conditions to establish that protection.

Our idea is whichever - it meant that we agreed it should be objective and non-discriminatory and it should be - it should treat all international organizations the same as long as they fulfill those requirements.

Let me see. I don't have the document with me. Perhaps in the next page. Well also the treatment should be the same for all top level domains. We think it would also be extended to the CCTLD but that is not in our orbit. So it should be just sent. We propose to send an order to the CCTLD to extend the same protections that we decide upon on the TPLD's, not only the new TPLD's.

I wish I had that document with me. So those would be basically the principal points we made. The other ones - we tried to answer the question of though some of them didn't - we didn't think it was so important. We do think that - we didn't see any reason to get the protection on the first level - on the top level dimensions. We haven't seen any requests for domains with the

international organizations names. But we do think that on the second level, the frame should state the protection.

And at the same time, there should be some type of procedure so if like the RPN or whatever procedure that we can think of to be sure that those other organizations that have some right over the names of an international organization can defend their rights with some procedure inside ICANN.

I think that would be the main point in our documents. I don't know if you have any questions.

Thomas Rickert: Thank you very much Osvaldo. And I would like to ask the group are there any questions for Osvaldo?

So Osvaldo, to put it in a nutshell, you would not grant any protections at the top level but you would grant protections at the second level, right, so that distinction for those who can't read the document in the Adobe at the moment.

Osvaldo Novoa: Well at this point, we wouldn't do it. If we want to establish a policy here, I think that perhaps it would need just to repeat it. I think it would be redundant to do it but on the sake of completeness, perhaps we should extend it on the first and second level domain names.

Thomas Rickert: Okay. Thank you very much.

So this is the last chance for the participants of this call to ask questions to Osvaldo. Okay. So certainly should you have questions later on, I'm sure that Osvaldo will be more than happy to answer them on the mailing list. But for the time being Osvaldo, thank you so much for making it possible to talk to us today and we wish you a successful meeting. Thank you so much. Bye, bye.

Oswaldo Novoa: Thank you very much. I'm sorry I couldn't stay for the whole meeting. Bye, bye.

Thomas Rickert: Thank you Oswaldo. Bye, bye.

Now getting back to the question that we discussed before Oswaldo gave us his little intervention. At the left side of the Adobe, you find the original wording of the general council request. And since it's only a few sentences, let me read it out to you and we can then go back to our discussion.

The question is, is ICANN aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either both of the following actions by or under the authority of ICANN? A, the assignment by ICANN at the top level or B, the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level of the name or acronym of an intergovernmental organization - IGO - or an international nongovernmental organization receiving protections under treaties and statutes under multiple jurisdictions - INGO, question mark. If the answer is affirmative, please provide the jurisdictions and cite the law.

So Greg and Jim, you had read your recollection of the wording of the request to general council was such that you thought that the role of registries or registrar would not be that predominant. Maybe you can chime in and see - and give the group an update whether - now that you see the wording - whether that reading has changed or how you construed in the light of the exact wording being in front of us. Greg, please.

Greg Shatan: My view really has not changed. I don't view the way this is written as limiting this to issues where the liability is that of the registry or registrar. There are clearly, you know, two or three parties involved in the registration of a domain name. There is the registrant, the registry and the registrar. And I think - I don't see this question as being limited to whether the registry or registrar is

prohibited from taking the registration - whether they incur liability - but whether the registration is - creates an issue.

And that, you know, maybe only the - whether or not it's the registrant's liability, the registries liability or the registrars liability. So I didn't view this as kind of limiting which actor or which element of the transaction was being looked at. And it appears that the general counsel's office also viewed it that way. Thank you.

Thomas Rickert: Thanks Greg. Alan took the opposite view. May I ask you Alan - now that you see the wording in front of you - whether you have changed your read of the document?

Alan Greenberg: No. The document basically confirms what I thought it said. I guess it may be worth hearing from the registries or the ones who created the question.

Thomas Rickert: Stephane, please.

Stephane Hankins: Yes, thank you. Stephane Hankins with (unintelligible).

I'm not sure what you're asking me as well but I only changed my deal on what I said in fact because to me the notion of actions by or under the authority of ICANN and the notion of any jurisdiction in which a statute or treaty where applicable by law prohibits to me was also to the international legal laws reminding us that ICANN has articles of incorporation.

And I think that before looking into the responsibility of registries and registrars, I think the first question - and to me it's in there for top level I think expressly under the little A but also implicitly under the notion of following actually by or under the authority of ICANN that, you know, we would also require or, you know, it won't feed the discussion in the group if we have - I mean an overview of, you know, what responsibility ICANN and the institution have to implement or to insure the implementation of the international law.

In this instance, it's appropriate to bring interventions and additional protocols to protect the designation of the Red Cross Red Crescent. Thank you very much.

Thomas Rickert: Thank you Stephane. David?

David Maher: Speaking for the registries, I don't agree with Greg. I think the language of the question speaks for itself. But at this point I'd suggest that we move along and let the general counsel's office decide how they want to answer the question.

Thomas Rickert: Thank you David. Greg?

Greg Shatan: I would just say that if we follow that logic then part A of the question would only be asking about ICANN liability for top level domains and not about that of the applicant for having a top level domain that was in - that might be against the law or might be prohibited under law and I don't think that was the intention.

And I think that the end tag soon to be registries probably would not want that question to be limited to ICANN liability. So either the same logic needs to be applied to both phrases and I think in any case, the more information we have, the better.

Thomas Rickert: Thank you Greg. I have David again.

David Maher: I think that was the original intent.

Greg Shatan: To only look at ICANN liability and not at registry, registrar liability on TLD's?

David Maher: That's part B.

Greg Shatan: No. Part B is only about second level.

David Maher: And that's where the question is being asked.

Greg Shatan: So you're saying the top level question was only being asked about ICANN liability and the registries and registrars didn't care to hear what the opinion might be about having a top level domain that could be prohibited under law?

David Maher: Well of course they care but...

Greg Shatan: But they didn't want to ask that question?

David Maher: Well the question doesn't ask it. The question is clear.

Greg Shatan: Well that's where we disagree.

David Maher: That's right.

Greg Shatan: I think it's a rather crabbed reading of the request.

David Maher: You're welcome to your opinion.

Greg Shatan: As we all are.

Thomas Rickert: Okay. Let me just finish this specific issue because I think we need to move on by saying that we should continue this discussion on the list but I certainly agree that we need to wait for general council's answer to the questions and see how they construed the question.

I want to make sure that the group is clear on whether we asked the right question and whether the expectation for an answer is congruent with what we thought we had asked. And to give you my personal view, I had thought the group had asked for the legality or illegality of ICANN under A and

registries and registrars under B. Because if you look at A and B, the similarity of the questions is such that the applicant is not mentioned in A and the registrant is not mentioned in B.

So the third party that may be held liable primarily for an infringement is not mentioned here because if general council - and this is why I said earlier and I've said this numerous times and I think others have said this also - if general council answered the question in the affirmative IE that it would be illegal for ICANN to allow for a top level domain name identical with the name or acronym of a beneficiary organization or if it were illegal for registries or registrars to allow for such registrations. Then certainly that would be a shortcut to the solution of our exercise.

I may be wrong. I'm not saying that my read is the one that should be the right one but I would like to encourage you to exchange your views further on the list so that we can now move on to the next agenda item. And that is under heading four - working group expectations, scope of protections.

And this question I have asked staff to put on the agenda because I thought or I found that there might be diverging views of what the outcome of the work of this working group might be. So we have discussed the scope of the charter, whether it is limited to the names and acronyms of certain organizations. And I heard that there was no unanimity on limited read of the charter. That we would not be confined to exact match names and acronyms of the organizations.

And therefore I think we should work on that basis and not use the narrow construction of the wording at least for the time being and leave that level of protection to the outcome of our work. But then there was some confusion and we saw a discussion starting in the chat as well as on the mailing list as to what additional strings should fall under additional protections. And there was the question of exact match plus keyword or keyword plus exact match.

To give an example of that might be german-redcross.tld or redcross-germany or donate to Red Cross or redcrossdonation.tld. This is just to illustrate not to prioritize a certain designation. And then there was an additional layer of complexity when at least it was alluded to the request that we're not only talking about exact matches of names and acronyms of organizations - not only potentially about exact match plus keyword domain names but also about variations of the exact match like where the name or the acronym is used in a slightly different way like a misspelling, you know, typical typo domain name.

And I wanted to open the floor to the group to see whether there is common ground to keep either the mandate of this group narrow or broaden it up should the group wish to do so. Can I ask you to respond to that or to share your views on this question with the group?

Then in the absence of volunteers - to kick this off - can I ask whether there is somebody on the call who is not of the opinion that our discussion should be limited to exact match names and acronyms? And at least there should be some.

Jim Bikoff: Thomas?

Thomas Rickert: Jim, please go ahead.

Jim Bikoff: I was just going to say that when we spoke the last couple of weeks, I thought we were limiting it to exact matches but obviously for many groups to have it broadened to, you know, typo squatting and to phrases that include those marks that are being sought for special protection would be beneficial in that there is a lot of - as everybody knows - there's a lot of marks that appear in the second level with other words that would not be covered by identical matches only.

Thomas Rickert: And what is, you know, since you were one of the organizations that have drafted extensive communication on that in the past, can you refresh our memory as to what your request was?

Jim Bikoff: Well I think our request originally was I think to protect not only exact matches but phrases or words that include the words Olympic or Olympiad as well as typo squatted like Olympic with an X - obvious, you know, change of letters.

However we were operating under the impression that from the beginning that this was limited to exact matches. So I think it would be really helpful to know because it affects all of us as to how we're going to be responding whether we're talking about just exact matches or we're talking about the other broader definitions that you've suggested might be, you know, might be discussable in this forum.

Thomas Rickert: Thanks Jim. Greg, I saw your hand up briefly. Is it down now or was it unintentional?

Greg Shatan: I'm not sure if it's up or down but I'll speak anyway. I don't recall exactly, you know, the genesis I think in the - there certainly has been discussion both in this group and in the prior DT of exact match plus and typo squat type of changes of challenges. I think it's within the remit of this group to discuss those - extending protection there if we do have, you know, if we have protections at all, whether they should be limited to exact matches or not. And I don't read the instruction so narrowly of our initial charter that is. But maybe I'm just reading everything broadly today.

So I think it's certainly - I think it's within our remit. I don't think we, you know, we can come to decisions on it rather than just kind of write it out of the picture before we start. Thank you.

Thomas Rickert: Greg, follow-up question for you. What would your request for protections look like? Would you broaden it up to either typo squatted type domain names because we have to bear in mind that this might be interesting for the whole group that if we're talking about exact matches that would most probably be an exhaustive list of strings that can be checked against when create requests for new domains that are coming in, for combinations of strings plus keywords that - combinations of exact matches plus keywords - we would be dealing with variance already.

And if we didn't even stick to the exact match names or acronyms but included variations thereof, that would be a completely different level of technical challenge in a real time registration environment because then algorithms would be needed to determine whether similarities given or not. And as you as a trademark lawyer and the others will easily understand, these are questions that judges have been debating over for decades.

So do you have any view on that?

Greg Shatan: Absolutely Thomas. I agree with you and I do see things - I see the same three categories as well. And I think that, you know, exact matches of, you know, kind of poses both the lowest legal and the lowest technical challenge. And exact match plus I think also is more likely to be an objective or at least more of a mechanical inquiry whereas the likelihood of confusion inquiry as to whether, you know, confusion goes beyond - especially if it goes beyond typo squatting. And even then I think the challenges do get quite significant.

Clearly, you know, it would be the most useful to rights holders to have a situation where, you know, a typo squat would be caught in advance. But I certainly, you know, can see that the technical challenges and the legal challenges and nuances I think become quite significant at that third level. So while, you know, the request might be to look at all three, I can certainly see us not coming to the same conclusions on all three or even those who are,

you know, desire of the broadest protections are seeing that the technical challenges for what's intended to be - at least likely to be more mechanical.

I mean we're not going to have a panel of judges, you know, looking at these. It's going to be a, you know, a higher degree of challenge when we get to kind of that third level. And some possible likelihood of confusion questions would be quite nuanced - probably too nuanced for any kind of a - what's intended to be a fairly rapid process. And I think at some point, you know, looking at whether there are retroactive or retrospective as opposed to prophylactic measures - we'll have to kick in at some point to deal with these things.

I think one of the challenges right now is that there are very few prophylactic or retrospective measures that are available to IGO's and INGO's given the way that the RPM's are drafted. But, you know, certainly the match plus words is a lot easier to deal with than a typo squad. And whether Red Jewel is similar to Red Crescent - you could go down the rabbit hole eventually. So I think we certainly don't want to go all the way down the rabbit hole. Thanks.

Thomas Rickert: Thanks Greg.

And as you can see from this discussion, we have seen these requests and it is my intention and it was my promise to insure that we take a look at the issues in a holistic manner and touch upon every aspect that is being brought forward. At the same time I think, you know, since we're trying to come to a consensus to the best possible extent within the community. I think the broader we deviate from what's easy to achieve, the harder it might be to reach consensus on that.

So I think, you know, the legitimacy of the request is given but I think as we move along, we also have to bear in mind feasibility and the potential support that we can get from the community. Would anybody else like to comment on this?

Stephane, please.

Stephane Hankins: Yes, thank you. Stephane Hankins (unintelligible).

If I - I think I do need to say a word because last week we - I have to say we were quite surprised when we were made to understand that in fact there might be an orientation towards examining so many exact matches of names of organizations. And certainly we, you know, we feel and we make the case many times, you know, that certainly, you know, the paradigm - the INGO name - paradigm doesn't fully suit the case of the Red Cross Red Crescent designations for a number of reasons that I've already outlined.

I maybe just made a couple of premise remarks which is also our understanding that, you know, in the process that lead up to the definition of the brief or the charter of this group, you know, each case, each organization and their respective names would be examined on their own merit because, you know, there may be specificities. This happen to be clearly the case for the Red Cross Red Crescent designations which again are not primarily protected as the designations of organizations but as the designations of the protective emblems of armed forces medical services in our country.

The second premise is obviously, you know, the group - as we understand fully - that the group has to achieve and aim for realistic solutions. That's clear. There's no point in making recommendations that are not technically achievable or feasible. This being said, we do also need to seek solutions that do meet the requirements of the protections of the said designations under the legal regimes that protect them. In the case of the Red Cross Red Crescent, the international laws in question is whether it's a domestic law.

Now as we've gone through the issue of, you know, exact matches of names of organizations, well you all have seen in the communication business subsequent to last week's working group session, you know, it just doesn't

suit the Red Cross Red Crescent case because these designations are not protected primarily as names of organizations.

So there is a need to find some kind of way to accommodate that particular client. This being said, you know, it also does remind us because I understand now that, you know, the string Red Cross as well as versus the string German Red Cross which was mentioned earlier on are not the same strings. They need their own particular treatment and their own particular solutions.

You know, there's two ways to go about this. Either we preserve the protection of the designations Red Cross Red Crescent as such and then we add to that the full names of all the organizations within the Red Cross Red Crescent movement. It's 188 national Red Cross Red Crescent societies - the international committee of the Red Cross and the international federation of Red Cross Red Crescent society. We can provide this list but then of course they will rule their outcome of the names. They also issue the translations.

It makes no sense to protect the name German Red Cross in English only with languages potentially not in German evidently. And that would not match obviously German legislation either. So I think there are a number of issues. This would be a way we can provide, you know, the names of all the organizations and then we have to define, you know, clearly that they are protected also in the language of the jurisdiction in which the respective Red Cross Red Crescent Society is active or there is a technical possibility to do it some other way - some form of string similarity review which would be based on a keyword approach which would be Red Cross Red Crescent Red Crystal.

And then, you know, that would allow to catch designations which include the keywords but have in addition and additional word. But we - in any case - you know, this would be our request. And certainly, you know, we would insist that, you know, this specific Red Cross Red Crescent designation case be

addressed specifically in any recommendation to reflect the international legal regime.

As to the second question which is string similarity review per say. I mean as you will recall obviously, you know, even the recommendation which the GNSO submitted to the board following Costa Rica foresaw something like this. In under international law as we take the Red Cross Red Crescent designation and finishing, imitations of the names are also prohibited.

So our priorities are reasonably to meet the requirements of international humanitarian board. So to have a string similarity review, we understand the complexity of implementing that - less at the first level, much more at the second level. But I think our recommendation would certainly be that there be some kind of mechanism foreseen and that efforts be sought to find a solution to this.

And of course if there is a need, you know, for some kind of appeal procedure or something of the kind then, you know, we'd be willing to support its establishment and even its implementation if of course it doesn't represent, you know, too big a burden to implement. But certainly the notion of a string similarity review to catch strings that are confusingly similar whether because, you know, they have a Red comma Cross or other cases - there should be a mechanism that doesn't allow that. And that would be conformed to what international foresees.

And then there is this last element where I think we can come back to that which is, you know, the whole issue of the authority and the entitlement of the organizations to register the name which would imply I understand registration on a modified reserve list and so on and so forth but this is beyond the question - immediate question you are raising. Thank you very much.

Thomas Rickert: Thank you Stephane. And you touched upon a couple of important points - one of which I would like to highlight now which is the requirement or the request for string similarity reviews.

While this is already done and implemented in the applicant guidebook for applications for new GTLD's, I think that string similarity at the second level imposes somewhat of a completely new challenge to the industry. And Stephane, you know, and I've written this on the list. We have had a telephone conversation - a very informative and helpful telephone conversation - between last call - the last call and this one. And I'm very thankful Stephane for you to raise these points again so that we can open the discussion to the whole group.

I have Kirin or Jim next, please.

Jim Bikoff: Yes. I just wanted to say that while I believe that the exact match plus keyword and the typo squatting issues are probably something that could be included, I think if we get into confusing similarity reviews in 1000 new GTLD's at the second level, it's going to be really something that's going to be quite complicated. And I'm not sure if it's reasonable or if it's something that really could be done without, you know, a lot of expense and a lot of technological issues.

So I would - just speaking from our perspective - I would be happy with exact matches plus keyword plus maybe some typo squatting - obvious typo squatting instances.

Thomas Rickert: Jim - just to be clear - when you talk about typo squatting instances, you would provide an exhaustive list or would you also require some algorithm to make that determination?

Jim Bikoff: Well we - I mean based on experience, we could provide a list because there's very - we're only talking about two words and the typo squatting normally follows a pattern. So a list could be provided on that.

Thomas Rickert: Thanks Jim. Alan.

Alan Greenberg: Thank you. I must admit I'm intrigued the way this discussion is unfolding. When the request was first made regarding the Red Cross, I and ALAC are sympathetic to the, you know, the issue of domain names which include Red Cross as part of it or things like that. And I expressed - I asked the question to both Red Cross people and the GAC people - selected ones in both cases - you know, why aren't you asking for strings contained because that's the real problem.

And the answer was yes but we have to be realistic about what's implementable. And as a result, all that the board gave in a temporary protection and all that the GNSO suggested in its recommendation was exact matches.

The GAC essentially has demanded or asked the GNSO why is a PDP necessary at all. In their belief there should be no PDP. We should just be implementing permanently what was done temporarily and extending it to the IGO names. So I find it interesting that the PDP which was, you know, it's not wanted by the people who originally originated the request within ICANN. It's now going onto significant changes and I won't say guaranteeing that this process never ends but making it a lot more difficult to come to closure on it. Thank you.

Thomas Rickert: Thanks Alan. Greg.

Greg Shatan: Well I think that one observation is I think that in terms what we can - what we are looking at here is not merely a reserve names or reserve name type of RPM but also within our remittent - it was in the list of things that we can

consider, you know, our repairs or changes to the UDRP or the URS. So I think it may be that, you know, something beyond identical match or match plus keywords might be beyond the - we might decide that that's beyond the realm of possibility at the preventive level or the blocking or the reserve names level - whatever it may be.

It may be that it's something that, you know, would be within the realm of possibility at the RPM or retrospective levels and so that's also, you know, part of what we're looking at. And I don't think that this, you know, kind of guarantees it never ends. I think that there are, you know, a number of branching variables here but I don't think that this, you know, increases them beyond the point that we can deal with them. Thank you.

Thomas Rickert: Thanks Greg.

I would very much like to hear registrar or registries representative to speak to these proposals because those would be the ones that eventually would need to implement measures technically. David, please. David, are you on mute maybe?

And for others - I hear somebody typing. For those who are not speaking, can you please put your mike on mute? David, please.

David Maher: I'm sorry. I was on mute.

No, I agree with what's been said on this. But if we get into string similarities - even typo squatting - increases the complexity enormously - order of magnitude. And it almost guarantees that we'll never get to the end of this process.

Thomas Rickert: Thanks David. Anybody else wanting to comment? Kirin or Jim?

Jim Bikoff: Yes, just as to what David said. I mean if we go for exact matches which we thought we were talking about earlier in these conversations, you know, that would be one level of protection that would be very helpful because it would cover, you know, the exact matches of two words in nine languages basically times the amount of new domain names.

However if we go with exact match plus keyword, that would obviously be better because that's where a lot of the infringements take place with things like Olympic sports, Olympic games, et cetera. And typo squatting I hear would pose a lot of technical difficulty. So, you know, I think there's a range here of what would be the most desirable but we can live with I think limiting this either to exact match or exact match plus keyword so that anything containing or comprising those words would be, you know, prohibited rather than trying to deal with some of the typo squatting issues that might be problematic.

Thomas Rickert: Thanks Jim.

You know, the reason why I'm highlighting this is because I think that if we found out that we need to think of more variations in our work, we should find out rather sooner than later because the later we find out in the process that the expectations of the participants are very divergent, it would take us longer to bring our work to an end and it would most probably make the finding of a consensus more complex as well.

So we've heard a couple of points. I would still like to hear registry or registrar representative maybe to speak to this or write on this on the mailing list to give the group some information on the technical side of things, you know, what that would mean.

David spoke to the policy aspect and that was very helpful but maybe we can get some more information on the technical impact that such requests would have on the operations and maybe cost and stuff like that to help the group

determine whether we want to pursue at least the third level of protections that we spoke to IE the level of protection where algorithms are required to determine similarity of strings that would lead to confusing similarity in legal terms.

So please, let's continue this conversation on the list. I also wanted to have this recorded because I think that our goal with this exercise is to answer these questions comprehensively so that no future policy work on these questions is needed. And so I want to make sure that it is visible and on the record for everybody to go back to at a later stage to see that we have fully considered the issue.

Also I would like to end this point by sharing one observation with you and that is closely related to what Greg said. And you might remember during last call when I - during the last call when I asked whether participants like the idea of opening up the RPM's to the groups that are now requesting protections. And if we - and my feeling was that the group might be closest to a joint position if there were a combination of limited protections in the proactive way which was asked for and then to back that up by broader protections in a reactive way.

Because - as you well know - the UDRP deals with similar strings as well. So there would be protection for the organizations if the UDRP was opened up. So maybe that's food for thought for you as well to take back and then consider between this and the next call or between this call and your decision to make yourself heard or read on the mailing list.

And with this - unless there are further comments and I don't see any - I'd like to move onto the next item on the agenda which is the review of the qualification criteria differences. And there was quite some discussion on the qualification criteria as you will recall. And today we have in front of us communication from the IOC as well as from ISO.

I know that Claudia from ISO has been working with Jim and Kirin on a determination or on a report on the qualification criteria. And I would like to invite - maybe I can invite Kirin and Jim to give us an overview of that for us to kick this discussion off. There you go, please.

Jim Bikoff: Well we had a telephone conference yesterday - myself, Kirin, David and Claudia - and I think we were successful in reducing the number of criteria by one - the agreement to remove one of the criteria. So that - I guess we could view that as limited progress.

We probably cannot agree as far as the others go - I think Claudia has reworded her list so that the items are somewhat, you know, a little more expanded in what they say. We were more in favor of reducing quite a bit more and leaving only a couple of the criteria - namely the nonprofit status and the existence of national laws or treaties that prohibit.

So we're sort of - I guess we've agreed to disagree going forward on that and I think, you know, both Claudia and we are proceeding in good faith. She has her viewpoint. We have ours. And I think that's basically where we stand at this point. Hello?

Man: I don't know either.

Thomas Rickert: Oh sorry. I was on mute now.

Man: You were heard.

Thomas Rickert: I was heard?

Man: No.

Thomas Rickert: Claudia, would you like to add to that?

Claudia MacMaster Tamarit: Sure. I would just like to echo the - I think the feeling of congeniality that we had and I think that it is important to agree to disagree and to reflect all the views. And I think that's actually a rather important step for us at this juncture to report the various views and to prioritize them to the degree that that's accurate.

I just note that I added just language from the criteria as proposed in your previous email just to make sure that by summarizing a particular criteria in the Excel sheet that we don't miss the nuances and the availability that we have to tease out what it means - one particular criteria or what kind of evidence we use. And to really highlight - I think at last from our perspective - the importance of, you know, being flexible and having a multi factored analysis.

I think we want to avoid as much as we can, you know, being seen as arbitrary or having a, you know, I've used the word silver bullet before. We want to still remain flexible and reflect that flexibility in these efforts. Thank you.

Thomas Rickert: Thank you Claudia.

I know - if you look at the note in the document - let me thank you for the work you've done on that first of all. In the note you said the group agreed to strike the previously proposed criteria internet presence IE at least one domain name from prioritized short list. And if I'm not mistaken, this or a comparative point has been brought up by Evan in his earlier email proposing some of the criteria. And those were added to the spreadsheet as well as I think it was in Alan's intervention or in the response to the input request that you asked for some interaction with users.

So I'd like to give you the opportunity to comment on or contribute to this discussion - in particular the point that the short listing has now lead to the deletion of that point. Evan or Alan, would you like to speak on that?

Alan Greenberg: I'll speak to it. It's Alan speaking.

Look, the ALAC and the individuals representing at large on this group have made their positions known. We believe that protections - if any - should be granted based on merit and the possible harms of not granting those protections. You know, we can't govern the outcome of the group and if everyone else says those are, you know - forgive the expression - but garbage criteria which aren't relevant then so be it. We've made our strong statement and it wasn't one made lightly because it was one made with an understanding that it makes the process more difficult and is not exactly what the GAC asked for which is always a dangerous position to take.

But, you know, we felt pretty strongly that those are important issues. I don't think saying them again at this point is going to change other people's perception but I don't believe it's altered our belief in them at this point. Thank you.

Thomas Rickert: Alan but I - if I remember correctly - you have proposed a set of points and at the same time you have made clear that you don't necessarily expect all of them to be included. So this is the reason why I have asked this question to you. But your point is well taken and it's...

Alan Greenberg: Yes. No, let me just elaborate a little bit. Yes, we presented a number of criteria and we didn't pretend that that is the final list. Clearly if we were going to use the concept of criteria and an evaluation process on a case by case basis, that list may well change.

We still believe strongly that the mandate of this group should be widened to include INGO's that don't have treaty protection and the individual evaluation becomes even more important there because it's virtually impossible to have a definitive list to start with that people will feel comfortable with.

So we understand that the details of the list may change. Removing the concept all together is certainly against our best wishes. But all we can do is state them and state them clearly. Thank you.

Thomas Rickert: Thank you Alan. I think this discussion has shown clearly that it is difficult to come up with a uniform set of criteria for the potential beneficiaries of protections. You will remember that one of the tasks in the charter was to see whether there is one set of criteria that can be used or whether we need different criteria for the different organizations. And I think that the discussion so far has shown that we might - at this point - need to split the qualification criteria for, you know, to differently deal with the IOC, the RSCRSC, the IGO's and the INGO's.

So are there any views on making that separation because I think that, you know, finding a common denominator which would have made our lives easier in terms of finding a solution turned out not to be a way to be successful. Kirin or Jim, please?

Jim Bikoff: Thomas, I think possibly we should separate IOC, RSC, IGO in one group and INGO in the second group because I think the difficulty we're going to have is some of the - one of the criteria especially - we should say there's a difference in opinion. If the word is protected by trademark registration only - whether that should be a criteria. Because I think that - I mean I think that Claudia's position is that that should be a criteria and that it would be discriminatory to exclude organizations that have trademark registrations but don't make the other criteria - especially the existence of treaties or national laws.

But I think that issue was already discussed in the reserve name working group and, you know, which never addressed the specific circumstances of IOC or RCRC. But in any event, I think if you opened it up to anybody that has a trademark registration, I just believe that would be over inclusive and

would literally extend to, you know, many, many organizations who - many of whom probably don't have any problems in this area.

But again, I think that's probably something that has to be looked at and discussed as to whether that is in fact a valid criterion.

Thomas Rickert: Thanks Jim. Alan.

Alan Greenberg: Thank you. ALAC has made it quite clear that we believe there should be significant separation - the IOC from the Red Cross and the two of them from IGO's and from INGO's. We believe the kind of criteria one might come up with in a natural path would be quite different from multiple ones. And I did find it amusing that Jim just said it's not clear that INGO's had any problems that they were trying to fix whereas we've already been told that we're not supposed to be fixing problems. We're here to grant immunity based on laws only. Thank you.

Thomas Rickert: Thanks Alan. Evan, please.

Evan Leibovitch: Thanks Thomas. I just wanted to speak again in support of the request to separate these things out. As Alan said - ALAC - after an awfully long discussion internally - thought that it was best that the issue - the Red Cross Red Crescent, the IOC and the IGO's - need to be treated differently. The criteria are different. The needs are different and the potential harm is different. Thanks very much.

Thomas Rickert: Thanks Evan. Claudia.

Claudia MacMaster Tamarit: Hi Thomas, this is Claudia. I'd just like to also confirm that from my perspective at least I think that we do need to maintain the flexibility to regard different cases as differently and the criteria that we proposed and that we consider as priority are meant to reflect that.

Also I think that in terms of, you know, having some sort of legal protection for the particular name to be protected in the second level or the first level can vary significantly. And the direct connection might be different. We might say that a trademark protection is extremely direct towards, you know, protecting a second level. And by no means does this rubric of criteria mean or intend to include just trademark owners. I think that when we look at all other criteria as a totality, the effort is very much to limit the pool to, you know, international organizations.

And that's what we are tasked to do right now - to define, you know, which are these international organizations that shall be given special protection on the basis of their extraordinary public service and their global reach. So I would propose that the criteria that we've - that I've highlighted as priority are meant to be flexible and also meant to be - to not be overly inclusive. Rather to really focus on the few organizations that could possibly satisfy this in different ways.

And also I would just like to say that - just to reiterate - that what we do have on the Adobe and the statements that have been distributed to me are a bit inaccurate and a bit reductive. I would just like to emphasize that our position is that, you know, the criteria themselves need to be objective. They do not need to be tailored to include only specific organizations. We need to define what are these organizations as a group, not tailor them to protect one or two organizations that we have in mind but rather to give protections on an objective and a non discriminatory basis that many or few organizations might be able to apply for that truly merit this kind of a special protection.

And also just as a final point, I would like to emphasize what we've been saying for several weeks now which is that the language of the charter doesn't itself specify what kind of a treaty or what kind of treaty protection it shall mean. Already identified we've seen treaty protection that shall cover symbols. And we've seen treaty protection that shall cover acronyms and names. These can wide - these can vary widely and from our perspective,

you know, trademark protection under the Trips Agreement and under the Paris Convention shall also be a basis for us to consider international nongovernmental organizations that merit this special protection. Thank you.

Thomas Rickert: Thank you Claudia. Does anybody else want to comment on this question?

And just - I'm looking at the Adobe. I see that I have now posted in the chat as to multiply three. So I have multiplied due to obviously disconnects in the mean time. So that was not intentional. So it was not my wish to outnumber you. So I'm just there once.

I would like to ask the group though whether there is anybody else in the group who would like to from different subsets rather than to discussing criteria sets - discussing four criteria sets separately. Seeing and hearing none...

Alan Greenberg: I'm sorry. Thomas, this is Alan. Could you repeat that again? I'm not quite sure what you're asking.

Thomas Rickert: We have heard the proposal that for example you made to deal with the IOC, the RC, IGO's and INGO's differently in terms of different criteria sets that need to be developed. And I wanted to ask whether there is anybody else in the room in addition to Jim who would like to ask for a different grouping or other sets of criteria.

Alan Greenberg: You're asking for people who disagree with the four groupings?

Thomas Rickert: You put it very elegantly. That was the question, yes.

Alan Greenberg: Thank you.

Thomas Rickert: In which case I would like to ask you Jim whether it would be okay for you to have the group to discuss the four separately and should we see that there is

common ground and that there are common criteria then we still have the flexibility of merging.

Jim Bikoff: No. I stand by what I said. I think it should be the first three which have common criteria - national laws, treaties and nonprofit status - against the INGO which is different and which is a new - fairly new issue that has not yet been fully vetted. I stand by what I've said. I'm not going to change my opinion.

Thomas Rickert: Thanks Jim. Claudia.

Claudia MacMaster Tamarit: Hi. I'm trying to understand your request Thomas because I definitely am worried about creating criteria that is going to only apply to the Olympic committee and criteria that is only going to apply to the Red Cross. That diverges significantly from I think what we're trying to do here which is to create objective criteria that yes can be flexible on a case by case basis. But I don't understand how we serve a non discriminatory purpose if we are creating criteria to specifically apply to one organization, another organization and then two different categories of organizations.

Thomas Rickert: Thank you. That's very helpful. I mean that's exactly the question that we're discussing now.

Claudia MacMaster Tamarit: Well if that is the case then I robustly object. I think that we really run a very high risk of serving self interested purposes and creating discriminatory criteria if we are writing them for the Olympic committee and for the Red Cross recognizing that they might have very different cases and so do individual IGO's and so do individual INGO's. That being said, I think we really need to be careful with this kind of an exercise. Thank you.

Thomas Rickert: Thank you Claudia. Evan.

Evan Leibovitch: Hi. I think it's - I mean the moment you introduce the concept of a case by case basis, you're allowing for the concept of discrimination depending on how you interpret the term. So you could have a situation where you have a criteria such as harm caused which is a - which is a standard criteria but on a case by case basis might have one body passing and another failing. The criteria may be published. The criteria may be well known and standardized.

But if you're talking case by case basis, you still have to allow for that and I guess that's why I'll continue to speak in support of the separation you were speaking of Thomas. Thanks.

Thomas Rickert: Thanks Evan. Greg.

Greg Shatan: Thank you. I would generally be in favor of criteria that apply to classes or organizations but not separating out a list of criteria that applies only to a single organization. I think that gets close to the kind of one eye red headed man with a limp type of criteria. And I think, you know, that does make it look like ICANN helps those who help themselves which is not I think where we need to be unless we're going to give every potential IGO and INGO a chance to kind of petition for special criteria for their own organization.

So I think we need to have some level of, you know, this has to be somewhat at the 10,000 foot level so the organizations - the groups and types of organizations may have different criteria for instance, you know, IGO's being creatures of governments may have slightly different criteria than INGO's which are by definition nongovernmental organizations.

And there may be some criteria that will apply to organizations that, you know, engage in certain types of activities, you know, maybe humanitarian aid versus cultural organizations or the like but certainly not like, you know, we shouldn't - we risk all sorts of things by getting too granular and too specific, you know. Nothing we do here should be kind of in the nature of private legislation. Thank you.

Thomas Rickert: Thanks Greg. Alan.

Alan Greenberg: Thank you. I agree with that in theory but we have a problem. This whole process was started off by us being told by the GAC and the two respective organizations that there is no one else in the same class as the Red Cross and the IOC. They are unique throughout the world.

We were then being told multiple times by the Red Cross that the way they are created is quite different from the IOC and they are in a class by themselves because the method of how it's organized, the fact that there are so many countries partaking the treaty words very, very different.

So yes, it's fine to say we want to do it by class but we happen to be dealing with classes where there's only one member. And I'm not sure how we can make that disappear. So we're dealing with a reality. These are different types of organizations and merging them together I think is going to make it much harder to come to consensus on them. Thank you.

Thomas Rickert: Thanks Alan. Jim?

Jim Bikoff: Well I disagree with Alan. I agree with Greg that we're talking about classes and the criteria should be by class. And I think that splitting them up means you would also I think split up IGO's because there are different IGO's that have different provisions and different needs. And, you know, if you're going to do that, you might have, you know, 200 different criteria for each individual organization.

I think the ones that have - meet similar criteria should be linked together because I think it just avoids duplication of effort and I just don't agree with that. So I think you know my position on that.

Thomas Rickert: Thanks Jim.

The difficulty that I see in practical terms is how we can get as close as can be to a consensus decision in the group for the diversity of requests that have been made. We have different legal basis that is proposed. We have different additional criteria. The IGO's for example have voiced concerns of applying criteria at all. They have mentioned on the list that now that ICANN has kicked off the new GTLD program, they need to make sure that there are no violations of their applicable international laws. And all these view points are standing next to each other.

And I would like to get some guidance from the group as to how we can - in a most meaningful way - continue our conversation. Mason, please.

Mason Cole: Thanks Thomas. Mason speaking.

I agree with you. I think that the issue of arriving at consensus is particularly important for an entirely different reason and that is the health of the ICANN model in general.

The GNSO not coming to consensus and thereby - for lack of a better term - upsetting the GAC would do no favor to all of our shared objectives. So I - knowing the council the way I think I do, I think the more this - the more the result of this group sort of overreaches into areas that - and I'm not suggesting by the way just to be clear that anyone is intentionally overreaching. But the more inclusive we are about sort of need to requests, the more danger we run of not reaching consensus.

And I want to be careful. I do think that protection of certain categories of names is entirely warranted but I just want to caution that we need to take care so that we don't arrive at something that the council itself can't tolerate when it comes time to vote.

Thomas Rickert: Thank you Mason. Anybody else wanting to comment on this?

I think we need, you know, whether you like having one set of criteria or whether you like having two or four set of criteria, still if we build one class, that would need to be one class separating this one class from the rest of the internet users or rights holders. The same would go if we had two or four classes.

I think it depends a little bit on - and this is just thinking loudly - on what we take as a starting point. If we take treaty protection as a starting point and not the names of an organization, one could say we have one class in the Nairobi Treaty, one in the Geneva Convention and then one in the Paris Convention. And, you know, the other treaties that have been mentioned and derive it from there and develop criteria.

So I think that - I'm not optimistic in terms of finding one set of criteria that would satisfy everybody and allow us to reach a consensus convention. Let me do the test here. Is there anybody in this group who thinks that we should be working on a single set of criteria?

Woman: (Unintelligible).

Thomas Rickert: I heard some faint voices. Claudia, please.

Claudia MacMaster Tamarit: Yes, Thomas just to take your invitation, I do think that we should be able to come up with a single set of criteria that are objective and non discriminatory and that can reflect the flexibility that we require to be able to analyze - whether it be classes or individual cases - as they are requested.

Thomas Rickert: Thank you Claudia. Anybody else?

Okay. In the absence of more contributions to this question, I would like to propose that we continue our conversation on this on the mailing list. And I guess that we should take the proposal sent by Kirin and Claudia - maybe we

can put that in one document, you know. We take that report from the subgroup as a basis for comments on the list that can inform our further discussion.

So thank you for this. I'd now like to move to the sixth item on the agenda which is the user evaluation spreadsheet. And since the last call there has been an exchange of emails on the list on this particular subject and just to give you a little bit of background, the original idea where this came from was kicked off - if I'm not mistaken - by the ALAC paper that was in combination with the nature of the problems discussion and the respective spreadsheet where we tried to answer the question where there is an actual problem that needs to be fixed.

And the argument was made that if there is no problem that needs to be fixed then in that case no PDP would be required to resolve a problem because there wouldn't be one.

Now a proposal submitted by Alan has served as a basis for a spreadsheet that has been produced by (Barry). And before I hand over to (Barry) to show us through that, I would like to make one remark. And that is that basically that goes back to the earlier question of the legal questions behind our project and the requests to general council.

And that is the IGO's or some IGO representatives have stated that there is no need for an assessment of harms caused and that therefore there was objection against doing this survey because the names need to be protection and they deserve protection under international law and that therefore protection mechanisms need to be implemented.

And again I guess the logic would be that if general council got back to us saying that there was this universal protection arising from the treaties then the question of harm might be of less relevance. But in the absence of that, I think that I as chair don't have any alternative - to put it as neutrally as I can -

than to follow the groups wish or several group members wish to obtain information on threat or harm scenarios so that we can hopefully reach consensus on the question whether there is harm. And once we've clarified that, I think it will be easier to take the next hurdles.

So (Barry) I see you have put up the spreadsheet in the adobe. So would you please guide us through what you did in Excel please?

Berry Cobb: Alright, great. Thank you Thomas. This is (Berry) with ICANN staff.

So basically - as Thomas mentioned - I just basically evolved some of the work that Alan had performed. I think his first draft was a review of five or six organizations across - I don't know - maybe like around seven or eight different top level domain.

And what you see here - you probably can't see it very well on the shared screen but I think all of you have reviewed the spreadsheet. Essentially I've expanded the scope across all the top level domains. First and foremost I tried to pick some of the larger country code domains - TLD's. I also included much of the generic ones - the generic restricted as well as the sponsored to kind of flush out that list.

There are members of the working group that think we need to include more country code TLD's and we can but I think for the most part this will give us a representative sample of what we can see happening in the CC space versus the generic space and - probably more important - some of the sponsored space as well kind of singling out X, X, X as the most recent delegation that may mimic future GPLD's that come into play.

So towards the end of the spreadsheet, what you see here because the Red Cross and the IOC have asked for multiple stings to be protected. I kind of put them towards the end because this would eventually spread out further if we were to include the other identifiers that the Red Cross included. And I

hope I was okay in doing this but I completed the example for the IOC as it was started by Alan and that was probably the easiest just to get through two strings to get an idea of what this would look like.

I think a couple of points to note out that I tried to carry over in this version first is that in Alan's analysis he had identified some of the second level registrations that may be used legitimately by other organizations and those were highlighted green. And I basically tried to replicate that here. When we get into the details of what each organization's portfolio - for lack of a better word - would look like. You know, first we asked is the domain registered or not and that was indicated by a one or a zero.

And I'm doing the one or zero aspect or the binary aspect so we can try to roll these stats up into some sort of percentage. The second column is whether the domain is controlled by the organization in question. And if it appeared that it was, a one equals a yes answer or zero if it was registered by an individual or some other organization that didn't appear affiliated to that organization in question then we would place in the zero.

What I had asked for the working group is in terms of this second column for org control...

Chuck Gomes: Just a second.

Berry Cobb: What I would ask is how do we further identify whether some of these domains are in fact being abused? Should we highlight them in red in the instance where that domain doesn't appear to be in control of that particular organization? Or I'm open to suggestions on how we can demonstrate that abuse is occurring across these various organizations.

Then lastly basically the comments section is also a carryover from Alan's first analysis mostly pulling from who is data to understand the organization and there may or may not be a certain comment as to how that particular site

is being used. So again, I welcome feedback. And I'd just like to touch on Red Cross. If we do agree that this analysis should be performed, certainly we would include in some of the other identifiers that they're requesting protections for.

The last comment I have about this particular page is all of the organizations listed in here were derived from the letter that was sent to the ICANN board I think on the 13th of December of 2011 where a number of NGO's had signed onto that letter. And I think that that was something that Alan had mentioned as well that we should perform the analysis.

Chuck Gomes: Let the womb get wet a little bit.

Berry Cobb: Hey Chuck, this is (Berry). I think we can hear you in the background if you want to mute your phone. So any questions before I move on to the first tab of the spreadsheet about this? Is this the appropriate path to head down, you know, certainly ICANN staff will be available to help try to fill out as much of this part of the chart so that we can get a better indication of what the registration landscape looks like across these organizations.

I'm seeing no hands. So I'll move over just to the first tab of the spreadsheet which is probably more indicative of a survey kind of tool that would need to be created. But essentially what we have here in rows two through seven are a set of questions that were created from Alan's initial study and I just exported them into here. And what we're looking for - if the working group agrees that we should try to move forward with this part of the analysis - that it would probably be best created within a survey tool and somehow we can acquire the email addresses of those parties that signed a particular letter whatever and have them actually submit and complete a survey.

I think the biggest feedback here is - from what I understand - much of the working group agrees that this kind of analysis needs to be performed. So it's more of a question of what are the questions that we should be asking these

organizations to show whether abuse has been encountered by them or not. And so I think with that - without any other questions - I'll turn it back over to you Tom.

Thomas Rickert: Thank you (Berry). Any questions from the group?

There have been some opposition to carrying out the survey as such. I'm not sure whether anybody of those who wrote on the lists are on the call. But I have Jim - Jim next. Please.

Jim Bikoff: Yes. I think we agree with the opinions that have been rendered by some of the IGO's that really the number one - I think - survey is premature. Because if we're going to get - as you said Thomas in your opening remark on this - if we get the opinion of the general council within the next week or two, that might affect whether or not we need to go into these details.

Secondly I think, you know, the lack of preventative protection from legally protected names and acronyms of IGO's also runs to the other organizations. And I think that, you know, that by itself is what we're trying to deal with here. So I'm not saying, you know, I'm just trying to say I think I go along with what the other objectives have been from the - mainly from IGO's I believe. I haven't seen anything else.

Thomas Rickert: Thanks Jim. Anybody else? Claudia.

Claudia MacMaster Tamarit: Hi Thomas. This is Claudia.

I would just actually like to also agree with Jim in stating that I'm not really sure how this survey which is extremely anecdotal, is going to help us get a clearer picture of harms. There may be very different scenarios for very different organizations. And if they find a lot of cyber squatting in one, that doesn't necessarily mean that the one that has less cyber squatting is less harmed whenever a serious case does occur.

So I'm worried about there being an arbitrary benchmark of some sort of - this number of domain names that are owned by the organization versus this many domain name cases or this much money spent on the domain name case abuse. I'm really worried about the purpose of this survey. And when we do get any answers - if enough people in this working group proceed - what they shall mean. I think that this is very dangerous in the sense of possibly being arbitrary and not helpful. Thank you.

Thomas Rickert: Thank you Claudia. Greg.

Greg Shatan: I also really have to state my concern as well both with the timing and with the content of the survey. I think it implies that certain of these would be relevant. I think that, you know, given in the sense the fact that disputes - dispute resolution processes may not be available to IGO's and INGO's if they don't also have trademark protection for their names which is also the case.

You know, it kind of renders the second question of dubious value. I think that whether they've registered once or a hundred times - I'm not sure that that's of really any value. I don't mind having information but if we're going to go to the step of contacting, you know, 100 organizations or whatever it's going to be or trying to fill it out on behalf of a number of organizations, I think we really need to have a clear understanding of what we're trying to accomplish here. And I really don't feel like this reflects an understanding of these.

And, you know, some of the questions I think are - maybe they're phrased in short hand here - but I find them unintelligible. And, you know, really in terms of our analysis of little value, we're implying that, you know, one answer or another is going to be - going to give a different result either to our analysis or to the treatment of a particular organization in the end.

So I think that, you know, if we are going to query or take a census of IGO's and INGO's, I think we have more work to do. Thank you.

Thomas Rickert: Thanks Greg. A few remarks. They're not only response to you Greg. So it's not directed personally at you but it's, you know, general observations.

When we discussed the questions asked by Alan during the last call, I have done a test with the group and asked whether there are any objections to asking these questions. And if my memory doesn't fail me, there were no objections to getting some input on this. So I was quite surprised to see that level of fundamental opposition to this approach.

The second point is that I have asked the group whether there was an idea of dealing with quantitative elements to prove harm. And there were no suggestions on that. And since we are working under quite some time pressure, I have proposed that we continue with working on answering these questions. And I was hoping that we might have ideas how to deal with the quantitative element - for them not to be arbitrary in the mean time.

The difficulty that I see or that I have as chair is that this seems to be dealt with in a quite binary way. So there are those that would like to see some information on the level of harm that organizations are exposed to, to make it easier for them to grant protections. And the other side of the spectrum is that there is a reluctance to share such information with the community. But there have been no proposals to sort of find middle ground or find consensus on this.

So we've asked explicitly for a comment on the questions that have been proposed by Alan. You've seen (Berry's) proposed spreadsheet. And apart from no, we don't like it. We have not seen any response. And we can, you know, I can certainly not ignore the request for further information. At the same time it's certainly up to the organizations in question to respond to the

questionnaire or not. But the fear that I have is that those groups that have asked for evidence on this - and maybe the threshold is very low.

Maybe they are convinced in no time that protections are needed. But in the absence of any information provided to them, my fear is that if, you know, we failed to jump over the first hurdle in the process and that they may say no to whatever protections we might be proposing. I'm not sure whether you share my concerns but I thought I should share these observations with you because I struggle with that quite a bit.

I think this process needs to be inclusive. I take all your concerns seriously. But if we continue dealing with this in a binary fashion - yes or no - then we might lose parts of the community that would otherwise potentially be helpful to come up with a consensus position. Alan, please.

I heard - is that Chuck? Chuck?

Chuck Gomes: Yes, it is. I would like to get in too if I can.

Thomas Rickert: Yes. I'll take Alan first and then it's your turn.

Alan Greenberg: Okay. Thank you Thomas.

I mean we have a dichotomy here about between those who believe that protection should be granted, you know, based on existing situations - be it treaties laws or whatever. And those who believe that if we're looking at protecting things and we're talking about special protections that we should be making sure that whatever we do does protect them - that it fixes whatever, you know, protection is used as opposed to harm.

Protection is used to stop from harm but if we're looking for protections, we should make sure we understand what the harms are that we're trying to fix and that the remedies are in fact going to address them.

It sounds like there is a good part of this group that is not looking at this not looking at this for protection but is looking at this to, you know, legislate a right which they believe they already have. And I don't see how we're going to have anything but a binary, you know, argument at that point or binary discussion. There are two opposite and orthogonal ways of approaching this. Thank you.

Thomas Rickert: Thanks Alan. Chuck, please.

Chuck Gomes: Thank you and I hope the interference isn't too bad because I'm driving. And let me first off apologize two times - one for not being on mute. I thought I was on mute. I'm learning to use a new phone. So I'm certainly sorry about that.

Secondly, I apologize for not commenting on this issue of the harm survey sooner. But and what I'm going to share now is my own personal opinion. It's not necessarily the opinion of the registry stakeholder group.

But as soon as we go down the path of determining harms and possibly making harms a criteria then we're getting into subjective territory. How much harm is enough? Where do we draw the line like in the ISP statement, you know. Where do you - do they have to have ten incidences of problems or what?

That's getting us into a subjective position which the one thing I think that the GNSO reserve names working group as well as the new GTLDPDP emphasized is to avoid or at least minimize subjectivity and try to find objective criteria for the things that we do.

Now it's true that if you say, you know, they were harmed 15 times or 50 times, I get that's objective. But we have to subjectively find where to draw the line. So I guess I'm personally kind of leaning towards those that think

that either the timing of the survey isn't right or I'm not sure what we're going to do with the data once we get it because everybody's going to say they're harmed and we're going to have to draw a line somewhere and where do we draw that line? Do we just trust them?

So I'm not saying the value of the data we get back from the survey - considering the amount of work that it would involve.

Thomas Rickert: Thanks Chuck. Alan, is that an old hand or a new hand?

Alan Greenberg: No, that's a new hand.

You know, I'm the one who started this. So I'll make a statement that if indeed we decided that these are not protections that we're looking at, the word in the charter's wrong and we're going to correct the GNSO and correct everyone else that has been using the term protections and that's really not what we're trying to do then the survey isn't needed.

I mean if indeed, you know, general counsel comes back and says yes, we have to protect all these organizations. We have to reserve their names and stuff - anyone we want to use. Then the survey has no merit at all. And everyone's right about that. If we believe we're trying to fix a problem then the survey has merit I think. Thank you.

Thomas Rickert: Thank you Alan. And Greg, you will make the last contribution today.

Greg Shatan: Thank you. I don't think we should need to draw a straight line between prior - proof of prior harm and whether or not we are looking at protection. And I think that the general council question is really a completely different variable. I think that I would like to think of some better questions to ask IGO's and INGO's and I think that, you know, sending out a survey that, you know, implies that we're going to set up a kind of prior abuse sort of standard is kind of like saying that you can't, you know, that it's legal to rob you the first time

but, you know, once you've been robbed then we'll enforce the law or whatever or enforce some form of protection.

You know, it just seems to me to be not the way our analysis needs to run. I think that there are a number of things that we're discussing throughout, you know, kind of nature of the problem and criteria that we were discussing earlier today as well where we could get valuable insight from IGO's and INGO's. And I think that we won't get - we'll only kind of get one bite of the apple in terms of getting information from a large group of INGO's and IGO's or at least we should aim toward doing it in a single bite if at all possible.

And then kind of the harms survey - when I think there's, you know, disagreement that prior harm has anything to do with setting up a future harm criterion which would kind of send the wrong message to that grouping. And the idea that there is no such thing as, you know, abuse of domain names generally on the internet. I think then we have a problem of mass delusion on the side of one part or the other.

Either there's a bunch of people out there who think that the internet, you know, is causing them harm and it doesn't or we have the opposite. But I think that the idea that we're going to try to use harm as a sis, you know, to decide who we're going to protect and what we're - how we're going to protect them - is not the right way to go.

Not that we shouldn't get some information on harm that have been experienced but I think that we need to go, you know, we need to think about what we're doing here in the larger context. Thanks.

Thomas Rickert: And Greg, final remark. My impression was that we didn't want to ask these questions to do an organization determination but just to sort of give a justification to those who wanted the information that they can open the door to protections as such. So if we could establish on that which is what I understood. If we could establish that there is an issue that organizations are

facing harm then, you know, their reluctance to think of protections would be given up.

But we have to end this now. We see on the screen a potential new work plan and I'm not sure (Barry) if you can update us on that in 30 seconds. You know, I don't want to go too much over the hour.

Berry Cobb: Yes. Thank you Thomas. This is (Barry).

Just real quick, you see a lot of TBD's in there in terms of deliverables, topics for discussion. But I'd like to point out I think originally we were kind of roughly targeting trying to have this wrapped up by Beijing just to take note to that in terms of the working group process. We are required to do an initial report that would then have to go out for public comment which is a minimum of 42 days required before posting up the final version of the report before it's submitted to the GNSO council.

Basically a target for Beijing is pretty much in jeopardy given all of the things that we have on the table right now. The earliest that we could start to try to submit anything to the council would be February 18th just to initiate that public comment session.

So I just really wanted to draw the attention to the working group on this in terms of the schedule. We've got basically three GNSO council meetings prior to Beijing - I'm sorry - two prior to Beijing. And the next version hopefully we'll get together with the chair and try to map out some of the high level deliverables that help us between now and then. Thank you.

Thomas Rickert: Thanks (Barry). And in terms of managing this project, certainly we do want to have predictable timelines and milestones. But the big unknown at the moment is the response of general council which as we've seen today is imperative to have to conclude our conversations.

Thank you so much for bearing with us. Its three minutes past the hour. So I apologize for not being efficient enough to end this call on time. Thank you everybody for your contributions, for your patience. And I hope that we can continue this discussion on the mailing list. Have a great day and evening. Bye, bye.

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