

**ICANN  
Transcription  
IGO-INGO Protections Policy Development Process (PDP) Working Group  
Wednesday 20 March 2013 at 17:00 UTC**

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<http://audio.icann.org/gnso/gnso-igo-ingo-20130320-en.mp3>

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

Attendees:

Jim Bikoff – IPC/IOC  
Avri Doria – NCSG  
Elizabeth Finberg – RySG  
Chuck Gomes – RySG  
Alan Greenberg - ALAC  
Catherine Gribbin - Red Cross  
Stephane Hankins - NCSG  
David Heasley - IPC/IOC  
David Maher - RySG  
Kiran Malancharuvil - IPC/IOC  
Osvaldo Nova – ISPCP Christopher Rassi - Red Cross  
Thomas Rickert – NCA –Working group chair  
Claudia MacMaster Tamarit – ISO  
Mary Wong - NCUC

Apologies:

Lanre Ajayi - NCA Debra Hughes – Red Cross  
Greg Shatan - IPC  
Guilaine Fournet – IEC Wolfgang Kleinwaechter – NCSG  
Ricardo Guilherme – RySG  
Wilson Abigaba - NCSG

ICANN Staff:

Samantha Eisner  
Brian Peck  
Berry Cobb  
Glen de saint Géry  
Julia Charvolen

Coordinator: Excuse me. 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 PDP Working Group call on Wednesday, 20 March 2013. On the call today we have Jim Bikoff, Avri Doria, Chuck Gomes, Alan Greenberg, Catherine Gribbin, Stephane Hankins, David Maher, Osvaldo Novoa, Christopher Rassi and Thomas Rickert.

We have apologies from Greg Shatan, Wolfgang Kleinwachter, Ricardo Guilherme, Lanre Ajayi, Guilaine Fournet and Debra Hughes. And from staff we have Marika Konings who will be joining later, Berry Cobb, Brian Peck and Samantha Eisner and myself Julia Charvolen.

May I remind all participants to please state their name before speaking for transcription purposes? Thank you very much and over to you.

Thomas Rickert: Thank you very much Julia. This is Thomas Rickert speaking and I'm chairing this PDP Working Group. And before we go to the next agenda item, I'd like to ask you if there are any updates to statements of interest. Hearing and reading none, we can now move to the second agenda item, which is the review of the General Counsel research survey response.

And at this point I'd like to thank Samantha Eisner for joining today's call and being available to answer our questions. And also I'd like to thank you Sam and your colleagues for providing the response to our request to General Counsel in the first place.

As you will have heard from Brian Peck, who I guess is the person that you have liased with, we have already talked about the response during last week's call. And we've also taken note of some questions from the group. And I'm not sure whether Brian has already conveyed these questions to you

but I'd like to ask you Brian maybe to read out the questions for the group and then ask Samantha to respond to them.

Brian Peck: Sure. Thanks Thomas. Sam and I did have a chance to meet before this call to go over a couple of key questions that were raised last week during discussion and review of those responses to General Counsel. So I guess I mean if it'd be easier as you proposed I just go ahead and maybe reiterate those - the questions and Sam can respond and then I guess open up to any other additional questions if that would be okay.

Thomas Rickert: That would be perfect. Thank you Brian.

Brian Peck: Okay. I think one of the questions was whether, you know, out of the research from the report if there was a need to establish a separate level of liability, if you will, in terms of (unintelligible) infringements or - of right holders compared to what are the general rights the right holders have to, you know, to a name if it would be registered by a third party.

Samantha Eisner: Sure. This is Sam Eisner and thank you for having me and thank you for your patience as we've been working through the research here. And I'm happy to be able to be here today. And if you have follow on questions throughout this process, be sure to let Brian know so I can come back and join you at later times.

In regards to the question regarding whether it's liability generally or more specifically, so, you know, as we worked through the questions, if you reviewed a question that was sent to us, which is posted in the notes section of the Adobe Connect, the issue of liability really wasn't a part of the question that was posed to us for this.

However, as we went through the research and determined that there really were very few if any statutes that specifically mentioned the role of ICANN, a registry or a registrar in relation to the registration.

We then tried to look a little bit more broadly to see if the laws and treaties and protections that did exist in regards to these specific types of names that the Red Cross and the IOC for being the most prominent INGOs as well as the IGOs if, you know, if there seemed to be anything special that would attach specifically to registries or registrars based on allowing registrations to go through with it.

So we really tried to have this researched. We weren't looking at is there a potential for general liability that has been well tread by multiple people in many places around the ICANN world. And this was looking more specifically at how its liability may go up to see the value chain as you're undertaking these registrations.

So as we noted in the executive summary on the research performed that, you know, we didn't provide a detailed assessment of how likely liability would be to a registry or registrar in any specific instance because really across the jurisdictions we found that each one had much different ideas about accessory types of liability and the types of - ways that they might look into a registry registrant relationship or a registrant registrar relationship for the imposition of liability.

Brian Peck: And also is there - were there any follow up questions to Sam's response or related to this issue or...

Thomas Rickert: Well I'd like to open it up to the group with any follow up questions. Brian, was this the only question that we have noted during last week's call?

Brian Peck: No, there was also the - sorry Sam, let me get closer to the mic. I apologize for that. There was also the question raised as whether there were other INGOs that were researched in addition to the IOC and the Red Cross Red Crescent. And, you know, if not if there's a possibility of (being depressed) looking at that.

Samantha Eisner: If you'd like Thomas, I can respond to that now.

Thomas Rickert: That would be excellent. Thank you Sam.

Samantha Eisner: Great. So we did not conduct specific research outside of the IOC and the Red Cross on the INGO side. Part of that was based on the research that had been performed previously as the issue of protections was being developed within the new gTLD program. That was the research that you guys had seen that was previously produced in un-redacted form a few months ago.

Throughout that research really it stood out that the IOC and the Red Cross stood in a different position than many other organizations out there. And so those were the most likely on the INGO side to have protections.

We know and I understand it's been part of the challenge to this group as well coming up with a standard definition across jurisdictions about what an INGO is and how each jurisdiction would recognize that is a very difficult and time consuming process.

And so we used the benefit of our previous research to identify that the IOC and the Red Cross were the ones that we were most likely to have any potential to really identify whether or not heightened protections exist.

As you see from the research that we've presented, to the extent that other INGOs called out and there were statutes that related to registration of domain names, we have those identified. And again, that is only one place. That's for Brazil and the protections that are afforded to FIFA.

And then also I know that there are some protections that we had not identified yet in Mexico that Brian forwarded to me and we'll have that updated for you within the memo. We'll get an updated version out.

In terms of feasibility of performing additional research, I think that this is where we would really get into the laws of diminishing returns. I think the amount of time and effort that it would take to come up with some sort of definition that we could even guide our attorneys across jurisdictions to perform research over and then have any hope of getting something back from them about it, I really question first of all the amount of time it would take for them to come back on something that's far more ambiguous than what they've already looked into. And we see how long that's taken already.

I don't really have much confidence that that would return a lot more information.

Glen DeSaintgery: Excuse me please.

Thomas Rickert: Glen, what was that? I thought I had heard Glen. Sam, please continue, sorry.

Samantha Eisner: And so that really is - that's basically the sum of the answer to that. I'd be happy to entertain further questions about that issue.

Thomas Rickert: Well, Sam I think the issue before I move to Alan for the INGO you presented in particular was INGOs have not been mentioned in the study. They also confirmed that (unintelligible) may not have been able to find positive results concerning protections that they have been looking for has not been particularly surprising to them.

But still I guess they would appreciate at least a small note that you have not been able to identify anything for INGOs. I'm sure that INGO representatives will chime in as we move along. But I guess that was disappointing to Number 1, find out whether you've done something in that area and Number 2, to formally if you wish have the INGOs included in the findings and if it's only to the extent saying that you haven't found anything.

Alan, please.

Alan Greenberg: Yes, thank you. I was intrigued by the statement that it is possible that a registry going - as you used the expression going up the food chain, a registrar or registry could incur some liability if they register some specific name in some jurisdiction.

I understand that registries can essentially create their own list of names that they will not register. What about registrars? Is there anything in the agreements registrars signed that requires them to register a name if it's available or can a registrar in some jurisdiction say I will not - I will not register this list of names due to local law? Is that allowed by the RAA and associated documents forbidden or is silent?

Samantha Eisner: Just speaking off the top of my head, and I am very familiar with the RAA. You know, there's nothing within the RAA that appears to either expressly require the registrar to register all names that a customer would present to it for registration because the registrar actually has an affirmative obligation to follow all applicable laws.

And then the registry or the registration agreement the registrar would enter into with its registrants also requires that the registrant take on the responsibility that their registration is being undertaken in conformity with applicable law.

So I think with that far from having an explicit requirement from the registrar to undertake registration of all requested names the registrar has the ability to identify whether or not a registration would be undertaken in violation of the laws applicable to that registrar.

So while that's not anything explicitly written about the registrar's ability to create its own reserve names list or anything like that, there's...

Alan Greenberg: It's not forbidden either.

Samantha Eisner: It's not - exactly.

Alan Greenberg: Okay. No, I was just wondering if we ended up with a catch 22 that, you know, a registrar could be in a position where they couldn't do something that they weren't allowed not to do it. So.

Samantha Eisner: No, no. I think...

Alan Greenberg: That's a good answer.

Samantha Eisner: Yeah. Far from it. The registrar is obligated to follow its applicable laws. So to the extent the registrar believes the laws under which it operates for then certain registrations, it would be up to the registrar to not undertake those registrations.

Alan Greenberg: Okay. Thank you.

Thomas Rickert: Avri, please.

Avri Doria: Yeah, hi. This is Avri. A quick question and the answer to this may be, you know, may vary jurisdictionally. Given that they have this requirement to adhere to their national and local laws about registrations, is there any obligation on anyone else to make sure that they know what those laws are and how they relate to various classes of word? Thanks.

Samantha Eisner: So I think that this is really where we go back to some of the more general expectations that exist throughout the registration value chain, right. So the registrant itself has an obligation to not undertake registrations that are in violation of law or infringe on the rights of others. And that - the expectation that people are aware of the affect of the actions that they're undertaking is just part of the registration team today.

So I'm not sure that there's, you know, there's nothing written Avri that states it in a way that you've expressed the question. But the expectation that people understand the laws under which they are undertaking registrations particularly, you know, again, this is jurisdictionally specific.

But that people understand the laws under which they're operating any part of their business or any part of their day-to-day lives. That's an obligation that exists already.

Avri Doria: Okay. Thanks. So just to make sure I understand because I'm (unintelligible). So the registrar should also know that in their country for example various classes of names should not be registered and they should have their own mechanism for determining what their country allows and doesn't allow. That could be - is that something that we could all expect them to be doing?

Samantha Eisner: Yes. In the most general sense registrars and any other business are expected to understand the laws under which they operate. So to the extent that goes to names that are given special protection within the countries that they operate or it could be something that doesn't even have to do with the registration names, right. It runs the whole gamut. But yes, that is an expectation that we have of all businesses with which we do business.

Avri Doria: Thank you.

Thomas Rickert: Are there more questions for Samantha? At the moment I don't see any hands, which is why I'm taking the opportunity to ask a question myself.

Samantha, we have I guess raised the question to General Counsel the way we did because we wanted to find out whether there were any reasons for granting special protections to certain types of organizations.

But when I read your report, I more or less got the impression that when you made reference to liabilities that liability risk for registries and registrars would not be special for the organization that we're discussing but that that would be general liability risk as taken the let's say in instances where a registrar is made available - made aware of and be given actual knowledge of an infringement.

And that, you know, if the registrar doesn't act upon it that ultimately that might result in liability. But I did not understand the way you phrased (unintelligible) as any special or extra liability risk being present if a party illegitimately tries to register the name of the organization in question. Is my understanding correct in this Sam?

Samantha Eisner: In typical lawyer fashion I will say yes and no. That what the research showed was that there are special classes - in many jurisdictions there are special classes of names. I think we need to separate out the Red Cross and IOC from the general IGO question.

So on the IGO side we look specifically to see if there was anything - any heightened protections by virtue of being on the (fixture) list. And so I think that to the extent that there's - that the countries afford protection and specifically call out certain rights to IGOs be they that the IGOs themselves have had to provide notice to or get onto a registered list.

That it can be more - it appears that it could be more likely for general or for someone to seek liability or seek to impose liability against a registry or a registrar when those names are of that heightened protection and not just given a general protection that you'd have for other trademark classes or, you know, generally infringing registrations.

But the likelihood of that liability imposing is different based on if it's a general registration or one of these names, not - we didn't parse through that too

much because we actually didn't try - we didn't look at general trademark or general infringement areas.

But in some ways that risk calculus probably could be the same but there's likely more notice ability to a registry or registrar based on the fact that the organizations and IGO are on a special list somewhere.

In terms of the Red Cross and the IOC marks, clearly - which the marks that are protected across jurisdictions depend on the specific location and the specific words and marks that are associated in those regions. But they're - because of the - there seems to be more universality of protections across the board that those likely would be of a - far more potential to raise issues at any point in the value chain be it registrant, registry or registrar.

Thomas Rickert: Thanks. That's very helpful. A quick follow up question though. At least in the jurisdiction that I'm living in, there would be a risk for, you know, let's say players in the market; let's keep it that broadly.

Samantha Eisner: Okay.

Thomas Rickert: If they don't take - if they don't take action after having obtained actual knowledge of an infringement taking place and I got the - I understood your analysis to speak of liability risk more in that area.

The big challenge for this working group to cope with and we're still not - we still haven't a result there is that the four types of organizations that we're discussing, IOC - actually IGOs and INGOs are asking for preventative protection. While in - agree, you know, the jurisdiction that I'm in we - I would be able to spot (pure sense) protection mechanisms.

So if an unlawful registration has taken place, then certainly we would have a - it should be - the registrant would and possibly those registrar as well. But the question to us and that would facilitate our work enormously if you could

identify reasons within the laws that would justify or not justify preventative protection mechanisms; i.e., whether there is a legal obligation for registries and registrars to prevent illegitimate third party registrations from taking place.

Samantha Eisner: No, it's a difficult - it's certainly a difficult line to walk and I understand that the hard questions that this drafting team is looking at. I think we had - I can tell from the way the questions were asked that, you know, really it's clear that there was some view of whether or not there could be some bright line drawn for preventative protections.

You know, and it - one of the issues is is that it's not uniform across jurisdictions whether or not - to what extent knowledge is a requirement. And so then it would trigger curative issues as opposed to preventative issues.

You know, it's really hard to come up with a bright line rule that is based on the laws that could be more broadly applicable. You know, it's - you know, we hope that the research we provided helps show where there are considerations of more universal type of protections.

And so the more universal that the protections appear to be even though there might be different classes or different, you know, member state associations within those; the more universal they come out.

And this is me speaking as Samantha Eisner, not me speaking as a member of the Office of the General Counsel. Really this is something that I would say leans more towards the ability to try to create some sort of - the - some sort of preventative scope or some category that you could provide preventative registrations or preventative protections within.

But, you know, it's really hard and I'm not sure where we would take the research in order to provide that. One of the things we found is that it's just so varying that it's hard for us to help you create that. And so we're trying to give

you information within which you can help define if there are areas of preventative protections. But I don't know what else we could give to you.

If you have ideas of what that could be we could take a look at it and see if that's something else we can provide to you. But I'm - off the top of my head, I can't quite figure out where that would go.

((Crosstalk))

Thomas Rickert: (Did somebody talk) please?

(Claudia Magit): This is (Claudia Magit). Is that you Thomas?

Thomas Rickert: Yes. You can. Alan is first.

Alan Greenberg: Okay. Just a quick comment that one of the difficulties we're facing - at least some of us are facing is the belief that even if there is legislation preventing use of some terms, there are almost always exceptions whether it's prior use or what use you're going to be making of it or fair use rules, you know, such as that criticism is allowed.

And one of the difficulties we're facing is how to do this on a global scale but still not remove the rights that people have to use some of these terms due to the specific way in which they're going to be used. So thank you.

((Crosstalk))

Stephane Hankins: ...in the queue please if I may.

Thomas Rickert: Yes you are in the queue.

((Crosstalk))

Thomas Rickert: No problem. Samantha, would you like to comment or respond to Alan's intervention?

Alan Greenberg: I wasn't really expecting a response but Sam certainly may if she chooses.

Thomas Rickert: No, I just wanted to give her the opportunity to do so.

Samantha Eisner: It is something that's definitely hard to respond to. And I definitely appreciate the boundaries within which you're trying to do your work. And I don't know if there are middle ground solutions that can also be come to, you know. You know, is there some sort of approval right or something, you know, the way that jurisdictions could resolve those sorts of prior rights abilities. Can they - can some of that be brought into the work of this group? I don't know.

That's just again brainstorming as Sam Eisner and not as a - and not my official position with ICANN.

Thomas Rickert: But still Sam I think your views even though they are not representing General Counsel's office are much appreciated by the group because we've been discussing this for a couple months now and I think we are happy to hear fresh and new perspectives and ideas on this. Claudia, please.

Claudia MacMaster Tamarit: Hi Thomas. Thank you. Samantha, I'd just like to say as an INGO - as ISO, the International Organization for Standardization, which ICANN is obviously familiar with because of our popular Standard ISO 3166, the country codes.

I'd like to just say that we very much appreciate the work that your office has put into this question. And I'd like to just take you up on the comment that you made in terms of maybe some ideas in which way we could take the research.

I think a lot this research has been basically looking at the idea sort of, you know, sort of per se liability for the registration of names. I wonder if there's scope for us looking at or changing the focus a bit and looking at the possibility of research areas of legislation where the public interest in protecting and international organization's name is evident.

That being, for example, that special accord or a law that is made between or among an organization and different countries or one particular country where that country has enacted legislation in view of an international organization, you know, non-profit quasi governmental international status.

Putting it in a different category of other non-profits and other non-profits that might even operate in one or two countries but really kind of legislating that recognition that if this international organization is so globally active and its work is so influential on an international level.

Not just with countries but also with other international organizations that that kind of a legislation could be for example a way for us to sort of hang our hat on saying hey there's some public interest in protecting this international organization name because there has been at least one country or several countries that have legislated some aspect of the organization as being protected or being special in some way.

And I say that because for example at ISO we do have a special fiscal accord with Switzerland. Several other INGOs, a handful have the same situation. And it's the kind of legislation - I don't pretend to be an expert internationally on how many INGOs or which other ones would have it.

I know that in Switzerland there is maybe a handful. But outside of Switzerland I'm not sure. But I wonder if there's any scope for this kind of research that we could just kind of shift the focus because for INGOs that might not have a legislated protection other than of course trademark law and trademark treaties of their names, there might be a good - it might be a good

idea for us to change the focus and talk about the public interest and the Internet used international.

And it's truly about the public and for the public where there might be an interest in protecting an international organization's name since it's particularly vulnerable as a non-profit and not in the same situation as a private trademark owner to be able to sort of relay the costs of subsequent intensive domain name abuse.

Samantha Eisner: So thanks for that (Claudia). You know, it sounds like - so my first reaction listening to that is - the drafting team itself likely has some opportunity to set out some - to set out some criteria that might actually reach some of your concerns.

You know, if there is public interest in protecting a certain name if that can be shown by having a certain number of countries that have legislation that protects a certain name in there. You know, maybe those are some of the criteria - criterion that this working group could help come up with in order to formulate the protections.

Whether the - research being performed out of the Office of the General Counsel to identify where these potential protections may be is the best way to help meet that criteria I don't know now. You know, it sounds like from the ISO standpoint, you know, you are in a very good position as, you know, representing ISO to identify the treaties or special legislation that are there.

You know, if there are certain organizations that are really active in this process or that or through communities of INGOs or IGOs that are out there that know of where they have, you know, specifically mentioned protection, you know, it seems like it's a very high bar and a really huge undertaking for us to try to send out attorneys to determine where these protections might be because, you know, here ISO we could say, you know, go look to see if ISO has special protections or special legislation in any country.

But we would still be missing other organizations I think because then we go back to the issue of there's not really a good common definition of what level of INGO particularly would have these types of protections.

And so, you know, I'd encourage us to be part of a dialog among the INGOs and the IGOs and this drafting team. And then if there's research or assistance needed in verification of some of this stuff, I think that that's where we at ICANN could help provide some objective verification of what's being state.

But I'm not sure that it's - it sounds like it's such a hugely scoped thing to try to do research on it anew. From our standpoint I'm not quite sure how we would achieve that.

Thomas Rickert: Thanks Sam. I have Stephane next.

Stephane Hankins: Thank you very much. I will speak - I'll come back to a more general comment. That first of all from a very (unintelligible) perspective - this Stephane Hankins with ICRC.

I first needed to express appreciation for the work that was produced by the legal counsel's office and the contribution. It is our understanding from last week's discussion but also this week that majority of (people in this) working group is that the research is very partly conclusive.

And we have made clear (unintelligible) to our - in our view the reasons why, you know, this is not providing the whole (unintelligible) I mean is very largely due to the manner in which the questions were put to counsel and the way they have been interpreted.

If only - I mean obviously the expectation that (unintelligible) results in 1949 and subsequently there too, which is the date of adoption of the 1949 Geneva

Convention, which protect the Red Cross Red Crescent (unintelligible) and to expect that, you know, the treaty or, you know, implementing legislation resulted thereafter you would examine the issue of the liability of building registry registrar just doesn't make sense.

It could hardly be expected and obviously, you know, it requires an interpretation of the prohibition and protections of the designations concerned as they were formed (unintelligible) at the time.

Obviously the absolute of the specific reference to domain name registration and the legal duty or liability attached for in the registry registrar (chain) and of course considering, you know, the absolute in many jurisdictions of legislation or case law and the liability of registries registrars whether it is agents or accessories or anything else.

I think definite (unintelligible) just not a realistic expectation. We note however that the report does include this phrase and concludes that there does seem to be potential basis for challenges to be brought -- I'm reading - I'm quoting - - including potential challenges to registry - operate to the registries so their role in the registries will change.

So I just, you know, was wondering exactly, you know, what the working group will take - can - would take from that. And I would like to ask the representative of the legal counsel what she feels, you know, we should take from that assertion.

And, you know, what should be, you know, next steps to actually take into consideration what is written there, which does not exclude and suggests that, you know, at least in the jurisdictions examined only domestic law, international law does not cover this, which I'd be curious to, you know, whether you - how this feeds into the issues that the working group is looking at.

And I have a second comment that I want to make. I - you know, we've made this quite a few times already including at the time when the questions to the counsel would be the basis.

We understand and we (unintelligible) very well that you - the legal counsel's interpretation of the question, you know, was not to look at or discuss ICANN's potential for liability for it, you know, for its own potential for liability or its own duties spinning from the treaties or the laws concerned.

As we expressed before, you will - this is much to our regret because I feel that either this is being central to the question raised. If we are as you discussed at your own (unintelligible) we're looking at, you know, preventative mechanisms and, you know, these should obviously begin first and foremost within, you know, ICANN's own quote unquote to provide the role of the, you know, these processes.

And, you know, we, you know, reading also the article of incorporation the reference to international treaties in our view, you know, it's curious that you - that this is not part of the legal analysis especially I would say because if you read the question, it does talk about in the third phrase is ICANN aware of any jurisdictions in which a statute to other applicable law prohibits either or both of the following actions by or under the authority of ICANN under the authority of ICANN.

So I, you know, to our, you know, we feel that, you know, that element is still not - it still has not been looked out or sufficiently addressed. We certainly knew that there is necessarily a legal liability but that at least a duty of (unintelligible) to ensure to take all possible levels within the authority of the organization to ensure that you - one, that you may be aware of these international (unintelligible) aware of these - of these protections.

And then perhaps potentially more than that, you know, some form of instruction to implement. So I'll leave it at that. So thank you very much.

Thomas Rickert: Thanks Stephane. Sam, would you like to respond to that?

Samantha Eisner: Sure. Thank you Stephane. As to your first point, you know, one of the things that we definitely did find in the - throughout the research is, you know, particularly as it relates to the IOC and the Red Cross, so many of those protections are so longstanding, you know, 1910, 1930, 1945 that of course we wouldn't expect to see domain name registrations set out in there.

And so that's one of the reasons that we looked to see or performed evaluation as to whether or not there would be other places where we would think that the protections that are afforded would actually attach to domain name registration and then that's the research that resulted.

So of course, you know, the way that that question was asked we - the answer in most cases had to be no because the statutes or the treaties themselves do not say ICANN registry or registrar domain name registration. But we tried not to stop the answer there.

So in terms of where ICANN stands in this, you know, we do take our role and the work that we do very seriously and, you know, to see through the protections that have already been put in place through the new gTLD program.

You know, we consider that our role within this is very important and know that we have a really important place to help set the standards to which we expect our contracted parties and others to operate.

In terms of - because we did not find a specific or in most cases we did not find a specific piece of legislation or statute that didn't specifically say ICANN can't do this. You know, we do have - we would have provided those for you if they were in existence.

You know, we think that the supports that we can give to this working group is part of our commitment to providing guidance on how the statutes that do exist can be met, which is why we, you know.

We undertook a very large piece of work here to try to get the information out. And so we do hold our role here as very important. So, you know, we do look to see if we can support you in any other way. So please let us know as your work continues here in the drafting team.

Thomas Rickert: I understand the IOC is next. So we will either hear from Jim, (Kirin) or David. We can't hear you. Maybe your microphone is on mute.

Samantha Eisner: They got disconnected. They're calling back in.

Thomas Rickert: Okay. Okay. Just reading it in the chat. So do we have any further questions?

Samantha Eisner: And I - just so you know Thomas, I do have a meeting that starts at 11 o'clock. So I will have to leave at that point. If it's of value for me to come back to a later meeting, please let Brian know and I'm happy to come back.

Thomas Rickert: That's much appreciated Sam. I guess we've already taken more time of you than anticipated. But I'm happy for us to have (unintelligible) this discussion and I'm very thankful for you to be there for almost an hour already and answer the questions. I guess...

Jim Bikoff: So I'm back on.

Thomas Rickert: Jim, please go ahead.

Jim Bikoff: I'm sorry. I got cut off. I just wanted to thank Sam - Samantha for her report and mention that actually Stephane's comment took in a lot of what I wanted to say on the point about the statutes.

I would make the additional point that more recent statues for the IOC such as Brazil and Greece both specifically do mention domain names and Web sites so that, you know, as the Internets come on into its own, I think new legislation is considering specific extension to Internet domain names.

On the other point I think that both Alan and Thomas you and Samantha mentioned the fact that, you know, what do we do with people who have legitimate rights, grandfathered rights, rights in news articles and things of that type.

And I think that we're going to discuss later an exception procedure for second level domains that could deal with that issue so that there would be protections granted subject to somebody with a legitimate right being able to establish their right on the second level in some manner that would be both fast and efficient and impartial.

Thomas Rickert: Thanks Jim. I guess we'll get to the question of the extension mechanisms and your i.e., David's proposal in a couple of minutes. Are there any more urgent questions for Sam because otherwise I'd like to let Samantha go?

Sam, thanks again for being available and answering to our questions and also for your willingness to come back to this group and continue the conversation. So that's much appreciated. And again, on behalf of the whole group I'd like to thank you. And please convey our thanks to General Counsel for us.

Samantha Eisner: Will do. Thank you for having me.

Thomas Rickert: Thanks Sam. Now with this we can move to the third agenda item, which is a protections proposal as we call it. You will see the document in the Adobe in a moment. And that was actually another attempt to provide an overview of where our discussion is.

And it's basically slices of issues that we're discussing into smaller portions, which hopefully will help the group get a good old view of where we are, what we need to achieve, where potential consensus is and where we need to work more on consensus positions.

Berry, I'm not sure whether you have difficulty bringing the document up or whether it's just on my machine at the moment. I just see the name of the document but I can't see the document itself in the Adobe.

Berry Cobb: Thomas, it is up. It may be your machine.

Thomas Rickert: Okay. That's good. Since I can't see the document, Berry, thanks so much for putting this together and making it look as it does. Would you be kind enough to maybe give the group an overview of what (in).

Berry Cobb: Yeah. Sure Thomas. This is Berry. So carrying on what Thomas just mentioned, the document you see before you is kind of an extension of what we were working through the protection spreadsheet over the last couple of meetings.

And the thought here was to try to transform that tool into a set of possible working recommendations that the working group can establish which ones are viable, which ones might not be viable.

And so the first aspect here is to try to lay out onto - in Word format, you know, what are some possible outcomes of the working group. Essentially there are four listed here. By no means are they the only four and certainly any one of these outcomes described here with the exception of number one, there could be some kind of reshaping of some of these outcomes.

But essentially, you know, we're trying to lay down as to where consensus could possibly be achieved, some of which are aligned to the polarized positions that we have right now within the working group and then of course

the final outcome to try to define some middle ground. Of course this is divided between top level and second level protections.

So I'd just like to first point out that this is a first draft. Certainly the language listed within here is not written by a lawyer so I'm sure there's lots of room for improvement. And perhaps some of the statements in here are vague and can use some - I can use some assistance to make them more direct as well.

So I won't read through the entire document. I understand that the working group only received this either late last night or early this morning so there hasn't been time to digest what's written here.

But I'll just quickly provide a high level overview of each one of the outcomes and then hopefully we as a working group can work towards refining this document. And at the very least hopefully it becomes a useful tool for us to achieve some sort of consensus position out of this.

So starting with Outcome 1. This is more or less the easy one for lack of a better word. If this working group cannot find consensus on some form of recommendations for protections identifiers, this is most likely the outcome that we're faced with today.

As everybody is aware, the ICANN Board has placed a few resolutions in previous meetings affording temporary protections for the first round of ICO RCRC names as well as IGO names that are listed within 2.2.1.2.3 of the Applicant Guidebook.

And below the first element of the outcome is kind of some general rationale for what's the outcome they produce. So again I invite the working group members to take a close read and this and also look forward to any feedback that the working group may have as to some of the statements listed here.

But in short, as to the many consensus position coming out of this, this is most likely what the community is faced with and what the board has already implemented to date or in the process of implementing.

The second page is basically slight derivatives of the first outcome. Essentially this is where we start getting into possible consensus positions that could be created from the working group.

Outcome 2A is that basically the working group has defined the consensus position that no protection should be afforded. And in the face of deliberation that perhaps the temporary protection granted by the ICANN Board should be of redacted - retracted as well.

A secondary outcome is that the working group comes together and that there are protections granted to IGO INGO organizations in that they are made permanent and not only temporary. And of course this outcome 2B is - would also require some additional effort to accommodate the positions of exception processes, et cetera.

I think the one thing to note here is that the - what has been implemented to date is very limiting in terms of any kind of exception process is should these identifiers be listed on the reserved names list.

Most importantly, you know, we have certain protections or objections processes at the top level but that we also -we're I think more of the attention needs to be focused is what would happen at the second level.

And if names were placed on the reserved names list to date without any creation of other exception processes, the only thing available to the community is the RSEP process.

So for example, if a particular string was placed on the reserved names list and an organization that is seeking the protections which to register that

name, at the current timeframe we only have RSEP process to transfer the registry services evaluation process in which that protected organization would need to work with a specific registry operator to have a particular name removed from the reserved names list than for - to make it available for registration. And certainly that process is not an overnight process.

David, I see your hand is up. And then Alan. And David, you may be on mute.

David Maher: Sorry, I was. I think there's an additional outcome that is a possibility of the registry stakeholder group has not voted yet on its position. But one of the positions that is being offered for vote by the registry stakeholder group, which is essentially continuing the position that they've taken before.

That is their most special protections but support for the drafting team outcome protecting the IOC and the Red Cross but no other organizations. In other words, support for the Board position on the top level and the drafting team position on second level.

Berry Cobb: Great. Thank you David. Since you mentioned it and I think as you said you're stakeholder group is working on formulating something like that. When - as soon as possible if you could share that on the mailing list and I can incorporate that into the document.

And certainly as I mentioned, what I have listed here is not a definitive list. It's very clear there are going to be probably several variations of - and what I'd call more of a straw man than a proposal at this point that the working group can consider. So I would appreciate some kind of written form so I can incorporate that into the document.

David Maher: Okay.

Berry Cobb: Alan.

Alan Greenberg: Thank you very much. The reference to the RSEP process I find interesting. I can imagine an outcome of this group saying that names be protected subject to registries filing RSEPs for exemptions. And that could be fair.

However, if this group comes out and does not make that explicit statement, I would question whether it's intuitively obvious that an RSEP would be granted in the absence of an explicit intent of this group to use that as the escape hatch.

If I was in a position to judge whether an RSEP should be granted to a case and the organization in question had agreed through this working group that they not - that a name go onto a protected list, it's not intuitively obvious to me that an RSEP would be a valid way of getting an exception for that.

So I just raise the issue that we can't assume that's going to happen. If that's the way we want to create the exception, then I think we're going to have to explicitly say that. And I for one do not favor that. That's a cumbersome expensive process to go through for exceptions, which in some cases I suspect they're going to be expected.

You know, if there's a .charity I'm expecting that some organizations will want to be present there. And it is - it would be a wrong thing to do to grant a general protection and expect the RSEP process to be used to get around that. I find that a cumbersome and very expensive process to - a responsibility to put on the community. Thank you.

Berry Cobb: Thank you Alan. And yes, you are correct. It is - it's definitely not an easy process and I'll defer to Chuck. I believe he has much more experience with it than I do. And certainly even filing an RSEP is, you know, no guarantee of acceptance of that RSEP.

Certainly the process in and of itself is once the RSEP is filed there's a review by the - by ICANN as well as it's opened up for public comment to receive

input from the community and series of decision processes that are exercised through that process. So without a doubt it's definitely not a simple and overnight procedure. Chuck, please.

Chuck Gomes: Thanks. It's important that we understand the conditions around the RSEP. First of all, there's no - I'm going to comment on a lot of things. But there is no formal public comment period with RSEPs. They are put out for, you know, public comment and so forth. But that's not officially a part of the process.

More importantly there are two reasons - assuming that a registry service is proposed that doesn't contradict other essential elements of the registry agreement. There are only two criteria that would disallow an RSEP. One of them has to do with security and stability. And the other one has to do with competition concerns.

The RSEP process only becomes real expensive if you have to go to the registry services evaluation panel to evaluate the - whether or not it's a security and stability issue.

The other alternative if there - if it is a - if it appears that there are - if ICANN staff determines that they think there may be competition issues, it would be referred to whoever the applicable competition authorities are in whatever jurisdiction's at stake. So it's important that we understand that when we're talking about an RSEP.

If an RSEP that's proposed doesn't affect security - if there's no indication that it affects security and stability or that it's a competition issue, then it's really not that complicated. Hope that helps.

Berry Cobb: Great. Thank you Chuck. I think that is very helpful. And I should point out that at least everything that we've researched so far, this is the only process that may be available. I'd certainly invite the working group if they have other

ideas of other existing processes that could possibly be used to provide an exception process in this regard, please help us inform that.

Otherwise absent of anything else or to make something more streamlined in this regard, it would probably be a recommendation that this working group would have to deliberate on and create. Chuck, please.

Chuck Gomes: Yeah. Just one more thought on that. And thanks Brian. The - an RSEP would only be needed if there's an exception to something in the registry agreement. For example, if there were reserved names or specially reserved names or whatever term we want to use and a registrar wanted to make an exception to those, then they would need to submit an RSEP.

But if there are no protections, an RSEP - anyway for particular names, I don't believe there's anything in the registry agreements or registrar agreements for that matter that would prevent them from implementing their own protections. Thanks.

Berry Cobb: Great. Thank you Chuck. And yeah, I guess to provide some clarity, the way I understood it is Specification 6 of the registry agreement contains those names that are on the reserved list.

And that's why I was tying in the RSEP process because it would require that that name be removed from the registry agreement of that specific TLD to allow it to be registered while it would be blocked or remain on the reserved names list across all the other registry agreements. And I see a green checkmark from Chuck. So thank you. Avri.

Avri Doria: Hi. Yes, thanks. So I just want to make sure if I was understanding Chuck correctly. If for example one of the recommendations that came out of this group was we're not putting - and this is an example. We're not putting more names on the reserved list. But we are creating a set of names that we recommend.

You know, kind of like the way we had originally started a thought that RPMs would work is that we would create them and invite every registry to implement something of their choice and encourage them to do so.

So that if registries were to create additional reserved names lists specific to that registry, those would not require an RSEP. Those would require whatever registry process the registry itself put in for those. Because I mean as we look at, you know, the new applicants, there are all sorts of reserved named lists that they're creating because of, you know, because of GAC comments, because of groups like this, because of other comments.

Long lists of names that those registries voluntarily say they will not register. And this going together with what Sam said before of every registry, every registrar has an obligation essentially to create that sort of extra list on itself but for the set of all those lists for something to come off it - how something would come off that would be up to the registry and/or registrar. And I think that's what I understood. Thanks.

Chuck Gomes: And this is Chuck. I think that's true Avri. Now as you know, I'm not an attorney and fully qualified to evaluate all the nuances of the registry agreements but I believe that's true.

Now one of the things that's a little complicated right now is we've got the - a registry agreement for new gTLDs. And certainly I think we know that for new gTLDs registries have an opportunity to provide more protections than the minimum.

I think that's also true with existing TLDs, but it's probably not quite as clear within the existing range. As long as it doesn't change our agreement, I think that's absolutely true even with regard to existing registries. But somebody correct me if you think I'm off base there.

Berry Cobb: Thank you Chuck. From my individual perspective, I would agree with that statement as well. And I believe it's - and correct me if I'm wrong. I believe a few applicants have already come out and stated that they would offer us additional reservation of names for their proposed TLDs. Avri.

Avri Doria: Yeah. So to add to the multiple choice of possible outcomes and this perhaps is one for those of us that are more into voluntary locking than ICANN enforced blocking.

If this group were to recommend either a list or a formula or a combination of a list and a formula dealing with the prefix, post-fix and in-fix cases and suggest that, you know, registries add this to those public interest comments that they're making, the (picks).

That could indeed be another kind of recommendation that this group could make that stops short of adding things to the reserved list that the enforced observed list but going to something that was more jurisdictionally specific, was more, you know, you know, takes into account for example how .charity if such were to exist, and I don't even know if it does, were to sort of say we put all these names there but we have a process by which, you know, you can get the name open if you want to use our services, blah, blah, blah.

So basically one of the options we would have would be to create lists that were voluntary and even a recommendation that, you know, look at adding these things to your (pick). Thanks.

Berry Cobb: Thank you Avri. Any other comments before I - Avri, one more comment?

Avri Doria: No, no. I'm just trying to put it down and (spazzing).

Berry Cobb: Oh. All right. Sorry. Any other quick comments before I move on to the third outcome or I should say the fourth, which is labeled Number 3? And I won't go through the details of this. And again, I advise the working group to read

through the - through each one of these proposed recommendations or I should say straw man recommendations and to help improve some of the language here and some of the rationale.

This outcome is certainly a derivative from the spreadsheet that we are working on the past couple of weeks. And it also tried to incorporate much of the dialog that occurred over the last couple of weeks as well.

And this basically split into three tables. The first table being the recommendations or proposed recommendations around top-level identifier protections. The second table is focusing on second level registrations. And then the third, which is kind of the unknown at this point, is, you know, what would possible qualification criteria be.

And as you can see in the comment on the side, many of these recommendations in the first two tables will key off of any possible recommendations that the working group may come up with in regards to qualification criteria in of itself, which is certainly a separate document that does - that we've send out that has a history of proposals of what that (UC) may look like.

But in a nutshell, so with the top level identifier protection, basically this mostly keyed off - I believe Alan made some great statements either last meeting or the meeting prior to that that, you know, permanent protections at the top level it seems that we're at a point where that may not necessarily be a direct threat and thus that perhaps such top level permanent protections may not be necessary.

And certainly carrying on some of the key elements to this is that - go ahead Alan.

Alan Greenberg: Yeah. I just wanted to emphasize that I have raised this a number - this a number of times. But I've been clear to say it's that - I suspect existing protections are sufficient. If they - existing objections processes are sufficient.

However, if they are not, if we can identify a hole in, you know, a break in the wall, which says certain things, the objection processes would not be sufficient. Then we need to invent a new objection process for future rounds to make sure that the kind of organizations we're talking about are thoroughly protected and still of course allow, you know, other legitimate rights to be exercised.

So I've never said that the existing objection mechanisms are sufficient. I've said the existing ones or if necessary additional ones. And I think it's important to do that because there may well be a hole in, you know, in the overall armor.

And I don't think anyone's looked at it from a perspective of protecting the IGO INGO organizations we're talking about with the existing protection mechanisms that - objections mechanisms. That wasn't what they were invented for. So I'm just adding that caveat. Thank you.

Berry Cobb: Great. Thank you for the clarification Alan. I apologize if I misspoke. And certainly that is the essence of the third recommendations here for the top-level recommendations is that basically one-year post first delegation there is an affirmation of comments review that is two fold.

The first is that there's a review on the success of the new gTLD program as it relates to consumer trust, consumer choice and competition. There's also a secondary review involved that is to review the application process from start to delegation.

And so this is the nature of the third recommendation is at this point given, you know, we've seen all of the strings applied for. At this point it seems clear

that there were no applications that infringe on any of the IGO INGO names that are in question.

And that the essence of this recommendation is first let's conduct a review post delegation and after the application process closes to ensure that there aren't any gaps that may limit IGO INGO participation in that process as well as the second recommendation.

And Alan I think you had mentioned this before that the GAC and ALAC are afforded a certain standing that allows them to file objections through this process. So in essence, you know, it would be a review of these at the top level. Alan, please.

Alan Greenberg: Yeah. I agree that the AOC review that will follow is a good escape hatch to catch something that is done wrong. However, I guess again I want to emphasize that in this group if there are people representing the IGOs INGOs that feel that the existing protections are not sufficient, if we do not have an explicit top-level prohibition.

But if they feel uncomfortable the existing objection mechanisms are sufficient, then I think the onus is on this group to try to identify what additional objection mechanisms should be put in place in the future.

So yes the AOC review is another mechanism later on. But I think our overall remit is to make sure that we provide reasonable protection at the first and second levels to the kinds of names we're looking at. And therefore if we choose not to put them on a reserve list, we have to ensure that the objection processes do cover the whole gamut of worries that they may have.

And that's why I've emphasized again and again that we must look at it and if that's the route we go, it is our responsibility to say what's missing if there is anything. Thank you.

Berry Cobb: Okay. Thank you Alan. Any other comments before I move down to the second level table? All right. This one is I think a series of about seven or eight proposed recommendations for the working group to deliberate on.

I won't really go through these in detail but in essence the idea here is to try to leverage existing platforms and processes for the protection of names. And in very short terms is to try to leverage the trademark clearinghouse, its sunrise and its trademark claims processes where possible.

And as well as to - I think one of the main issues for IGO and INGO organizations is that the pursuit of protection does prevent the use of (funds) in promoting the public interest for their organization strategy, et cetera.

So that's what this basically tries to capture is leveraging the existing trademark clearinghouse, sunrise and claims processes where possible and to provide the protections in a way that are - that are fruitful while not necessarily relying on the reserved names list as the protection element.

And I think the important thing here is that again it kind of circles back just with the top level domain is that if names were to wind up on a reserved names list, it's going to be a difficult process for the organizations seeking protection to use those names if they wished as the example was mentioned earlier, a .charity or something along those lines.

So the essence of this third table again is to try to balance the needs of both while not necessarily trying to prevent registration of certain names. So again, I won't go through details on this. I invite the working group to read through these. Please provide me red lines of feedback that you have on some of the language here. And we'd be - I would be happy to incorporate this into a go forward model that we can start to deliberate on.

And then lastly, as I mentioned, there's a third table that gets into qualification criteria, which at this point I just left that as blank. And so with that, if there

are no other questions/comments I'll turn it back to you and happy to answer any other questions.

Thomas Rickert: Thanks so much Berry. Any questions regarding the document or comments? Do you think this is useful? At least I do think it is because it puts everything into one document that we can comment on.

So basically if we look at that we have the options that we go (unintelligible) the options that have been mentioned during this call and that might be placed on the mailing list.

Also it will be important to note that we have the option of saying yes and no to all four categories of organizations separately. That's something that we've agreed on early on the process and if we then enrich the document further by putting a - or further defining an exception mechanism as well as defining criteria, which we had parked for the moment. Then I think we have everything in one place.

Can I get some indication of whether you think this is useful or would you rather proceed working on a document in a different format? So seeing no hands and hearing no comments, I take that that's agreement that you think this is useful. And if you think that my understanding of your silence is incorrect, you should speak up now. Okay.

So let's then try to further refine the document and the options Berry to get a more holistic view on that. I see the IOC's hand up. Please.

Jim Bikoff: Thomas. This is Jim Bikoff. I was just going to say that I haven't had a chance to look at the document yet. I think it came in early this morning. But, you know, we'll look at it and I guess get back on (unintelligible).

Thomas Rickert: Thank you Jim. That's much appreciated. Okay. Unless there are further comments or proposals from the group, I guess we should look at the

exemption process. And at this stage I'd like to thank David, Jim and (Kirin) again for putting together and further detailing the proposal - the basic parameters for the exemption process.

And unfortunately neither Robin or Mason do seem to be on the call. But there has been some communication on the mailing list. You know, so Robin and Mason have voiced concern with the exception process. And I've responded to them asking exactly what that meant. Whether, you know, any type of preventative measures is something that they would be able to support.

And the second question was if there was no such fundamental objection to preventative mechanisms to what extent we would need to tweak the exemptions mechanism so that it would constitute a basis for discussion for you or, you know, that it provides the group with the opportunity to further discuss amendment so that we could get - possibly get a consensus.

As I mentioned on the mailing list it was my understanding that the group felt an exemption process to be necessary to be in place. And certainly an exemption process is an extra process that would create burden for players engaged in that process.

And the comments that we saw at least I understood to represent the view that everything that would create a burden on this - on somebody trying to register a domain name would not be acceptable. But maybe we can hear Robin and Mason's view on that later on.

Alan has mentioned that he also commented on the list and I must have overlooked that because I've been traveling all day and now doing this call after having one meeting after the other today. So I apologize for that and not acknowledging Alan's feedback on the list. I'm sure Alan that you voiced your concerns or provided comments during this call but first I'd like to - Avri, please.

Avri Doria: Hi. This is Avri. Okay. First I did not voice any opinion on the list. I was fine to ride in in Robin and Mason's wake on it. I guess I have two issues. One is a prior issue in that the existence of this procedure seems to rest on the notion that names are blocked by some list or blocked by some activity, not just the period of 30 days and of notification but actually that there's a block.

And the presumption of a block is certainly something that I haven't accepted and I think we should be eliminating the blocks that currently do exist as opposed to adding further. So any procedure that is based upon there being blocked names is of course a problem - this is an existential problem with it.

Now accepting a sort of, you know, theoretical position that well we might as well talk at one - about one just in case we do reach consensus on blocking mechanisms, then I also have a problem with any process and this one seems to include that, that includes the possibility. And please, I'm not accusing anyone of any intentional acts.

But any process that looks like it allows for a either implicit or explicit notion of licensing, tit for tat, quid pro quo, whatever you want to call it where of course we will give you our great donor an exemption.

And as I say, this process seems to have many different ways in which one could weave in sort of around the corner semi-gaming notion of, you know, I applied for the exception, you know, process, process, wink, win, process, process, okay you've got the exemption.

So A, I don't see why we need an exemption if we have no blocking but B, if we do have blocking and exemptions, I have problems with anything that includes considerations by the people who make claims on the name. I think it would have to be a process that was yet another independent ICC type neutral working on a set of principles type of group. Thank you.

Thomas Rickert: Thanks Avri. And before I move to Alan, I'd actually like to ask you a follow up question. You have mentioned the word blocking. And blocking has been mentioned all over or a couple of times during our discussions over the last couple of months. At least as far as I'm concerned blocking to me was the - an actual prevention of a resignation - of a registration.

Would you already by definition regard an exemption process as blocking just because it requires further steps whatever the steps might look like prior to a registration taking place?

Avri Doria: Okay. It's my assumption that you don't need to be excepted from something if you haven't been excluded from it first. So it's just in the notion of to get an exemption means without the exception you are blocked whether it is because you are in a reserved list or some other sort of entity has been created that says you may not pass here unless you have an exception.

At the moment a reserved list has the exception of RSEP. Now that's perhaps too arduous and also that doesn't offer some of the opportunities that this procedure offers so therefore I could see why people would prefer this procedure to an RSEP procedure.

But in essence both of them are exemptions to not being allowed to proceed. So whether we call it blocking, which I guess is getting a negative connotation or being on a reserve list or something is yes indeed problematic.

Thomas Rickert: Avri, sorry for following up...

Avri Doria: No.

Thomas Rickert: ...again, but I guess we need to get a common understanding of the terminology. And I think that we should try to get away from these terms that have certain connotations that, you know, might lead to misunderstandings in the group.

As far as I'm concerned, at least from what I've heard as Chair, there was the general notion that an exemption process or something, you know, that could be (self-implied) as an exemption process would be needed to ensure that legitimate use is given enough space.

I think it's not correct to derive from that notion that per se the perception an exemption mechanism would be reserved names list, i.e., a blocking mechanism if you would call it.

Maybe we as a group need to step back a little bit, take a (fresh) perspective and maybe make a distinction between domain names that can be registered by anybody in the world without any difficulty and those names that would only have a certain number of eligible registrants.

And this - these eligible registrants can either be the organizations in this case that have asked for protection or any other third party that can register with the use the name.

So that the reservation as you call it, you know, we don't call it reservation but it would just mean that we have basically a decision to make how to deal with these names where that not everybody in the world is eligible to register.

And then, you know, depending on how we shape the process it could be a level playing field for the organizations in question or a legitimate third party. And so I guess the question that I'm asking you is whether you would accept the fact that certain names would lead or would require a certain type of eligible party regardless of who that ultimately might be and who that exit to the name.

That can be or could be discussed in order to avoid what you call licensing (scheme) or would such differentiation between names that everybody

(unintelligible) register and those were only certain eligible parties can register go too far (unintelligible).

Avri Doria: Okay. Thanks. Okay. I see two categories. There are names that anybody can register for and there are names that nobody can register for. I think to create a - to spin another category out of the names no one can register for to create a set of names that only some can get - can register for nonetheless means that most of the world is blocked on them and it's just basically a way of spinning the story so that it doesn't look like we're blocking people.

I still see that as a blocking notion and because a priori you have to prove you deserve the name as opposed to anyone can register for it. And so everyone is blocked until they get licensed. That to me is blocking. So no, I don't see the category as legitimate.

Thomas Rickert: Thanks for - thanks for that clarification Avri. Alan.

Alan Greenberg: Thank you. On the last part of the discussion first, I agree we need to have common words that we all understand what it means. But I do not think we want to get into a game of semantics of what does the generic meaning of something.

You know, as in contracts if you have a capitalized term it means what you define it to mean. And it doesn't matter if it's used in a different sense in the general language. And I think that's where we are right now.

Up until now unless I missed something very substantive, we've been talking about blocking as opposed to a claims notice where you must tick off a box on the Web form and then you go forward with a problem or blocking as opposed to some other mechanism we're talking about.

So blocking is blocking. Now if we want to come up with a different term which says - which means where we say blocking means no one can ever get

it period, no exceptions and a different word that we invent to say there will be an exception process which can be followed, fine. Let's do that. You know, but let's not talk about - spend our time talking about semantics.

If indeed we have a concept of blocking that is you cannot get it through the normal registration process that one goes through today but one has to go through some other hurdles other than just ticking off a box on a claims notice, then we have to look at what that process is.

I disagree with Avri by the way that there may well be cases where there is remuneration involved. You know, if you go to the Red Cross Web site, they sell a whole bunch of products. There's radios and lanterns and first aid kits and things all of which bear the name Red Cross.

And I can imagine scenarios where the vendors of those products could use the name Red Cross in a part of a domain name just as they use it in their product name, you know, but with money going back to the Red Cross. It's a fundraising activity, sure. But we're not talking about those. Those are private agreements and that's a different issue.

What we're talking about here are if someone comes up and says I want to use this name, oops, you know, ISO, which is well known for all sorts of things but is also the acronym for many other organizations. And especially in tailored TLDs it may have a meaning which has nothing to do with standards; that it's a much more common use of those three letters in the context of that TLD.

And if we're going to have a blocking mechanism, which says yes there's a way to get around it, the proposed one we're looking at is just in my mind not acceptable. To say it will take weeks to go through even if the outcome is positive to say if the organization says no you can't have it, you have to then go through an arbitration mechanism, well the cheapest arbitration mechanism we know of now is the URS, which is a \$300 expense.

That's 30 years of domain registration at the typical \$10 domain cost that we're seeing today. And, you know, to say it's going to take weeks or months, you may have to hire a lawyer and there's going to be fees associated which are multiples - high multiples of the cost of the registration. It's just not a reasonable process in my mind; certainly not from my community's point of view. Thank you.

Thomas Rickert: Thanks Alan. Chuck.

Chuck Gomes: Thanks Thomas. I'm going to talk about something different than what Avri and Alan were talking about. So if Mary wants to follow up in what either one of them said, I am fine with that.

Thomas Rickert: Mary.

Mary Wong: So okay. I was just trying to digest what Alan said. But I wanted to go back to Avri's comment. And as I said on the mailing list today, I think - and I've said this before. I think the sort of procedures that we design at this stage whether they're exception procedures or something else is that the process is very closely related to what exactly the protections are that we come up with.

So for what that's worth, my view is similar to what's been expressed by Avri, David and others that essentially if you're going to have an exception procedures that looks like what we have up here on the screen, it needs to be fairly limited and very well specified.

And what makes the most sense is that it is limited to a list of reserved names however we define that. Because that's clear that's the list and we know what that is.

The other thing I wanted to bring up is just a thought that occurred to me as I was looking through this was leaving that aside and going back to some of

the discussions we had over trademark protections in the IRT and STI process is instead of an exception procedure where the burden of proof essentially is just right to the potential registrant or applicant that you have the kind of claims notice process that the community has agreed to for trademark owners.

So that if the application proceeds with the potential applicant saying yes I understand that, you know, this is close to or matches a name on the protected list but I warrant that this is not infringing, et cetera, et cetera, then a notice can also be sent to the protected organizations at which point if they believe that it is a real case for dispute then the dispute resolution procedures that we talked about right now in this document could kick in.

So I don't know if that's something that folks want to talk about is a good idea, bad idea but I just wanted to suggest it.

Thomas Rickert: Thanks. Chuck, you're next.

Chuck Gomes: Thank you Thomas. And by the way just to thrown in a prefatory comment, Mary, I agree with you that it should be limited. So I'm with you all the way on that.

Now I'd like to talk about if it's okay the general principles that are listed on the procedures here - just before the procedures, especially the first two. I'm fine with the third and fourth general principles.

But I think the first two need some qualifications. The first one says provide immediate notification to the applicant and the protected organization. That may or may not be necessary depending on implementation model.

The applicant knowing that a name is reserved could actually take care of the communication in advance and so no more communication is needed. Now

that gets probably a little bit messy and more time consuming to follow on with Alan's concerns.

But let's take the example. Let's say that an applicant for a special reserved name had trademark rights to that name even though they're not part of the protected organization. Then it could simply be a matter of checking the trademark clearinghouse, seeing if they do have a trademark and making sure that they know that they can't use the name in a way that causes confusion or something that that. That could be a checkbox or something.

So there wouldn't necessarily have to be immediate communication between the parties. Again, there may be depending a need for immediate communication. Certainly if it is, I believe it should be immediate but there are ways this could be implemented that wouldn't require that.

On the second bullet, provide a channel of communication between the applicant and the protected organization. Again that may or may not be necessary to have that.

If it's a really straightforward procedure like for example they just need to show that they have trademark rights for the name, which is one way this thing could go, then there needs to be no communication with the appliance except in certain jurisdictions.

And that might be - have to be handled by the registrar involved because if you go back to the General Counsel's response to us, they noted in some cases for where there were protections for some of the organizations studied whether it be IOC, Red Cross or IGOs there are several of them referred to kind of their own exception process.

There was an approval required sometime by the protected organization. So that's a caveat to what I'm saying here. That's all I've got. Thanks.

Thomas Rickert: Thanks Chuck. You're very helpful. And I'd like us to continue the conversation on these points and also Mary's proposal on the mailing list. Do you have any further comments on the document or on the exception procedure? I guess that fundamental positions that are represented in the - ah, I see the IOC's hand up. Please.

David Heasley: Thomas, this is David Heasley speaking. We believe that the exception procedure flows from the qualification criteria that we've been discussing and gives us perspective on that.

Essentially Mary Wong has already provided the rationale behind the qualification criteria. And we think that the model alpha bravo, which we combined together, provides sufficient justification for the kind of protection we're talking about because it comprehends the idea that the organization has shown that its primary mission is of such importance to the public interest that it receives multilateral or multinational protection and some form of special protection for its name can be justified.

And beyond that your four amalgamations show how each of the organizations, not just the IOC but also the Red Cross and potentially others, satisfy those criteria.

The bottom line from that I think is that once they've shown that some form of special protection for the name is justified, that should take the form of a presumptive preventive protection because ordinary RPMs simply wouldn't work. They'd be outstripped or too expensive for example.

And if you look at it from that perspective, then we understand that the exemption procedure presupposes a presumptive preventive protection of the sort we've been talking about.

So when we look at the exemption procedure, we can see that the goal there is when somebody comes along and claims a legitimate interest, they should be able to be heard and have that considered as soon as possible.

And if we get to the general principles, I think Chuck's comments are quite accurate. It is possible for an applicant to contact the organization in advance and thereby open a channel of communication early on. And we can certainly tweak those to provide for that.

If the applicant doesn't do that, then both the applicant and the organization should be notified quickly if there's a conditional refusal based on the protected name. And there should be some expeditious way of resolving this claim of legitimate right to use it.

The fastest way we could think of is to come up with this declaration of legitimate use to which the protected organization could or might not object. And if there's no objection, then it simply goes ahead.

That's not the same as a licensing regime because as you pointed out correctly Thomas, the applicant in that case would be a legitimate eligible party and would be in the group entitled to use the name. The organization would have admitted that by not objecting.

The next step after that if there is an objection from the organization is what kind of an examination procedure can we come up with that would be quick and inexpensive exactly the way Alan has indicated. So I think that's sort of the next step is what people could suggest with respect to Part 3, the examination procedure. Those are my comments.

Thomas Rickert: Thanks very much. I guess that's very helpful. And it's sort of sets the scene nicely for my comment. That is that whoever thinks that, you know, he or she should not fundamentally oppose again the exemption process should help

refine it so that - or at least come up with proposals to give the group a chance of refining it.

Let me note again that we haven't made much progress with respect to the protections mechanisms and the criteria or the hurdles to begin to get access to them during the last couple of calls. I've encouraged the group multiple times to specify the conditions that they want to attach to the protection mechanisms that we're discussing.

I think we can't do any better than work with what we have. So if you want to make yourself heard and if there are things that you think can be added to the proposals that would help you to say yes to them, then please do share that with us.

I'm (comment) of the fact that we have parked the question of qualification criteria because the group or at least a big part of the group felt that they should see more of a holistic picture of what the set of recommendations might look like and also look at the protections for software protection level for names versus acronyms and then maybe attach this and different qualification criteria to these individual smaller pieces.

But I think that the time has come for you to actually come up with those suggestions. And I think we need to flesh out more what this exception process could look like. I think we also need to put the flesh to the bones in terms of what qualification criteria if any need to be attached to what protection mechanisms for the top versus second level and for names or acronyms.

It's six minutes to the hour and, you know, I just wanted to make this kind of comment as usual to encourage your active participation. I know that some of you have continued to constantly contribute to this process, which is very much appreciated. But I think that we will need to put something into the document so that we have something to say yes or not to.

Now and with that, I'd like to move to the next agenda item and that is the discussion of the comments for the face-to-face meeting. And first of all I guess (refine) the (absolution) report in terms of time and date, right.

Brian Peck: Yes. It has been confirmed for Monday the 8th and the session will be - we'd be able to move it in the afternoon so it no longer conflicts with the new gTLD update sessions. So it'll be from 1600 to 1730 local time on Monday the 8th. And I just checked. It is up on the new revised schedule that's available on the, you know, on the ICANN Web site so people can take a look at the schedule there. And it's reflected there.

The other thing very quickly just let you know, I did also confirm with Sam to the extent that her schedule is available, she would be happy to sit in, you know, for at least part of the session as well in Beijing to facilitate further discussions or questions that might arise.

So again, she, you know, her schedule is in - say yes but to the extent that she's available she'd be happy to offer her ability - availability to - if the working group would like her to be present for that time.

Thomas Rickert: Thanks. That's much appreciated. So we now have the date and the time, which is great in terms of format. Have you been able to give any thought to the question of who shall be present (in the chair) of discussing further? Shall we invite other external partners to the meeting? Any thoughts or suggestions on that? Chuck, please.

Chuck Gomes: Thanks Thomas. You know, it's pretty standard practice in ICANN public meetings to make them open to anybody who wants to attend. Now it's okay to give participants in the working group some priority. But it's also a good time to get input from those who haven't participated. So I think that's a good precedent to continue.

Thomas Rickert: Thanks Chuck. And I should clarify that I was not suggesting that it should be a closed meeting. The question should rather be - are we waiting for people to come in or shall we specifically invite certain parts of the community to come to the meeting to better understand the process. But please do give that some further thought.

I had proposed that maybe we should reach out to the GAC and in terms of early engagement encourage GAC representatives to come and see what we're discussing so that they hopefully get a better understanding of why it takes us so long to address and respond to a question that in the eyes of some might seem to be a very typical answer. But please do provide some feedback on that on the list.

The next call is going to be in a week's time. And I hope that we're going to be able to make substantial progress with the document that we have in front of us. The week afterwards, in two weeks on the 3rd of April, I will have difficulty to chair the meeting because I will be on a plane at that time.

So either the group wishes to do some homework in that week and then continue our conversation onsite in Beijing on Monday or we would need to have a volunteer to replace me as Chair. So anybody would like to volunteer to chair so that we can continue our discussion. Alan, please.

Alan Greenberg: Yeah. We're talking about the Wednesday just preceding the Beijing meeting. Correct?

Thomas Rickert: That is correct.

Alan Greenberg: Yeah. I think half of the people or almost all these people are either going to be on planes or in their last day in work and frantically trying to get things completed before disappearing halfway around the world. I think it's totally unreasonable to try to hold a meeting that week. I for one will be on the...

Thomas Rickert: Okay. I...

Alan Greenberg: ...I'll be on an airplane also for the record. But...

Thomas Rickert: And I see some comments in the chat that others are flying as well. So let's then consider the meeting on the 3rd canceled but we have to find ways to keep up the energy and get some work done in the week between the 3rd and our meeting onsite.

And with this, I'd like to ask you whether you have any urgent remarks to make. Otherwise I would like to close this meeting. Thank you Avri (unintelligible) and keep up what energy. I guess you should see my comment more as an encouragement rather than an observation.

So thanks everybody for your participation today. Have an excellent day and remaining weekend. I'm looking forward to talking to you next week Wednesday and also reading on the (menu). Thanks. Bye bye.

Man: Thank you.

Mary Wong: Thanks for another great meeting Thomas and everyone. Bye.

END