

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 12 June 2013 at 16:00 UTC**

Note: The following is the output of transcribing from an audio recording of the IGO-INGO Protections Policy Development Process (PDP) Working Group Teleconference on Wednesday 12 June 2013 at 16:00 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-20130612-en.mp3>

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

Attendees:

Jim Bikoff – IPC/IOC
Avri Doria – NCSG
Chuck Gomes – RySG
Alan Greenberg – ALAC
Catherine Gribbin – Red Cross
Stephane Hankins – Red Cross Red Crescent
Wolfgang Kleinwächter – NCSG
David Maher – RySG
Kiran Malancharuvil – IPC
Judd Lauter – IOC/IOC
Osvaldo Novoa – ISPCP
Christopher Rassi - Red Cross
Thomas Rickert – NCA –Working group chair
Greg Shatan – IPC
Claudia MacMaster Tamarit – ISO
David Roache-Turner - WIPO
Mary Wong - NCUC
Mason Cole - GNSO Council vice chair – RrSG

Apologies:

Guilaine Fournet - IEC

ICANN Staff:

Berry Cobb
Brian Peck
Erika Randall
Julia Charvolen

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

Julia Charvolen: Thank you. Good morning, good afternoon, good evening everyone. Welcome to the IGO INGO PDP Working Group call on Wednesday, 12th of June 2013.

On the call today we have Chuck Gomes, Wolfgang Kleinwachter, David Maher, Kiran Malancharuvil, Judd Lauter, Osvaldo Novoa, Christopher Rassi, Thomas Rickert, Greg Shatan, Claudia McMaster Tamarit and Mason Cole.

We have apologies from Guilaine Fournet.

And from staff we have Berry Cobb, Brian Peck, Erika Randall and myself Julia Charvolen.

May I remind all participants to please state your name please when speaking for transcription purposes. Thank you very much and over to you Thomas.

Thomas Rickert: Thank you very much Julia and welcome everybody to this Working Group call. My name is Thomas Rickert and I'm chairing this Working Group.

And before we start our discussion on hopefully applying finishing touches to the draft report that we have in front of us I would like to go on the record saying again that Berry and Brian in particular have done a tremendous job in preparing this document and even more for having managed multiple comments that all of you thankfully made and they have actually managed to (amalgamate) those comments, reflect all of them or most of them.

There are only a few left in an updated version of the document. And we will hopefully be able to discuss the remaining comments and suggestions during today's call and then have a document tablet ready for publication.

I would like to say also that in terms of procedure what we will do is we will hopefully achieve the status of the document that everybody is trying to publish.

At the end of our call or at the end of our work on that I will ask you whether you want to take another look at the document prior to its publication or whether you're happy with us i.e., me and well primarily (unintelligible) Brian and myself applying the finishing touches and then publishing the document.

I should alert you of the fact that even if we agree that the document should be published straight away we will take a little detour because that's usual practice with ICANN that I'm going to mention it.

Nonetheless for transparency reasons it's going to be quickly reviewed by legal our general counsel to ensure that no statements in there that would open ICANN to liability.

I hope that I haven't misrepresented this otherwise I would like Brian or Berry to jump in and clarify.

Also I would like to bring to your attention that most of you will have heard or read that already that the ICANN board or I should say the new gTLD committee has responded to the GAC advice on IOC and RCRC names.

And you will have read that. I will nonetheless quickly read out those couple of lines to you to bring everybody up to full speed on that.

And I'm - the reason why I'm mentioning this to you today is because Bruce Tonkin has sent a note to the GNSO Council list clarifying a couple of points on that. And I have reverted to him promising that I would bring this to our group's attention.

Now just to refresh your memory the GAC Advice was - the GAC advises the ICANN board to amend the provisions in the new gTLD Registry agreement pertaining to the IOC RCRC names to confirm that the protections will be made permanent prior to the delegation of any new GTLDs.

The board response is the new gTLD program committee accept the GAC advice. The proposed final version of the registry agreement posted for public comment on 29th of April 2013 includes protection for an indefinite duration for IOC RCRC names.

Specification 5 of this version of the registry agreement includes a list of names and brackets provided by the IOC and RCRC movement. That shall be withheld from registration or allocated to registry operator at the second level within the TLD.

The protection was added percent to a new gTLD program committee resolution to maintain these protections until such time as policy is adopted that may require further action 204.11.26NGO3 for those who want to read that in depth.

The resolution recognizes the - recognized the GNSO initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the TDP and the board adopts it then the NGPCs resolution protecting IOC RCRC names will remain in place.

Should the GNSO submit any recommendations on this topic the NGPC will confer with the GAC prior to taking any action or any such recommendations - prior to taking action on any such recommendations.

And then (Bruce) added I think the key message here is that is - sorry. I think the key message here is that it is possible for the GNSO two adopt a policy that offers an alternative to a particular interpretation of the new gLTD program Including the IOC RCRC names and the trademark clearinghouse.

The policy recommendation will then go through the normal community process where advisory committees can provide advice to the board prior to accepting the recommendation. And the board can refer such advice to the GNSO for review.

The members of the GNSO community feel strongly that a particular interpretation is wrong or could be significantly improved then the GNSO Council should consider how they efficiently conduct policy process to provide formal policy recommendations in that area.

I guess that's important for us to know as we move along with our work. And with that I would like to conclude my introductory remarks and move directly into the document.

And I would like Berry who is the master of controlling the document to move the document to the first comment which is a little bit hard to read so I will need to go through another window to another window on my machine.

Berry Cobb: Hi Thomas. This is Berry. So we're starting off on Page 10 the section for top level protection. We're going to go with an easy one here I believe.

Greg Sutton had stated basically should this language be stated in past tense? And if nobody disagrees with that then we'll accept those and move on.

But the changes are just verb changes from the first paragraph into the second paragraph with respect to top level protections.

Thomas Rickert: Are there any objections to make that change?

Okay if not let's move to the next item.

Berry Cobb: Okay. The next item is on Page 11. There's a statement in here I think this is a conclusion for top level protections. It should be noted that IGO names and acronyms are not word marks as such.

And Greg had a comment that what does this mean and disagrees with the statement. So it seems like it would be a good topic for the Working Group to discuss.

Thomas Rickert: So Greg would you like to kick off our discussion on that by giving us some more background on that?

Greg Shatan: Sure. I mean my thinking was twofold. You know, first they can function as service marks as word marks.

Secondly that under Article 6 (ter) they're, you know, considered to be I think, you know, the functional equivalent of word marks and are treated as such in member countries of the Paris convention.

And so I was really not quite sure where this was coming from, you know, the question is whether they were registrations or what, you know, what the intent, you know, or the meaning of the statement was. It was just it stuck out to me as I, you know, gave this a kind of final careful read.

Thomas Rickert: Well let me take - or let me try to provide a little bit of background. I guess that the reason for us having included this was that it is not entirely clear or defined in the Applicant Guidebook how broad the protection and what exact marks enjoy that protection.

And I guess that, you know, maybe you have more information on what exact names would be protected but I guess that, you know, it was the intention to highlight that, you know, there is not necessary a protection for every designation.

Greg Shatan: Well I think, you know, this is coming right after the statement that a holder of a word mark is specifically protected by statute or treaty can avail itself of the PDPRP.

And I think this is also the language that's in the trademark clearinghouse as an alternative avenue into the TMCH other than having a national or regional type trademark registration.

So it seems like this is setting up perhaps an argument that IGOs can't avail themselves of the PDPRP even if they are, you know, if they are - even if they're created by treaty and their name is part of the treaty.

And if they're also protected under six (ter). It just seems to be, you know, where it's placed here not necessarily relevant unless this is, you know, a legal conclusion that we're willing to endorse.

And it's stated as a flack conclusion and I just don't see any support for it. And I don't see, you know, what, you know, either kind of what it's doing here or if it, you know, is here how we came to that conclusion.

And certainly IGO names, you know, in some cases they are, you know, registered as trademarks and in other cases they're certainly, you know, functioning as such. So it just this is I can't see any reason why this is right.

Thomas Rickert: I will a clarification such as it should be noted that IGO names and acronyms are not necessarily protected at work - were as word marks, what that clarify your or address your concern?

Greg Shatan: Well again I don't see the basis for that. I mean if some company, you know, some IGOs may seek protection for registration.

I haven't heard of one being turned down because it's an IGO. And I would, you know, obviously, you know, there's some countries where if you don't

have a registration you don't have a mark under that, you know, national, you know, system. But, you know, there are plenty of others where that is not the case.

So, you know, and I don't know what protected as a word mark means, you know, if we're not talking about registration or Article 6 (ter) what are we talking about? And if we are than I think it's wrong.

Thomas Rickert: Well I guess that the - that this is just to highlight that, you know, that when you look at the trademark clearinghouse eligibility criteria that, you know, the first one is a registered mark and you have the common law marks. And then you have the protect - the designations protected by statutory treaty.

And I guess that we wanted to highlight that these don't necessarily fall under the first category. They might fall under the third i.e., protection by statutory treaty but they don't necessarily fall out under the first.

Greg Shatan: The first being what holding a national registration? I mean that's just a question of whether an IGO has chosen to avail itself of such protection or not.

And many haven't because they believe I think that six (ter), you know, provides them with the functional equivalent of that without the need to have a registration program.

Thomas Rickert: Yes (so) word marks are in place that could go through the first alternative. But, you know, after having discussed the reasons for, you know, for your concerns is there any alternative language that you could come up with to satisfy your address your concern?

Greg Shatan: I would strike the sentence.

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

Thomas Rickert: Brian please go ahead.

Brian Peck: Yes sorry. Just to let you know the genesis of this statement it was indeed some comments or edits provided by David Roache-Turner who I l'm not sure if he's on the call or not. I don't believe he is.

So I think, you know, an alternative would be as in the view of, you know, IGOs you could include his statement.

I think part of the question or part of the debate if you will is indeed what is the concept of, you know, word marks and whether it could be interpreted broadly or, you know, very limited in scope in terms of a registered trademark. And I think that's part of the reason why we have this kind of discussion over that.

So perhaps if we can clarify that in the view of - it should be noted in the view of IGOs their names and acronyms are not word marks as such. Would that alleviate Greg your concern?

Greg Shatan: I wish we had David on the call...

Brian Peck: I do too right.

Greg Shatan: ...because certainly there are a number of IGOs that have , you know, in fact registered their marks.

And furthermore if we take this view and then that would mean that IGOs unless they have trademark registration -- and one wonders how they could get trademark registrations if their marks aren't word marks -- it seems perverse -- then that would mean that they couldn't avail themselves of the statute or treaty entrance into the trademark clearinghouse which I think would be a shock to number of IGOs, maybe not WIPO but...

Brian Peck: And I just saw that David is trying to enter into the chat, that Adobe Connect.
So if perhaps if he's hopefully online we can...

Greg Shatan: Yes he's - his name has appeared here so...

Thomas Rickert: Okay Greg but that...

((Crosstalk))

David Roache-Turner: My apologies for the lateness I just join the call indeed.

Thomas Rickert: Oh David you're on.

Brian Peck: David great.

((Crosstalk))

Man: Why don't we let David speak first before I do. Mine may be irrelevant.

Thomas Rickert: Yes, yes. I wasn't aware that he was joining so quickly. So David we're
discussing comment Number 6 by Greg.

And he asks about the - asks for the reason for the sentence that should be
noted that IGO names and acronyms are not word marks as such.

And this was something that we took from your - from one of your earlier
interventions so maybe you could elaborate on that a little bit?

David Roache-Turner: Yes certainly. Well it's simply to make the point that IGO names
and acronyms are indeed not word marks. They're protected, well at least in
our view they're protected identifiers by virtue of the fact that they are
covered under treaty.

And there's a process for the identification of names and acronyms that is provided for example under the Paris convention which we've discussed a number of occasions. And that provides a mechanism for IGOs to identify names and acronyms under that treaty.

And identified names and acronyms under that treaty then communicated to national signatories under the Paris convention who then have obligations as a result of that to protect those names and acronyms. And there's a variety of ways in which that's done.

But the net effect of that protection is that the identifiers themselves are not word marks in the sense that a trademark would be if it would be registered as a word mark.

The right that is obtained by the IGO is effect- is in effect a preclusive right in that it precludes the registration of the protected name or acronym as a trademark in certain circumstances. So it's a negative right I suppose in that sense.

So I think that there is a degree of uncertainty about whether or not IGO names and acronyms would or could or the circumstances in which they would be able to be included in the trademark clearinghouse for that reason and also whether IGOs would be able to access the URS for that reason as well because both of those mechanisms includes a requirement for word marks.

And for the reasons just explained it's not clear at least not to me that IGO names and acronyms would be word marks which is why I think it's useful to include that clarification here.

We shouldn't assume that either access to either mechanism is covered on that basis. So that's the purpose of this suggested comment.

Thomas Rickert: Thinks very much David. Let me move to (Alan) and then get back to Greg.

Alan Greenberg: Thank you. May I suggest that we are not going to settle differences between intellectual property lawyers on this call and that we use words here if some people feel it's not applicable to all others say it's important to put in then use weasel words saying it should be noted that IGO names and acronyms may or may not be considered word marks depending on the particular circumstances?

Thomas Rickert: That's helpful. Thank you very much (Alan). But let me ask Greg first where David's explanations have clarified this to a certain extent?

Greg Shatan: Well I understand the view. I'm not sure that it's a - an absolute legal conclusion. And I was actually going to suggest language very much like (Alan) suggested.

Thomas Rickert: Okay.

Greg Shatan: Just leaving it open that they may - may or may or may not be word marks and, you know, a question of whether, you know, a six (ter) listing, you know, makes it a word mark or such, you know, is and whether - I think there's a number of open issues here.

And I agree with David that certainly by no means settled and it may end up precluding TMCH participation if indeed that was, you know, the conclusion that was reached that it was not equivalent.

So I think the kind of making it an issue but an open one is I think the way to go.

Thomas Rickert: Okay. Now if you look at the left-hand side of this - of your screen you'll find a proposed language in the notes section.

And unless I hear otherwise I would suggest that we include that wording in the report which we - it should be noted that the IGO names and acronyms may or may not be considered word marked as such.

Okay hearing no objection to that I'd like to move to the next comment. Berry if you could?

Berry Cobb: This is Berry. So continuing on on Page 12 this is also with regards to Greg's comments listed in Paragraphs 2 and 3.

Jim Bikoff: Thomas?

Thomas Rickert: (Jim)?

Jim Bikoff: Yes. I just want to say on Greg's comments since my name is mentioned in there that in our comment we were trying to point out that the Paris convention provides a process rather than automatic protection.

But in view of the fact that the IGO protection for names has been accepted by GAC and others I - we don't have any problem with that.

Thomas Rickert: Thanks for this. Okay are there any comments on the comment made by Greg on this section? (Alan) I'm not sure whether this is an old hand or a new hand.

Alan Greenberg: Sorry it's an old hand. As soon as I get back to my computer I'll turn it off.

Thomas Rickert: Okay. Karen please.

Kiran Malancharuvil: Hi. I just had a quick comment and I'm sorry I didn't catch us earlier but referring to it as word marks instead of words is unnecessary because some

of the statutes that we referred to in relation to IOC and Red Cross in particular that I'm recalling protect them not as marks but as words.

And so I wonder how this might affect those statutes on that reading. Thanks.

Thomas Rickert: So your suggestion is just to make sure I understood...

Kiran Malancharuvil: To take out marks and just say words that are specifically protected by statute or treaty.

Thomas Rickert: Okay good.

Kiran Malancharuvil: Because in the event that they're not protected as marks, word marks then it would be helpful to remove the word marks in my opinion. Thank you.

Jim Bikoff: Thomas we would agree with that.

Thomas Rickert: Thanks (Karen) and (Jim). I have Greg next.

Greg Shatan: Well if we're talking about the trademark clearinghouse on the use of the word word marks rather than marks I think this gets back to the issue we were discussing before and I'm kind of, you know, frantically trying to find the, you know, trademark clearinghouse eligibility language. But I think it has to be a mark and not just a word.

Kiran Malancharuvil: Greg this is (Kiran). Can I respond to that? If...

Greg Shatan: Go ahead.

Kiran Malancharuvil: That's not true. It you can be eligible for the trademark clearinghouse without it being a registered mark if the word is protected by statute or treaty. So the word mark is superfluous here. (Sorry).

Thomas Rickert: Okay. So the proposed language is to leave out the word marks and to add the sentence as inserted by Greg.

Greg Shatan: Well I'm looking at the Web site for the trademark clearinghouse and it refers to marks protected by statute or treaty.

Kiran Malancharuvil: I guarantee you that it has been clarified that words protected by treaty and statute that are not necessarily a registered trademark.

((Crosstalk))

Greg Shatan: Well obviously they're not - it doesn't have to be a registered trademark. We understand that. Otherwise it would be superfluous to have the second prong.

Kiran Malancharuvil: Well referring to it as a mark though is unnecessary if the word is protected in statutory treaty. And those words can be entered into the trademark clearinghouse using the statute and treaty. That doesn't necessarily require it to be marked.

Thomas Rickert: Okay. Getting back to (Alan)'s suggestion to find words to communicate the issue can we talk about designations instead of using words or word marks?

Greg Shatan: I mean if there is something the clearinghouse has put out that's clarified this the guideline document on their system for only the marks protected by statute or treaty. You keep using the word mark over and over again.

So I don't think...

Thomas Rickert: Okay.

((Crosstalk))

Greg Shatan: ...(unintelligible) correct.

Thomas Rickert: Nonetheless can we settle this discussion by using the word designations instead of word or word mark?

Jim Bikoff: I think designation works Thomas.

Thomas Rickert: Thanks (Jim). Any opposition to that?

Greg Shatan: I just don't know the basis for that because that's just not what the trademark clearinghouse guidelines say.

And that indeed goes back to the issue that David was pointing out earlier that if these are not marks they're clearly words. We know that. But if they're not marks then they may not be eligible for the TMCH even if they are protected by statute or treaty.

Alan Greenberg: Thomas it's (Alan). Can I get in?

Thomas Rickert: Please.

Alan Greenberg: Yes we're not creating rights hereby stating what we think the trademark clearinghouse selects. By using a more general term such as designations we're not conferring any rights.

We're simply saying by designation meaning whatever it is that the trademark clearinghouse allows in.

You know, we're not granting rights here. We're not changing the trademark clearinghouse by putting something in a report. We're just trying to be as general as possible without having to delve into the exact definitions that the trademark clearinghouse is or is not using right now. Thank you.

Thomas Rickert: Thank you for that (Alan). I mean certainly it might be the easiest way to just copy the exact words of trademark clearinghouse.

And looking at the table of contents of the trademark clearinghouse guidelines at least in the - they're having (unintelligible) marks protected by statutory treaty.

So but I would suggest that we don't even take the language from the trademark clearinghouse guidelines because those guidelines have been prepared by Deloitte and IBM possibly.

But we take the wording from the latest version of the applicant guidebook and copy that into this document.

And I guess if we have that then at least there should be - nobody should be misguided by us construing things in this direction.

And with that we should move to the...

Chuck Gomes: Thomas this is Chuck. Sorry, I'm having connectivity problems so I can't raise my hand at the moment. The...

Thomas Rickert: Chuck please go ahead.

Chuck Gomes: Another way of dealing with this is to put a footnote and noting that we'll investigate the issue with regard to the proper wording and noting that there is some disagreement in the Working Group in terms of the use of the words or word marks et cetera.

I don't know if that's helpful or not but I don't think it's worth spending too much time on this. But that would be another way of noting the issue.

I don't think this has to be - that could be clarified later. And this thing could still go out for public comment without really losing anything.

Thomas Rickert: But would you be happy with just copying the exact wording from applicant guidebook?

Chuck Gomes: Well I don't think it's me that you need to make happy. We have, you know, maybe is Greg happy with that? He seems to be the one that's still concerned about this. So if he's happy with that I am.

Greg Shatan: I am happy with that. I think anytime we go to primary sources that avoids, you know, construing. So works for me.

Thomas Rickert: So let's try to make more people happy during this call and move to the next item. And that is the added sentence word marks have - that have successfully been protected in litigation or these (unintelligible) proceedings are also legible.

I would suggest that back in the light of trying to take language from the source we will ensure that this is exactly what the Applicant Guidebook says and if not we would change that to mean exactly the wording of the AGB.

And unless I hear from anybody if you - anybody is you - we can then move to the next comment which is comment number nine. And that is what's related to the sentence in the case of...

Berry Cobb: Thomas. This is Berry, hold on. So that - so and clear on Page 12 both comments had been addressed and then to strike the suggested sentence given the action that we have on the previous page?

Thomas Rickert: Well with respect to Comment Number 7 and 8 we would need to double check with the wording of the Applicant Guidebook and make sure that we use exactly the wording that's used in there.

Berry Cobb: Okay and...

Thomas Rickert: (Unintelligible) for comments.

Berry Cobb: And then and so we've addressed Comment Number 9 as well then?

Thomas Rickert: Well just this is the comment that I'm...

Berry Cobb: They're all the same.

Thomas Rickert: ...that I just started to read out. The sentence reads in the case of IGOs and INGAs which are in general not trademark holders any such benefits of the trade mark clearinghouse would typically not apply. That is certainly not language in the - from applicant guidebook.

Greg commented not true to the extent they specifically protected by statute or treaty. I guess that the statement if I may construe it it is true because it speaks of in general and it does not per say that state that is no such protection.

Greg would you nonetheless like to suggest alternative language to clarify or...

Greg Shatan: Yes. What I would suggest is in the second clause instead of saying which are in general not mark holders to say to the extent they are not considered mark holders.

Thomas Rickert: But if they applied for a mark in a jurisdiction they are mark holders. And then it wouldn't be a question of considering them to be mark holders.

Greg Shatan: But I think we're also considering marks protected by statute or treaty even if not by registration being the second prong under the trademark clearinghouse.

It's another variation of the issue, you know, discussed before that if these are not marks at all and if it's marks and not designations that are eligible for the TMCH under the statute or treaty prong then even if they are protected by statute or treaty they're not getting into the trademark clearinghouse.

If they are word marks or if somehow designations or words protected by statute or treaty is the filter then they do get into the trademark clearinghouse so in which case the sentence is wrong.

So there's kind of, you know, two issues which are probably not settled. One is whether or - and maybe three issues. One is whether IGO and INGO names are word marks for purposes at least of the statute or treaty issue whether if they're not word marks that means they're ineligible for the trademark clearinghouse or whether there's some broader definition of designations or words that might be used by the trademark clearinghouse.

And third the issue of whether it's protected by statute or treaty doesn't apply to fixed (ter) of the Paris convention because it's a process and not a protection if that's, you know, if that analysis were to hold.

Separately you got, you know, treaties that have established the names so if, you know, the establishing treaty of an IGO were to establish the name that presumably would be a treaty, you know, besides the six (ter) issue and would solve that issue.

But that still leaves open of whether it's a word mark or not and then whether word marks are the only kinds of words or designations that can be protected by statute or treaty and thus get into the trademark clearinghouse.

Thomas Rickert: Okay. Greg I get that the words in general have been intentionally included to ensure not to make a phrase that's a catch all for all scenarios.

Because as I said earlier you - IGOs might have applied for trademarks which would make them ineligible for the TMCH under the first alternative or they might enjoy protection by statute or treaty which might allow them in under the third alternative.

I guess that the purpose of the sentence is not to cover each and every scenario but just to explain that in certain scenarios they might be left without the possibility for entering into the TMCH.

Berry Cobb: I guess I just think the sentence is too conclusive in that regard. I think it's say, you know, to the extent not trademark, not mark holders. Any benefits would not apply or typically not apply if they're not mark holders.

Jim Bikoff: Thomas?

Thomas Rickert: (Jim). Please go ahead.

Jim Bikoff: Did this particular wording come from the IGOs or how did it come into the paper?

Thomas Rickert: Berry and Brian can you enlighten us on...

Brian Peck: I just yes this is Brian from ICANN staff. This was an edit provided by the IGOs.

Thomas Rickert: From my personal liking that the sentence doesn't seem to be too conclusive. It still leaves, you know, - it's just (to say) that the organizations might be left without the possibility of entering into the trademark clearinghouse.

But let's try to find the set of words that would satisfy everybody. Can we state there are cases where IGOs and INGOs do not have the possibility of achieving an entry in the trademark clearinghouse?

Greg Shatan: I just don't think we know that's the case yet. It really depends on what protected by statute or treaty means and what mark means in the trademark clearinghouse filter.

Thomas Rickert: Okay. Chuck?

Chuck Gomes: Just a suggestion Thomas. I'm not a trademark journey thankfully. But they - would it work to just say replace would typically not apply with might not apply? That's less conclusive I think.

Thomas Rickert: Greg?

Greg Shatan: Well I think if they are not mark holders and then and if we're right that only marks get into the trademark clearinghouse, you know, marks don't have to be registered but marks protected by statute or treaty then the last part of the statement is true.

I mean but I think we may still be better off with a bunch of mays rather than would so...

Thomas Rickert: Okay.

Greg Shatan: ...just maybe say may not apply, the benefits may not apply. So to the extent not considered mark holders any such benefits to the trademark clearinghouse may not apply.

Thomas Rickert: I would be happy with that.

Greg Shatan: Frankly I'd be fascinated to know what the trademark clearinghouse thinks they're going to do with all of this.

That's probably outside the scope of this Working Group but it might be an interesting inquiry to make. And it may not be outside our scope.

Thomas Rickert: Okay. If we say may not apply is that something that everybody could live with or actually better say that makes everybody happy? I guess that's the purpose of this call to make everybody happy?

Okay hearing no objections we should say may not apply. And I'm sure the Berry and Brian have taken note of that and that would allow us to go to the next item which is Comment Number 10.

Alan Greenberg: Yes this is (Alan). On Page 13 the original statement is however views on the degree of harm suffered by organizations varied in the Working Group deliberations essentially two views emerged. I won't restate the two views and Greg had posted a comment that these aren't necessarily opposites.

Thomas Rickert: So the first view is to require each organization seeking protections to provide evidence of harm against it. View Number 2 harm does exist and (unintelligible) consume to mitigate the harm that (unintelligible) away from serving the public global interests.

I would agree that these don't necessarily oppose. I guess the question is rather how we smoothen the language. And what we could say is that the views presented to the group included the following two and then present those two.

Greg?

Greg Shatan: Well I think that the issue is that, you know, in either - if either view could be that - could include the idea of the resources consumed to mitigate the harm divert funds away from serving the global public interest.

I don't - so I think the question is whether the views relate to whether harm should be presumed or proof or, you know, or required to be proven.

The issue of the resources is, you know, could be as much part of view one, once the harm is evidence of harm is provided.

Thomas Rickert: Okay.

Greg Shatan: So I'm not sure why it's only part of view two.

Thomas Rickert: Then we could say that the second - we could present the second view as harm does exist and does not need to be proven beyond the information already offered to the Working Group.

While you think about it let me move to Chuck.

Chuck Gomes: Well I'm just trying to help again. What if we introduce the two views this way? Essentially two views that are not mutually exclusive are merged in the analysis of this issue.

That certainly deals with the issue that they're not necessarily competing views. I don't know if that covers everything that Greg's concerned about though.

Thomas Rickert: While as far as I'm concerned Greg wanted to highlight the - indeed lengthy discussions that we had whether further proof of harm or evidence of harm should be provided.

And we basically had three views with respect to that the first of which is that evidence of harm should be provided.

The second view was that evidence of harm was sufficiently provided or sufficient evidence of harm was provided to the Working Group.

When the third view was that protections are granted by the legal basis that some Working Group participants based their request for protection on and that this protection by treaty or other legal basis and does not require further evidencing of harm.

So we could, you know, if you wanted to include all three in addition to the now second view which would then be the fourth view and have the extra remark that you made that these are not mutually exclusive.

And if my memory doesn't change those are actually the various views that have been presented during our deliberations.

Greg, not sure whether this is an old hand or a new hand?

Greg Shatan: Well I'm wondering whether we should just say in either case resources consumed to mitigate the harm divert funds away from serving the global public interest.

Thomas Rickert: And then present the three variations that I just outlined?

Greg Shatan: I think so yes, so not quite follow - trying to get my way through those three variations. But yes I think so. I think the issue of how you get to harm and what the harm is are really two separate related issues.

Thomas Rickert: Okay thank you. We have a proposal from (Mary) in the chat. Although the purpose of requiring harm she's would suggest goes toward the fact that (resources) otherwise earmarked for an organization's public interest mission

are diverted towards dealing with such harms the word divergent used within the Working Group asks you whether such harm needed to be first proved or if it could be presumed for each organization for which protection is given.

That sounds very smooth and nice to me. So any comments on (Mary)'s suggested wording which I think encompasses everything that we've just discussed?

So (Mary)'s language works for Greg. And on top of that I haven't heard or read any opposition to that. So let's please include (Mary)'s suggested wording and put that where the two bullet points with the two views were.

So that would allow us Berry to move to the next item and thank to Avri for indicating the support with the suggestion.

I'm now looking at Comment Number 12 on Page 15 where Greg says that last sentence is unclear which reads while being different from each other in many respects the IOC and RCRC together may be differentiated from other INGOs on the basis of the unique legal protection they are afforded under the framework of international treaties and national laws in multiple jurisdictions.

But IGOs have been differentiated from INGOs on the basis of the types of lead protections they are afforded. So Greg maybe you can explain a little bit why you think this is unclear?

Greg Shatan: Really looking more at the second clause. I'm not wading back into the IOC RCRC issue but rather the IGO INGO differentiation is really - I mean I don't know if we need to have more explanation than this but at least for me I was kind of having, you know, struggling with the idea that IGOs necessarily have been differentiated from INGOs.

I guess if we're talking all about the treaties by which they're established and article 6 (ter) maybe that's sufficient and maybe, you know, this is clear

enough for this purpose but, you know, if that's what's intended. Otherwise, you know, I'm not sure where the conclusion comes from.

Thomas Rickert: I guess it's just to reflect what we've been discussing. And I guess that we've been very clear in our discussions that we do want to have or that we do see different media basis for the four categories of organizations.

Claudia I see your hand up.

Man: Well I think...

Claudia McMaster Tamarit: Hi Thomas. This is Claudia. May I suggest that we delete the word together? I agree that with Greg that it's a bit unclear.

And for me the word together is really at the heart of the problem. It gives the impression and I think that we'll all agree that we're treating all four organizations differently and we don't need to reopen the reasons why. They all have unique legal protections and unique situations.

I think that the word together gives it the impression that we're looking at the IOC and RCRC as having similar or identical legal and actually I should say identical legal protections.

And I think that's not the case and something that we're moving away from. So I noticed that the word together has been added.

I don't know from where but I think that that word in particular can give some confusion. Otherwise I think it's the sentence is a bit long yes but important that people understand okay there are different (phrases) in legal protection and different frameworks for all four of these organizations slashed categories.

Thomas Rickert: Thanks Claudia. So the suggestion is to delete the word together. That was my impression though that Greg had more difficulties with the second half of this statement. But let's hear from Avri.

Avri Doria: Hi, Avri speaking. I actually think getting rid of the word together is probably a good idea. My recommendation is for the sentence as a whole though.

I think that it would be better as two sentences. And if the semicolon after jurisdictions was replaced with a period and the word while was eliminated I think we'd have two sentences each of which was understandable.

The while made the second clause seem like well why is that while the first clause? But, you know, so I would recommend that. Thanks.

Thomas Rickert: Thanks Avri.

Let me try not to lose focus of what's happening in the - or to devote my attention to what's happening in the chat before I move to Greg because (Mary) again has suggested language here.

But there have been some edits to (Mary)'s language which makes it difficult for me now to read it out to you.

Okay while the IOC and RCRC maybe distinguished from other INGOs on the basis of and then moves on as in the text it is possible also to distinguish IGOs from INGOs in general since both types of organizations enjoy protections on different legal basis' or basis where the discussion on what the plural I've basis should be.

So let me hear from Greg and (Karen) and maybe you can also indicate whether maybe (Mary)'s suggested wording would do the trick.

And this question also goes out to Avri, you know, maybe suggested something that could resolve the issue. Greg please?

Greg Shatan: At the risk of sounding (mamby pamby) I am happy with either kind of Avri's edit to what's in the document or to (Mary)'s edit. I agree that the word together should be deleted. Thank you.

Thomas Rickert: Thanks Greg. (Karen)?

Kiran Malancharuvil: Hi. I think I was the start of this - the most recent version of this controversy of IOC and RCRC together or separate.

And I just wanted to make one clarification after whatever that is stops.

Man: Hello?

Kiran Malancharuvil: Okay so...

Thomas Rickert: (Karen) hold on a second. For those who are not speaking can you please put your microphones or mic on mute please? Please mute your microphone. (Karen)?

Kiran Malancharuvil: Okay. So I think there was a misunderstanding about the separation and where that was coming from.

It's not so dependent on the details of what the law provides but rather the qualification criteria that we came up with last year and the nature of that.

IOC and RCRC, the qualification criteria which was some, has that legal protection or in intent to protect the marks or designation has a basis in international treaty or (sue) generous statute is one category that refers to both the IOC and the RCRC.

IGOs have something separate and INGOs have something separate even still. I don't think that we need to be getting into separating them. I think it makes the document incredibly complicated. And it's going to be even more ever more difficult. People can make arguments about the specific organizations all they want.

But if we go back to what we were originally trying to do way back when we had that massive spreadsheet where we were discussing qualification criteria that's - it just - there's no point in continuing to try to separate the IOC and RCRC for that reason. Thanks.

Thomas Rickert: Thanks (Karen) I'd like to just make reference to the note that Berry that - sorry that Brian included in the covering letter to the latest version of the report where I gave a little bit of history of our deliberation.

So I guess that's (unintelligible) we have discussed and then decided that we should separate the four which I think can also be reflected in the wording. Claudia please?

Claudia McMaster Tamarit: Hi Thomas. This is actually to agree with you your last sentence that paragraph talks about the Working Group's deliberations.

And even though I am one of the few who had said we should have one criteria for all sets of four organizations that is not ultimately what we decided to do.

We decided to treat the IOC, the RCRC the IGOs and INGOs all four in different ways.

I think that that last sentence is really just meant to reflect the idea that the reason we've done that so far has been at least for the majority of the group is that there are some differences -- and this is refutable in that sense -- between all four organizations or categories.

So they all have their own unique framework of legal protection that they might look towards and reasons that they might look towards to be asking for special protection.

I would suggest that we be very careful to just be very, very - to write that sentence in the context of this paragraph and to keep it very general in the sense of these are four different organizations or categories and they all have unique legal protections.

If we start going beyond that we are rewriting the entire paragraph, we're getting away from what we've been discussing over the last week that we've made a choice to treat them all four separately. Thank you.

Thomas Rickert: Thanks Claudia. (Alan)?

Alan Greenberg: I support what Claudia just said. There's no doubt some people in this group think that there are four different and others believe we could group some of them together.

The reality is we have not come to closure on that. And any statement we make - if we make a statement saying the IOC and the Red Cross, the RCRC are working under the same legal basis and should be treated the same you are just demanding that certain groups make a comment and call you out on this in the public comments. I don't see the merit in that. Thank you.

Thomas Rickert: Thanks (Alan). I guess that - and I see (Karen)'s hand up again and (Karen) you also made some comments in the chat. I think that we should really focus on trying to find language that satisfy everybody's needs because I think we will not be able to settle and answer this question so that everybody is happy.

Because if it were possible then I guess we would have been able to achieve consensus in the last couple of months.

So if I can please ask for language that might address everybody's concern in terms of presenting where we are and not with the intention of presenting a consensus position on whether to separate or whether there might be common qualification criteria because I guess this is not the point where we should discuss this. (Mary)?

Mary Wong: Thanks Thomas. And I agree that we can probably move on to understand that the reasons why others may feel differently.

I guess, you know, this is really one paragraph in a broader context. And it's not actually making the specific point that was actually, you know, arguing about.

But to the extent that there is a sense that some folks may misread or there's something missing again taking the broader context into consideration I mean there is reference in the previous sense into four types of organizations.

So it seems to me that we should keep it general and people will read into it what they want to read into it or not...

((Crosstalk))

Thomas Rickert: Sorry (Mary) you hadn't yet finished which I overlapped. Please can you repeat the last sentence you said?

Mary Wong: I simply said, you know, the previous sentence to the one they were discussing makes explicit reference to all four types of organizations.

So I suggest we just leave it the way it is. Keep it general. Make the distinctions general and people can read into it what they want or not as they will.

Thomas Rickert: So your suggestion is to keep the wording as it is?

Mary Wong: You mean for the purple sentence? No I'm saying that whatever we do with the purple sentence and I think we're looking at tightening and clarifying it, we just make the distinction pretty general, you know, between the IOC and RCRC and INGO and between INGOs as a group and IGOs as a group and leave it there.

Thomas Rickert: Okay. (Mary) before I move to (Stephan) let me read out to you the - another proposal that has been posted in the chat by Avri in the meantime.

And that is while being different from each other in many respects the IOC and RCRC may be differentiated from other INGOs on the basis of the unique legal protection they are afforded under a framework of international treaties and national laws in multiple jurisdictions.

IGOs have been differentiated from INGOs on the basis of the types of protections they are afforded. Is that something that the group can live with?

And while you think about it I'd like to hear (Stephan)'s view please?

Stephane Hankins: Yes. Thank you, good morning, good evening. Well I think without prejudice to the fact that indeed the IOC designations and the Red Cross Red Crescent designations have been addressed together, were addressed together in the very - in the early stages of the process I think it is the case that, you know, the situations are quite distinct and that, you know, the grounds for the protections under international law are also distinct.

So I, you know, from our point of view, you know, it's the words, you know, together was withdrawn in in order to avoid any, you know, implication that, you know, the protections are identical. I think, you know, it makes sense to take the words together out of there.

You know, we - I do want to make just a short additional point which is, you know, this path is as well as, you know, the PDP attention once again is focused on protections due to organizations while, you know, the unique legal protections in regards to the Red Cross Red Crescent Red Crystal and Red Line and (Sun) names are not, you know, afforded to the organizations.

They're afforded to the designations of once again, you know, the emblems of protection of Armed Forces medical services and armed conflict and of the - and distinctive signs of the organization.

So there is a difference. In a sense that's not captured for example in this paragraph, you know, as we would like.

But in any event, you know, to come back to the very first point I think, you know, the fact, you know, there are four categories or, you know, four categories that are being examined. And if they were together withdrawn it's okay with us. Thank you.

Thomas Rickert: Thanks (Stephan). Just a quick follow-up question, you have commented on the purple sentence. Have you been looking at the language that I just sent out at first from - by Avri? Is that something that you would be able to support?

Stephane Hankins: Okay, you know, I am sorry. I'm not sure I saw it so I'm - and so I need to see it. I apologize. I will have a look.

Thomas Rickert: Not to worry. It's in the - on the left-hand side in the Adobe in the notes section. Find Paragraph 2 AD and it's below that.

I guess we need to expedite our discussions a little bit because we only have a little less than an hour left.

So I would suggest that we proceed on the basis of Avri's proposal. So this is your opportunity to object.

Okay so having heard or read no position to that let's include Avri's suggestion because I guess that captures the status of our discussion. This was the last proposal that was made. And (Stephan) it's your hand again.

Stephane Hankins: Maybe we're looking at every proposal on the left-hand side which is numbered number two right?

Thomas Rickert: Yes exactly.

Stephane Hankins: Say I was, you know, to capture the point that I was making earlier, you know, maybe one way - one possible way would be, you know, to refer to the unique legal protection that they, the organizations concerned and their designations are afforded under framework of international treaty because you know...

Thomas Rickert: Can you repeat that last bit please...

Stephane Hankins: Where it says...

Thomas Rickert: ...we need to find...

((Crosstalk))

Stephane Hankins: ...(unintelligible) says it may be differentiated from other INGOS on the basis of the unique legal protections that they are afforded under a framework of international treaties.

And I think to be more exact at least with regards to the Red Cross Red Crescent designation one way would - might be to put on the basis of the

unique legal protections that they and their respected designations are afforded under a framework of international treaties and national laws.

Thomas Rickert: Thank you for that (Stephan). I would be happy with that clarification. And should I not hear any opposition then we should take that as adopted language. I see confirmation from Avri that she's accepting this edit as friendly so to speak and Claudia's signal of support is also visible in the chat.

Jim Bikoff: Thomas we also support it.

Thomas Rickert: That's great. Thank you very much (Jim). And let's move to the next comment and I think we need to speed up a little bit.

Berry Cobb: Yes Thomas, the next comment on Page 18. This is a section within a - for the summary of the General Counsel's Office response to the research.

And I think the reason why we've left this one as it is there were several competing thoughts about how this should be worded. And we thought it as staff best to leave it up to the Working Group to create the final version here.

Brian Peck: Okay. Thomas this is Brian from ICANN staff.

Thomas Rickert: Brian please.

Brian Peck: If I may just add the - what we've done here is two things. One is to add some additional language. As Berry pointed out there was some comments, one feeling that the original summary was too restrictive, others felt that it was fine.

So you'll see in the redlined version, languages additional language will be pulled directly from the general counsel's response.

So we've tried to incorporate enough language where we feel, you know, it fairly summarizes or properly summarizes what the report is saying and also to alleviate any concern that it might not be either too restrictive or nonrestrictive enough. Again we just pulled language straight from the report.

The second main comment is we are suggesting it's our view that where it starts with never the less we believe this is kind of commentary on the general counsel's report which is fine.

But given that the section is simply a summary of the report only that text that was actually going to be deleted should be more appropriate either submitted as a public comment, you know, during the public forum period and/or if I believe this was submitted by (Ricardo) on behalf of the IGOs that we insert this in, you know, there's a community input section of this report which allows various parties to express their views that have been expressed during the course of the deliberations of the Working Group.

So those are the two changes here. One is adding additional language to try to alleviate concern that it's either too restrictive or nonrestrictive in terms of the summary.

The other is suggesting the deletion this last part is more appropriate to be submitted as a public comment.

Thomas Rickert: Thanks I - very much. Brian I guess this is very helpful. And in the light of these explanations and due to the fact that the language sort of has been stolen from the general counsel was (unintelligible) was not made up by ICANN staff to color the statement in one way or the other.

Are those who would have provided comment on that section satisfied with this explanation or do we still need to discuss and tweak a little bit?

But can I ask particularly those who have commented where the - they keep up their comment and require further changes?

Hearing and reading none we should deem this part of the report as accepted by everybody present in this call so that allows us to move to the next item.

And I'm scrolling down in my own document but Berry if you're quicker please do jump in and let us know where we are in the document.

Berry Cobb: So the next section for review is Section 4.4 Paragraph 2 with respect to how our recommendations would it apply to all gTLDs?

What I've done here is just highlighted the second paragraph and the comment box to the right. And I recommend that people use the Word document I sent out.

I went ahead and cut and pasted the comments with respect to this topic over in the comment box. And there's also a link down at the bottom regarding from our wiki.

So I think for the most part the Working Group is in agreement that, you know, this paragraph does need to exist but probably we need to enhance the second sentence to make it more clear as to what should be stated here.

Thomas Rickert: And with that addition is, you know, we had an exchange of emails on that. So Avri as one of the commenters on that indicated that she would be happy with the language if we add a little bit from Chuck's note to it.

And with that yes Avri you have the word. Please.

Avri Doria: Yes thank you. I don't have the exact - good. But the part of Chuck's note that I think would be worth adding has to do with his statement that part of the

definition of consensus policy these would be incumbent on the current gTLDs.

And so it's not actually a problem of if they are applicable to the new gTLDs but in what way it will be applied. But I didn't actually write a sentence. But Chuck had one. Thanks.

Thomas Rickert: Chuck did. And Chuck certainly I do want to put you on the spot but please do raise your hand if you want to comment. I guess that the general idea is that certainly consensus policies once they're adopted are - have to be followed by every signatory of ICANN accreditation contracts.

The only question that remains is how these policies can be implemented particularly in the light of existing registration. Chuck please.

Chuck Gomes: Sure, thanks. This is Chuck. Actually Avri said it pretty well I thought. That second sentence there talks about the fact that we haven't deliberated and how we're through what mechanisms it would be implemented.

It - I mean we have mechanisms already. The consensus policy process has the mechanisms for doing it for establishing the policy.

So actually if we can kind of say what Avri just said I think we would be fine. But we shouldn't imply that we don't know how to do this for existing TLDs.

That's part of a PDP. That's what we're doing. There are mechanisms already to implement policy on existing TLDs.

What we are going through in this process even though we have not talked much about existing TLDs if we make consensus policy recommendations it will impact them.

And this second sentence kind of implies like that's not the case. I don't think that was intended but if we can capture the way Avri said it I would be fine with that.

Thomas Rickert: How can we capture it?

Chuck Gomes: Well let me look at it here okay? Let's try - let me think live. This is Chuck again.

What if we said today the Working Group has not deliberated how possible consensus policies would impact existing gTLDs? Does that work?

And we may want to add a statement like Avri did. The fact is is that if consensus policy is approved it will be applied to existing TLDs as well as new gTLDs so we probably need to say both.

Thomas Rickert: Okay. Before I moved to Avri and (Alan) just my personal understanding was that we might just say something along the lines of while consensus, you know, should the Working Group's recommendations ultimately become a consensus policy? The group has not yet deliberated on questions of how to implement these with existing TLDs beyond the fact that consensus policies have to be followed by all registry operators because I guess that's sort of what we're looking for that, you know, we may provide special advice for incumbent TLDs. (Alan)?

Alan Greenberg: I would just change in the first sentence the Working Group must consider how they should be implemented within the current gTLD environment period, stop it. That's implying we haven't done it yet but we understand we need to. Hello?

Thomas Rickert: I see a plus one for (Alan)'s suggestion. Any more views on that? Okay so (Alan) it seems like you have helped us out quite a bit of this one. So we'd tweak the language accordingly and move to the next item.

Alan Greenberg: I'll send my bill tomorrow.

Thomas Rickert: Well if you're paid by the hour I guess it (can't) be too expensive for these 30 seconds right?

Alan Greenberg: You haven't seen my hourly rate.

Thomas Rickert: Okay. Let's take this off-line. Okay scrolling down again and Berry if you're ready to go before (unintelligible) let us know where we need to be now?

Berry Cobb: This is Berry. So our next set of comments is with regard to in the second level section for our recommendation option Number 9 which is on Page 31.

Thomas Rickert: So that's just a clarification. Any objections to including that clarification, seeing no objection to that I think we can leave it in.

And looking at Berry and Brian, you know, as the authors of the document should you have any concerns with adding or changing language please do let us know.

Okay then let's move to the next item and that's something Brian that you have edited?

Brian Peck: Yes thank you Thomas, Brian Peck from ICANN staff. Similar to the along the lines of the previous comment that we deleted regarding the summary of the general counsel's report again I think this particular aspect of the comment is more appropriate for either public comment submission and/or if necessary we can add it to the section of community input at the appropriate place for INGOs. But I don't believe it's appropriate here for the summary of this particular recommendation.

Thomas Rickert: Thanks. I guess that's helpful. And understood so unless there are more comments on this one we can move to the next item which...

Berry Cobb: The next item is recommendation Option 11 regarding the exception procedure. And Avri had some comments on the list today which I pasted in the comment box over to the right. And I believe her suggestion was supported by Chuck and (Mary) on the list.

Chuck Gomes: And...

Thomas Rickert: Okay so how can...

Chuck Gomes: That was...

Thomas Rickert: Excuse me Chuck?

Chuck Gomes: Chuck talking. I just said and Wolfgang's I think supported on the list as well.

Thomas Rickert: Yes which is true. Okay how do we best incorporate that here? I guess it's understood that, you know, the view should be accurately displayed and that such edit should go to - into the report. Avri?

Avri Doria: Yes. Just as I indicated the request was just to add a sentence which is there at the bottom of that note although okay and I got to go look at it.

There is a portion of the community that is strongly opposed to the creation of any exception process for naming the reserve list.

So it's exactly what was typed in there as my request for additional sentence. You know, and it goes either before the last two or after the last two and I don't really care where.

Thomas Rickert: Okay. So I suggest for the sake of speeding things up it goes before the last two sentences and...

Avri Doria: And it hooks them kind of together.

Thomas Rickert: Say that again Avri?

Avri Doria: I said because it looked like the two question - the two last sentences went together. So that's why I was saying is either before them or after them because it shouldn't be in the middle of them.

Thomas Rickert: Correct. And I guess we've done that. So thanks for that. (Karen) you're next.

Kiran Malancharuvil: Hi. I don't object to the inclusion of that. But I was just wondering how much of this report is presenting the options that we developed as a working group and how much of it is based for us to put, you know, what people think one way or the other?

I think it's starting to get more about, you know, presenting viewpoints which I thought that's what the public comment would be for then.

Thomas Rickert: Avri would you like to offer an answer to that?

Avri Doria: Yes. Sure. Thanks. I was looking for a way to put my hand down and put my hand up. What we're also trying to describe is what discussions went on and where there were strong positions. And those positions to indicate options.

In other words we have an option here at some point (unintelligible) from people do we create special exception processes for reserve lists or do we not?

At the moment the group is - has differences of opinion on that. I'm not going to try and sort of say how big or little those differences are in terms of

groupings that agree but that is one of the neat comments on because it's something we do not have unanimity on. Thanks.

Thomas Rickert: Thanks Avri. Chuck?

Chuck Gomes: Thanks. And I think Avri said it pretty well. Bottom line our goal isn't to use this document to present our individual views or our group views. That's true.

But also much of what's in this report is various people's opinions. And we've tried to word it in such a way that it is presented as such.

So I think adding that sentence is fine because it is a view that was communicated in the report and we're not pushing it but it is an option.

Thomas Rickert: Thanks Chuck. (Alan)?

Alan Greenberg: I don't see the need for it. The preamble in 4.4 says this is a bunch of options. You can select some or not. Those who believe there should be no exceptions would not select 11.

And their comment to the - in the public comment period can make it really clear that 11 is something they would do their (something-ist) to make sure it doesn't happen.

But it's one of the many things that some people like and some people don't. I'm not sure why we need to put - in general in all of them we have not put why some people don't like this and will not select it. And I'm not sure why we need to include it here. It's just one of the options which if you don't like don't pick it.

Thomas Rickert: Yes. And I - all your points are well taken. And I guess that sometimes viewpoints that are presented or positions that are - or options that are presented are congruent with viewpoints.

So but I think we can't avoid to have viewpoints in such report. I guess this is to inform the community about the status of our deliberations.

I guess that we should not include each and every individual view in this because we can't. Otherwise the document would be very, very lengthy and hard to read.

I guess what we need to do today is try to finalize this for publication. So (Alan) my question to you is if you say it's not necessary do you object having it in there because obviously it's something that Avri really wanted to have in there?

Chuck Gomes: It's really going to cause other people to go back and say but if that's there then I want to put my 2 cents in in other ones.

I think it's a rationale for highlighting in boulder clear worlds the preamble in 4.4 but that's my opinion. I'm not going to veto anything. I don't have that...

Woman: I agree with (Alan).

Alan Greenberg: ...I don't have that right.

Thomas Rickert: Thanks (Alan). I guess that, you know, if you don't object having it in in there and if nobody else does and if nobody else takes this as an opportunity to also push for additional edits then I would suggest that we leave it in there as we did with other language that was proposed to make other participants of the working group happy. But now let's move to (Mary).

Alan Greenberg: Yes you asked me a question, let me answer. I do object. And just as the other comments that I think Brian suggested are best submitted as public comments I think this is one of those too.

I don't however have a veto. The group doesn't need my concurrence to go ahead with something with general consensus though.

Thomas Rickert: Thanks for that clarification. I asked this (unintelligible) question because it said it wasn't needed. But nonetheless it wasn't clear whether you really objected against it. (Mary) please.

Mary Wong: Thanks Thomas. I guess I would agree if (Alan) is the sentence or any of these sentences specifically named people or groups whether it be NCSG, ALAC, IPC, registries so on and so forth. I mean I think one reason that Avri suggested and I supported adding this if you look at the whole matrix as I said in the chat there are various points in this table where we have things that says there are some views that say this, some views in the community say that.

So and I view this addition as along those lines. But to the extent that there were definitely very strong views within the community we don't say who they are that opposes it, everybody puts some in then those of us that are watchful for certain views from our community. We can put those in.

There's nothing to stop others from saying well in this other part, you know, we want to say some in the community feel the other way if this is just something that we are suggesting.

And I don't want to open the floor and tell everybody now go back and look at that table and see where you want to put stuff in. I guess the point is A, it was always open to people to do that because B, those current language already has some of that. So either we take it all out or we allow folks to put general language like the type Avri's suggesting in today.

Thomas Rickert: Thanks (Mary). And I guess that Greg is in on that one.

Greg Shatan: Yes I'm following on this point. And, you know, I consider this I'm kind of increasingly uncomfortable having, you know, certain places where these viewpoints are expressed.

But, you know, other places where they're not in thinking perhaps about places where, you know, I did not or I on behalf of IPC did not, you know, express some view of a portion of the community, you know, that should be reflected here.

And, you know, I think that (Karen)'s semi-rhetorical question, you know, about what this document is supposed to do, you know, I would follow (Mary)'s - one of various suggestions, not necessarily the one that she was endorsing which would be to scrub these kind of ad hoc, you know, position statements or exceptions statements out of here or, you know, give everybody another round to decide whether they want to have a position statement in here too because they're definitely those within the IPC for instance who've expressed the view that there really needs to be some sort of an exception process.

And, you know, and believes, you know, or there are other kind of, you know, commentary type issues here type issues here. So I think I might want to get rid of all the commentary personally.

Thomas Rickert: Okay. Now we've heard various views. I guess that I take (Alan)'s last intervention as an encouragement to decide or suggest to the group that we leave the language as proposed in here.

(Alan) said the group doesn't necessarily have to concur with everything that he objects to so I think that he will accept us including leaving it in there. Because, you know, I guess that we need to close this section and move to the next item which I think is on page...

Greg Shatan: And so where does that leave us? We're going to leave in the ones they got in the door but we're not going to put any more in? Is that where we stand?

Thomas Rickert: That's is what I suggested yes.

Greg Shatan: Including or not including the latest suggestion by Avri?

Thomas Rickert: This - my proposal was to leave the latest proposal in the document, you know, Avri brought up this point and the language was not objected to first.

And it was (Alan) who raised the point that he would prefer not to have it in there but he said that the group doesn't necessarily have to agree with him.

But (Alan) you are raising your hand again so please.

Alan Greenberg: Yes just if indeed there are other personal opinions that are saying but some people don't agree on any of these options I think they should all be scrubbed and I think staff should look for those and highlight them for our review in their next review.

You know, each of these are presenting options. If they were not - if there was not someone opposing some of these - each of these options they wouldn't be options anymore, they would have been decisions. So every - virtually every one of these has some opposition.

Anyway I'm putting down my hand and I'll let you decide whichever way you like.

Thomas Rickert: Yes I guess the difficulty is that, you know, we would never get to agreement on all these points. I guess that when it comes to this point the reason why I proposed to leave it in there is not to open the door to include each and every viewpoint.

But because these were variations to the original policy recommendations that I think the communities should know about to be able to make an informed decision on what they think about the protection mechanisms.

But as previously stated we put out the report for public comment. And each and everybody if you can go to the public comment section and file a file a comment.

Jim Bikoff: Thomas?

Thomas Rickert: I have Chuck first and then it's your turn (Jim).

Chuck Gomes: Thanks Thomas. And most of you probably saw my comments in the chat. I am really opposed to doing anything that delays us finalizing this report today on this in this call.

So even though I think it's fine to have that sentence in there if it's going to mean we take more time beyond this call if we can't do any scrubbing that people are talking about on this call then I guess I would take out the sentence because we need to get this thing out for public comment.

I said that last week. It's not going to be perfect but we all have the opportunity to comment. Let's get this thing done and out for public comment. And otherwise we're just going to keep dragging this thing on and on and it's ridiculous.

Thomas Rickert: Thanks Chuck. Avri just a practical question, would you be - would you be okay with leaving out the language and filing it in the - as a public comment?

Avri Doria: No I would not. I think at the very least we have to look for every instance of some members of the community, some members, for example the last two sentences one would have to come out.

So no, if we're going to say that they can't be added when people have been adding them all along I think we have to scrub them or we have to let it in. So no I would not be all right at all. Thank you.

Thomas Rickert: Thanks Avri. And you will remember that a couple of minutes ago I said that I would now leave the sentence as proposed by Avri in for the reasons I gave you.

I was looking for a practical solution to this by asking Avri whether she would approve to have it removed. And since she doesn't I will stick to my original decision I'm proposing to the group that we will - that we leave the edit in there.

And for those of you who do object to that they can state so in the public comments in which case I suggest that we move to the next comment. Berry can you help me out?

Berry Cobb: So the next comment is on Page 35 in regards to Section 4.5 in regards to recommendation Option 1. And I think that we've already discussed this but we had highlighted, you know, some (capital) separation of IOC from RCRC.

Thomas Rickert: Thirty-five.

Brian Peck: So Thomas this is Brian Peck from ICANN staff.

Thomas Rickert: Brian please.

Brian Peck: Thank you. I think it's the staff's view that this suggested edit be deleted. As Berry mentioned we - I know we've talked about this the separation issue before. And we understood that the previous language was somewhat unclear and we tried to clarify that both in this recommendation option and also in the kind of explanatory note that has been placed in front of the matrixes for the protection options.

And that is we understand that there are different views in the working group in terms of whether the criteria for - the qualification criteria for the IOC and RCRC are - should be different or separated out as, you know, as highlighted by (Ricardo)'s statements and positions.

But we also think it's a fact that, you know, in terms of the protections that having granted so far to both organizations that indeed both the GAC and the ICANN board have recognized or agreed upon that the criteria for these two organizations are the same basically the matrix of the international treaty protection and multiple jurisdiction laws.

And we try to reflect that here in this description of the recommended option saying that, you know, based on international and national legal protections as recognized by the GAC and ICANN board.

And then in our note as I said that is in the place before the matrix or the protections we say in the case where the RCRC and IOC are treated as the same risk together this only reflects the view and action of the GAC and ICANN board to date and does not reflect the approach of the working group.

So we hope or we're trying to, you know, clarify, you know, the status of this particular issue in terms of what is a fact in terms of the protections extended so far by the ICANN board but recognizing that there's a different point of view and that the Working Group has not necessarily accepted that.

And hopefully that will clarify that and as such, you know, would recommend that this particular edit be deleted.

Thomas Rickert: Any views from the group?

Jim Bikoff: Thomas?

Thomas Rickert: (Jim)?

Jim Bikoff: Just wanted to agree with Brian.

Thomas Rickert: Thanks for that. Anymore views from group? Okay in which case we will delete the addition and move to the next item.

Berry Cobb: This is Berry. Believe it or not that was the last one in terms of highlighted changes in this version of the document.

Thomas Rickert: Which is great. So we're done with that then which is great. And thank you everybody for the constructive discussion.

Staff will now prepare the latest - or a new version of the document. My question to you is whether you want to take another look at it or whether we can send it to general counsel for approval and then publish it. Chuck please?

Chuck Gomes: I recommend that we not take another look at it, that we trust staff to finalize what we agreed to today, that you do a quick general counsel review to make sure there's no concerns on their part and that we get this thing posted.

Thomas Rickert: Thanks Chuck. (Alan)?

Alan Greenberg: I've never heard this concept of submitting a draft report to general counsel for their approval. What is this based on?

Brian Peck: (Alan) hi. This is...

((Crosstalk))

Thomas Rickert: Yes Brian. I wanted just wanted to ask you to answer that question.

Brian Peck: Sure thank you. And (Alan) sorry, just to clarify it's not to approve, its more just to do a quick check, a fact check to make sure that there are not any misstatements especially in terms of, you know, for example the trademark clearinghouse or other matters.

So it's not a full on review and approval, you know, recognizing as you say that indeed this is a draft report from the working group.

It's again, it's more of just a quick fact check and make sure there's nothing inaccurate or inappropriate in terms of ICANN positions. So...

Alan Greenberg: I...

Brian Peck: Go ahead.

Alan Greenberg: ...if I may respond? To not set precedents I would say that any report before it goes on should be subject -- and I presume this is already been happening -- to staff review to make sure there are no inaccuracies of fact in it.

That's true. That's fine. I would not identify general counsel as being part of (fact). They are staff.

Brian Peck: Okay.

Alan Greenberg: And if we're - if staff is identifying errors in fact thank you very much. That's the limit that I would put on this in any case.

Brian Peck: Sure. And it's - and again, you know, apologies for misunderstanding. It's not for approval at all. I mean again this - recognizing that this is a report from the Working Group.

And so it's not a matter of approval. It's a matter as you say now it's part of staff just to make sure, you know, there are no inaccuracies.

Alan Greenberg: Well I hope other staff also are given the opportunity to identify errors in fact. But that should be the limit of any perusal.

And I would like to have thought this has been happening in parallel with writing it since we don't want a three week delay now while someone reviews them.

Brian Peck: It has been in parallel. And indeed I mean, you know, we've notified internally that would like to get this out by the end of this week and so everyone is in recognition of that intention.

So it's not going to be - please don't worry, there's not going to be a three week review period or even much, you know, much longer or shorter than that as well.

Thomas Rickert: Thank you (Alan) and Brian for your answer. I see David's hand up and then (Stephan).

David Roache-Turner: I just wanted to add to checks remarks that I'm the representative of the Registry Stakeholder Group. And we fully support getting this initial report out as quickly as possible. Thanks.

Thomas Rickert: Thanks very much. Thanks David. (Stephan).

Stephane Hankins: Yes (Stephan Hankins) with (Presicon). I'm sorry I think I may have missed the very beginning of the conversation.

But I'm - I noticed that this report is of course of a very different nature to the one including recommendations and which had been issued by the IOC Red Cross Red Crescent (antecedent) Working Group because it includes a wide variety of options that - on very key issues.

So I'm wondering a little bit, you know, what is expected from this except of course, you know, outlining the challenges that were identified, discussed in the options table.

And, you know, how - what's going to happen with this? I'm sorry if, you know, this has been already explained (everyone) at the outset of the conversation. Thank you.

Thomas Rickert: Thank you (Stephan). And let me try to answer your question in addition to the remarks that are being written in the chat in parallel.

The usual procedure would be that the Working Group comes up with a set of recommendations and then the Working Group expects more feedback on the recommendations from the public to take into consideration when or before making that or issuing that final report and sending that on to the GNSO council.

In our case you will remember that we sort of got stuck because the group was not able to come up with a set of recommendations that would be, you know, that would reach consensus or I should rather say rough consensus because full consensus I think is out of the question.

And we are now looking for the community to provide input and guidance that might facilitate our discussions as we move along and maybe that we get new ideas, new suggestions that helps the group to define a consensus position.

But as Chuck rightly points out the next steps are also described in the report so I guess that's something that you can also take a look at.

And I would be more than happy to discuss this further with you (Stephan). But I guess that for the sake of saving time we should take this off-line for the time being.

Before I end this call I have one remaining point that I would like to discuss with you. And that is the upcoming Durban meeting.

And there has been a suggestion by ICANN staff that there could be a session on the work of this Working Group or on the subject that we're discussing.

And if I may I would like to ask Brian to provide us with a little bit of background information on that.

Brian Peck: Okay thank you Thomas, Brian from ICANN staff. It has been suggested that similar to a session that was held in Beijing on policy versus implementation where you had a panel discussion of, you know, various views and perhaps, you know, looking, you know, kind of some brainstorming if you will on ways to move forward on that issue.

It thought it might be useful to have a similar type of session in Durban where we'd have a panel discussion. Of course we'd, you know, be moderated and to provide an opportunity for the different views to be expressed.

But more importantly and then given the timing of this initial report perhaps, you know, solicitor provided an additional opportunity for the community to provide some input or to provide perhaps even some as (Alan) put it in the chat here some insights that would help us to move forward in the working group's deliberation.

And so obviously, you know, we would want the working group involved in terms of, you know, coming up with suggestions for a particular panelist, the agenda, the discussion and so forth.

And so this is the thought of the ICANN staff in terms of planning such a session in Durban so that, you know, if there's any initial comments or feedback on conducting such a session.

Thomas Rickert: Thanks very much Brian. And before I open this up for the group to respond to I would just like to present you with my personal views on that because I have discussed this very question with Berry and Brian a couple of days back when they asked me whether I thought it was a good idea.

And in fact I do think it is a good idea. You will remember that the GAC has questioned the fact that the GNSO counsel has set up this Working Group and conduct the PDP in the first place.

Also I guess that there's a lot of confusion about why we are doing this, what we are doing, why this takes a long, why this is such heated debate on a matter that is perceived by some as a minute implementation detail.

So I guess this would give us the opportunity to shed some light on what we're doing and provide input to the community or to the attendees in Durban on what we're doing. And maybe that will also stimulate more input from the community.

Certainly since this is such a controversial matter the composition of the panel needs to be carefully considered.

I think it also needs to be carefully considered who is going to moderate the session because it should not be biased towards one or the other direction.

But I guess if this is done in a careful manner and well prepared I guess it would be very beneficial to each and every group represented in this Working Group and the community as such. Chuck you wanted to comment?

Chuck Gomes: Thanks Thomas. Real briefly I just want to say it looks like the reply period will still have probably roughly a week to go after Beijing or maybe overlapping with Beijing a little bit.

So I think that's a good reason to have a session just because of that in case anybody from the community has questions about this they will still have an opportunity to reply in the comment period.

Thomas Rickert: Thanks Chuck. (Alan)?

Alan Greenberg: When Chuck was just referring to the reply period are we talking about the reply period for the public comment for this report?

Chuck Gomes: Yes.

Alan Greenberg: I thought we haven't established process or rules or rule of thumb that we do not count the times at a ICANN meeting or nearby as counting against the time limit? We if we do that there's going to be some strong objections.

Chuck Gomes: Either way (Alan) my point still stands.

Alan Greenberg: No, no I wasn't arguing with your point. The issue you raised however is we need to settle on how long this public comment is going to be open. And we haven't had that discussion yet.

So if someone is assuming it's already a fait accompli I would suggest that we do discuss this. Thank you.

Chuck Gomes: Agree.

Thomas Rickert: (Alan) can we please leave this procedural aspect up for the moment and because I'd like to hear more views on whether you think succession is a good idea and whether you have any ideas as to the proposition of such...

Alan Greenberg: Thomas I wasn't demanding it be talked about now. I was just pointing it out.

Thomas Rickert: Sure, thanks.

Okay I'm not seeing any hands in the Adobe. Also I apart from some kind of support that we saw there was no objection against having succession. I would like to encourage you to please think about how this session could be set up and maybe share your thoughts with the whole group on the list or approach Berry, Brian or myself off list.

And with this I guess I can close this meeting. So we're going to have the next meeting...

Berry Cobb: Thomas it's...

Thomas Rickert: Brian please - sorry Berry please.

Berry Cobb: Sorry to interrupt. So if we're on target to deploy the report for public comment this week should we have a meeting next week?

I understand that our intent was to try to continue deliberations on the recommendation options. So anyway the general question is do we have a meeting next week or do we take a break and start two weeks from now?

Thomas Rickert: It's a good point. You know, I took the agenda as had already printed that decision. But I'd like to hear your views then on whether you think we should wait for yes Chuck.

Chuck Gomes: Sorry for jumping in so much. But the - if we start continue deliberations without receiving the public comment seeing what people are going to say I think we're going to be criticized and...

Man: That's fine.

Chuck Gomes: ...and rightfully so.

Thomas Rickert: Okay then we're going to have a break as Avri stated in the chat. Greg?

Greg Shatan: I think, you know, the one issue that's out there that we haven't, you know, or maybe there are two issues. But I think one we really do have to wait for the public comments to come back on.

The one thing that we could benefit from and I thought - I think we could also benefit from at least the one week break is discussing, you know, applicability to existing gTLDs or not so much applicability but perhaps how it gets applied to new gTLDs. And probably the biggest issue there would be the claw back question.

Other than that I agree 100%. You know, we really should enter somewhat of a quiet period here as the report gets published and the comment period ensues, you know, at least until we start seeing comments.

We could discuss those in - as they come in, not necessarily waiting for the end of the comment period and the reply period. But I think at least a one week break but potentially considering, you know, the issue, you know, that we have kind of not fully taken care of or at least, you know, the one that we've kind of least taking care of which is that this is for all gTLDs and not just the new one. Thank you.

Berry Cobb: And this is Berry.

Thomas Rickert: And Greg?

Berry Cobb: May I recommend that we meet on the 26th? Certainly we can talk about existing gTLDs. But more importantly that'll give Brian and I time to put together a draft presentation and a format for our session in Durban.

I think it would be wise for the Working Group to come together to talk about that so that we can prepare for that week.

Thomas Rickert: It sounds like an excellent suggestion Berry. And I have another hand up from (Alan). I guess Greg's hand is an old hand so (Alan) please?

Alan Greenberg: Just a question, when are we deciding how long the comment period is then or is the chair going to tell us and we can disagree if we like on the email list?

Thomas Rickert: With the comment period I guess we have foreseen a 21, plus 21.

Alan Greenberg: No we have a minimum of 21 plus 21.

Thomas Rickert: Berry and Brian I guess you sketched out the dates already haven't you?

Brian Peck: (Alan) is your question how those dates actually fall given as you say the general rule of the practice of, you know, not counting the time of an ICANN international meeting or is it - or are you asking, sorry are you asking to the group to consider who you want to extend it beyond 21 days?

Alan Greenberg: I don't know when it's going to be issued so I don't know when the 21 days is. So I'd at least like to know what the period is before I give my approval. I don't know about anyone else cares but I certainly do.

I, you know, I represent a group that has a great deal of difficulty putting together responses. And this is one we're going to want to comment on.

And, you know, if we find out the 21 days, you know, of the original comment period covers, you know, half of it is an travel or something like that or yes, I

don't know what the dates are, so I don't know when you're prophesizing you're going to going have this ready for issuing or not. So I'd like...

Brian Peck: Our...

Alan Greenberg: ...to see the dates.

Brian Peck: Okay. Our goal is to go ahead.

Thomas Rickert: Yes. I was just saying that, you know, we, you know, we did not count Durban days into the 21. So I took that for granted that we would add additional days for the Durban meeting.

But we can certainly fill up on that by email. But Brian you wanted to add to this.

Brian Peck: No. I was just going to say (Alan) was - is asking when we would publish? Our goal is to publish it, you know, by Friday. And that's our intention.

Alan Greenberg: Well given the substance of this report, given that the difficulty that this group has had in reaching in trying to narrow down the many, many options we're presenting I think we have to give the community more than 21 days to come up with responses.

I know this is an expedited PDP and we want to get answers. But if we really believe that regardless of how you spell insightful we're going to get insightful comments I think we have to give the community opportunity and time to do that.

Some comments written by one person, that's fine. Some groups have to come up with comments that they, you know, that is more of a bottom up process. And I point out we're issuing this report in English only.

Thomas Rickert: Yes. Nonetheless I, you know, if you ask me as chair I have not planned to recommend to the group that we had a longer public comment period than 21 plus 21.

I think in the light of the expectations that in the community with respect to the outcome of our work with respect to the fact that this has been called a model or a case study PDP by both the board as well as the GAC we should not go beyond what's required as a minimum.

And on top of that since we have been discussing this so controversially for more than half a year now in this group and even longer in the pre-assessing drafting team I think that various groups in the GNSO and outside the GNSO do want to - wish to comment are already familiar with the subject matter and that they have been updated by the - their representatives in this working group.

So I would suggest that we don't go beyond the 21 plus 21 plus the days of Durban. I have to admit my - the battery of my laptop just died so I can't see whether there are any hands in the Adobe so please do make yourself heard if you want to comment on this.

Alan Greenberg: There are no hands.

Thomas Rickert: No hands. Thank you very much for that. And with this I would suggest that we end this call.

Avri Doria: Avri has a hand.

Man: Avri.

Thomas Rickert: Avri.

Man: Sorry I...

Avri Doria: Actually I just (took off) my hand, sorry.

Thomas Rickert: Please.

Avri Doria: Just...

Thomas Rickert: Please go ahead.

Avri Doria: ...issue - I looked at the calendar (unintelligible). I looked at the calendar. If this gets really quickly the three week or 21 day would basically end during the travel week before Durbin if I counted my weeks right which is possible.

And then you've got Durbin where I don't know if your three week response period runs through Durbin or starts again after it?

So I recommend that you kind of work those things out and put them on the list so then we can dither about them a bit more. Thanks.

Thomas Rickert: But don't we need to have clarity on the length of the public comment period prior to or coincidentally with the publication of the report? And if that were the case can we get this settled before Friday?

We will, you know, take this as a rhetorical question. So we will work on the dates. We will send a suggestion to the list and we will hear your feedback on that.

Chuck Gomes: And Thomas this is Chuck. And that can be done in the next two days before it's posted. And if we want...

Thomas Rickert: Yes.

Chuck Gomes: ...to respond to that it's our obligation then to respond very quickly. In other words by early on Friday so that that is resolved before posting.

And we will do it exactly that way. And with this I would like to end this call unless there are, you know, which I can't see there are more comments but we're already past the top of the hour.

Thank you everybody for your contributions. Again thank you for your constructive inputs and your willingness to compromise on the language. That's been very much appreciated.

And hopefully we'll get a lot of very constructive comments from the community during the public comment period that will help us with our work. And with this I'd like to end the meeting. Have a great day. Bye-bye everybody.

Chuck Gomes: Thanks Thomas.

Man: Thanks Thomas.

END