

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

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Attendees:

Jim Bikoff – IPC/IOC

Avri Doria – NCSG

Chuck Gomes - RySG

Alan Greenberg - ALAC

Catherine Gribbin - Red Cross

Stephane Hankins - NCSG

David Heasley - IPC/IOC

Kiran Malancharuvil - IPC/IOC

Christopher Rassi - Red Cross

Thomas Rickert – NCA –Working group chair

Claudia MacMaster Tamarit - ISO

Mary Wong - NCUC

Mason Cole - GNSO Council vice chair - RrSG

Lanre Ajayi - NCA

Debra Hughes - NPOC

Wolfgang Kleinwachter – NCSG

Ricardo Guilherme – RySG

Joanne Teng – WIPO (standing in for David Roache-Turner)

Sam Paltridge - OECD

Apologies:

Iliya Bazlyankov – RrSG

Evan Leibovitch – ALAC

Paul Diaz – RySG

Guilaine Fournet – (IEC)

Alain Berranger - NPOC

ICANN Staff:
Berry Cobb
Nathalie Peregrine

Coordinator: Welcome and thank you for standing by. I'd like to remind all participants today's conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Nathalie Peregrine: Thank you very much, (Tonya). Good morning, good afternoon, good evening. This is the IGO/INGO Protections PDP Working Group call held on the 20th of February, 2013.

On the call today we have Ricardo Guilherme, Wolfgang Kleinwachter, Lanre Ajayi, Claudia MacMaster-Tamarit, Avri Doria, Charles Gomes, Catherine Gribbin, Jim Bikoff, Christopher Rassi, Thomas Rickert, Mason Cole, (John Penn) standing in for David Roach-Turner, WIPO, and Alan Greenberg.

We have apologies from Evan Leibovitch, Paul Diaz, (Gillian Fuame) and Greg Shatan for the first hour; he'll be joining us for the second. From staff we have Berry Cobb and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you very much and over to you, Thomas.

Thomas Rickert: Thank you very much, Nathalie. This is Thomas Rickert speaking. I'm the chair of this working group. And I'd like to welcome you all.

This is the first time that we start with rotation so this time we start two hours earlier than next week and we will change on a weekly basis and hopefully that will make it easier for participants to join and we spread the burden of having late or earlier calls.

Having said that I'd like to ask the group whether there are any updates to the statements of interest? Hearing none and reading none in the chat we can proceed to the next agenda item which will be actually Number 3 or Number 4. We will park the status of the general counsel request for a moment because Brian is not yet on the call and we'll get back to the general counsel request once he is - once he has joined.

I'm not sure whether the representative of NCSG is on the call today so maybe the microphones are on mute so if there is somebody from NCSG please speak up. It would be great if you could guide us through the input. Okay in which case we will postpone that agenda item to one of the next meetings.

And we can then move on to the fourth item on the agenda which will not take long; it's just a little update on the discussions on the February 28 deadline set to the GNSO Council. You will recall that the ICANN Board had set two deadlines, one of which was the end of January whether the general counsel saw any concerns with respect to the IOC and the RCRC.

And in the light of the December 20 decision taken by the general counsel that question was deemed sufficiently answered by the ICANN Board. And during our last call I have proposed to the group that I could propose to the general counsel to respond to the February 28 deadline in a comparable manner because in both cases an ultimate decision on whether there are such concerns could not be given before the completion of the PDP.

We heard some concerns with respect to that. And these were voiced by Avri in particular who said that there should not be given (raise) to expectations of more protections without the PDP being completed and that therefore there was no matter of urgency at the moment, which is why the Board should wait for the PDP to be completed and that we would keep the Board updated on the progress made.

I have presented these views to the general counsel - sorry, to the GNSO Council. And the proposed way forward was that we would circulate a draft letter responding to the February 28 deadline to the GNSO Council list that was - that would then be discussed. And this is actually something that's currently under way. So the views of this group have been presented to the Council and we will have to see what the view of the Council actually will be.

In response to Alan Greenberg's question regarding general counsel, I have shelved this - this agenda item for the moment because Brian Peck is not yet on the call but he will actually provide an update once he joins the call.

Are there - Alan, I see your hand up, please.

Alan Greenberg: Yeah, Thomas, I wasn't asking a question about general counsel; I was pointing out that in your statement several times you said general counsel instead of GNSO Council.

Thomas Rickert: Thanks for reminding me that...

Alan Greenberg: I wasn't sure how you were spelling council each time.

Thomas Rickert: Sorry for that. I was actually talking of the GNSO Council so we - hopefully I won't make that mistake again. It's hopefully not a Freudian slip that I think that the GNSO Council is sort of the general counsel which is certainly not the case.

Regarding the fifth agenda item - unless there are questions regarding the February 28 deadline we should proceed to the fifth item on the agenda, which is the harm evaluation discussion and next steps. And I have asked Berry Cobb to stand by in case there were questions regarding the spreadsheet that he prepared.

Just to refresh our memories on that you will recall that I have asked the group during previous calls as well as on the mailing list whether organizations would be willing to provide information on harms they're exposed to or whether they were unwilling to provide such information because you will remember that ALAC and NCSG both had asked for some evidence of harm because they felt that in order to think of protections you would first need to understand whether there is a problem that can be fixed.

And we had a vivid exchange of emails on the mailing list where some concerns were voiced particularly the argument was made that certain legal protections are granted without the need of evidencing harm and that therefore in this particular instance also no harm would need to be evidenced. I'm certainly paraphrasing here but this shall just be a very short summary to bring us all on the - all up to full speed.

We have, then, conducted a little survey on domain registrations which was thankfully prepared by Berry. And I can't resist saying, Berry, there was something in the language of the spreadsheet that you corrected and you said 30 lashes to me in your email. And I would like to point out no lashes to you but kudos to you because of the great work that you've done here.

And I wanted to give you the opportunity to respond to or comment on the results of the spreadsheet. Maybe you've - or hopefully you've taken a closer look at that during the last week. And my question to you is twofold, number one is whether you are - for those that wanted to see evidence of harm whether the information in the spreadsheet has helped you answering that question so that we can move on?

And should the answer not be positive then my question would be whether - or I would like to encourage those who were not willing to provide information to maybe come up with some middle ground or compromise suggestions so that maybe we can lower the barrier of those that have asked for evidence of harm so that they can - that their request for information can be satisfied and

that we do not lose potential support of those requesting evidence at this early stage.

Would anybody if you like to kick off the discussion on this? Because I think we need to move on with this. As I said, ICANN staff has prepared this little overview on the registration landscape, if you wish. I think there is not much more than - that ICANN can do to answer the question of the presence or absence of harm.

And I have not seen any correspondence other than some examples that have been made where suggestions were made to provide some more information that could sufficiently respond to Alan and particularly Robin's question. Avri, please. Avri, are you maybe on mute?

Avri Doria: Okay, yes. Sorry, I am. And in fact apologies at the beginning of the call; I was quickly trying to unmute when you called on NCSG but you had moved on by the time I got unmuted.

So on this in terms of looking at that table maybe it was just my reading on harms and such and I'm being slow to react at everything today, but in looking at that table I really had trouble seeing that there was an appreciable amount of harm. So maybe I'm misunderstanding but those are the impressions I had. Thank you.

Thomas Rickert: Thanks, Avri. Berry, would you like to elaborate a little bit on the purpose of this exercise?

Berry Cobb: Hi, Thomas. This is Berry. Yes, so, you know, in terms of looking at the spreadsheet itself I think the idea was to try to create a visualization to see if there's a chance of harm out there. Certainly I don't think ICANN staff is in a position to say yes or no these are definitely harms or not.

But the point was to try to take the view of the organization in question and if they were to explore a strategy of trying to protect their brand on the Internet the yellow and red highlights are those areas that would probably be targets to investigate.

So again first and foremost is does the organization in question have control of the domain or not? If they do, you know, then they're using it or forwarding to their main site and that's kind of the highlights in the purple. Everywhere else if it's yellow or red that was a suspicion that there may be an abuse there to at least investigate.

What I will point out is the yellows are typically either pages that were just parked and didn't have any kind of for sale kind of notifications on it or anything. Those that are red were typically - I should also say yellow was either parked or it didn't resolve at all. And then red was that it was parked but it was explicitly stating this domain is for sale and thus the higher red.

Out of all of the yellow and reds that you see there there were two that were - and this is where the 30 lashes comment came from - but there were two that are identified where the site appeared as though it was that organization. They were trying to - they were claiming to be that organization or it was at least very confusing as to whether it was the organization in question or not.

So, you know, I think in terms of defining well is there really harm here or not the spreadsheet probably can't quantify that but it opens up the prospect to start to determine if that harm is. And perhaps the working group needs to define well what is harm? Is a parked page enough of a harm or not? You know, do we use standards that are used in UDRP or, you know, those are the kinds of questions that need to probably be answered.

Thomas Rickert: Thank you very much, Berry. Avri, is that an old hand or a new hand?

Avri Doria: It's an old hand but since I'm speaking - then I'll put it down - is in looking at the chart - and thank you, Berry, for the explanation, it's kind of what I thought was going on - while there is always, you know, possibility of harm in looking at that chart I was actually impressed about how few places the risk actually was and how few cases there seemed to be of harm and that's one of the reasons I wanted to make sure I was looking at it correctly.

In other words, the chart is not full of red with a little bit of yellow. The chart seems to have a much more verdant view to it. So, thank you.

Thomas Rickert: Thanks, Avri. Alan.

Alan Greenberg: Thank you. I think the chart is more useful in some cases for demonstrating a probable lack of harm in some cases and not demonstrating harm. A parked page does not necessarily harm the organization.

Someone else may be capitalizing on typos or someone not knowing what prefix or what TLD you're in and maybe getting a, you know, a couple of bucks out of pay per clicks but it's not likely fooling anyone or it's not necessarily the simple existence.

I've gone to parked pages periodically and very often their first link points me to the right site so I say thank you and go on. You know, that's free advertising almost or free redirection.

There are some sites that I found when I did the original investigation which for reasons unknown some good hearted individual registers a name and then points to the real site and just does as a transfer.

So I don't think the chart demonstrates harm. In a few cases it may show there probably is harm. In a few cases it may show there is lack of harm for specific TLDs which is what triggered this whole thing to begin with.

I think an understanding of the current environment will indicate that there are different categories of IGOs and INGOs and that we need to find criteria to put people in the right buckets because some are going to be subject to potential harms and others are not likely to and that was the original motivation.

But I don't think the chart alone gives us the information that we need to set those criteria. It simply says that there's a very varied market out there.
Thank you.

Thomas Rickert: Thank you very much, Alan. And before I move to Ricardo I can't resist making the comment that at least in the trademark world - and I'm cognizant of the fact that we're not talking about trademarks - it is being perceived as an infringement of a trademark if a domain name is registered violating a trademark and the trademark owners are particularly unhappy with the fact that ultimately they pay for traffic that is then diverted to their site or even worse maybe to a competitor's site.

Ricardo, please.

Ricardo Guilherme: Yeah, thanks Thomas. Everyone can hear me?

Thomas Rickert: Yes, we can.

Ricardo Guilherme: Okay thanks. I mean, we already provided to the group on 14th of February our response concerning this specific request for identification of harm. So just to reinforce again, we - first of all we oppose any need for identification of harm concerning before a protection - a preventive protection for the names if IGOs can be provided. This is already something that we expressed in our message.

So, again, to point out that the protection afforded under the laws that we have been talking about for a long time now reflects an absolutely - or

presumption - and does not require a demonstration of harm as a pre-condition for such a protection nor does the Board's resolution or the GAC's Toronto advice.

So even what is - what was useful in that chart - and we have to thank Berry for the effort because it is not a very easy exercise in the first place - was that even if we were to accept that the extent of harm would be a relevant consideration for ICANN to define such a protection.

We can see that there was already an abundant evidence on record before the group so we mentioned some of the GNSO documents before as well as a number of IGOs that are sampled in that chart, in that spreadsheet, in which you can see a lot of like red so called yellow flags.

So not only - we're not only talking about IGOs themselves but also INGOs as is the case for the Red Cross. And if we are to start discussing now the expected amount of harm or the actual amount of harm that is caused by such undue registrations - and I'm not even mentioning here registrations which also happen in ccTLDs because there are a bunch of them as well.

I think we are straying away from the necessary discussion that has to take place which is to provide such a protection on the basis of existing laws. So that's just what I wanted to reinforce. We had already sent this consideration on the 14th. And of course with all due respect to those who do not agree with that. I think it's necessary to point that issue once more to the group.
Thanks.

Thomas Rickert: Thank you very much, Ricardo. And certainly your communication has been received and noted. However I have chosen to put this particular point again on the agenda today because the spreadsheet that Berry worked on has only been sent to the group very, very shortly before the last call and there was no opportunity to discuss this.

I see Kiran or Jim's hand up. Please.

Jim Bikoff: Yeah, I just want to say I - we agree with Ricardo that the true harm here is violation of law. And that we shouldn't have to show harm but that having said that we have provided evidence of harm in the past and if folks will take a look at the material on the wiki. If there's other things that are needed I think you should let us know. But, again, I think we agree with the view expressed by Ricardo.

Thomas Rickert: Thank you very much, Jim. And I think with this, you know, seeing no more hands up we can close the subject. At the risk of being redundant let me reemphasize that certain parts of the community have expressed their view that they would like to see evidence of harm prior to considering protections for those that are requesting protections.

They have acknowledged that some of the information has been provided at an earlier stage. But they - and I think Alan has explicitly stated earlier on this call that he doesn't think that the spreadsheet would provide a good enough answer to the question of harm.

And I, as chair of this group, I'm trying to guide the group to a consensus position. And on our way to hopefully reaching consensus or coming closer to consensus than we are now I wanted to use every opportunity to provide space for discussion or individual talks that can be off-list as well whether the question that has been asked by ALAC and NCUC can be answered so that they can proceed with potentially supporting protections.

I understand that participants of the working group including Ricardo, who has referred to the February 14 statement that he jointly signed with other - I think 43 IGOs in total - that we can't expect further information on the question of harm to be provided.

And therefore I think we, you know, before moving in circles we are going to close this discussion. But again there might be the risk that those that had reservations and that were asking for harm will actually have difficulties in supporting potential recommendations for protections.

Claudia, I see your hand up, please.

Claudia MacMaster Tamarit: Hi, Thomas. I don't want to belabor the point at all so I'll just try to make this very quick. I'm just wondering for those who are asking for evidence of harm I was wondering if they had given any thought to perhaps setting some sort of a benchmark or identifying even just informally what would satisfy, for them, sufficient evidence of harm and then perhaps including that as a suggested qualification criteria just to get an idea and also just to kind of move forward.

I make that comment not agreeing that I think that evidence of harm in this particular group, in this particular way, is important to get to the issue of protection. I think that we've discussed there's quite a few flaws with this at least from some perspectives. But just to put it out to those who are asking for this if they had given any thought to creating some sort of a benchmark and stating what that would be and then perhaps including that as qualification criteria. Thank you.

Thomas Rickert: Thank you very much, Claudia. And thanks for reminding the group of the difficulties of asking for information that is not quantified or that is not clearly mentioned. You will remember that during earlier calls I've also asked or encouraged those asking for information to maybe give us an indication of what the target would be.

So we don't have that at the moment but certainly...

((Crosstalk))

Thomas Rickert: ...should - who's that?

Chuck Gomes: This is Chuck. Can you hear me?

Thomas Rickert: Chuck, I - yeah, I have Ricardo first and then you'll be the next in the queue.

Chuck Gomes: Okay I'm going to have to put myself on mute then.

Thomas Rickert: Great, thank you. Ricardo, please.

Ricardo Guilherme: Yeah, thanks, Thomas. No, just on - just to follow on your comments after my first intervention. Again we have, as you said, we sent considerations on the 14th of February in which we say that there was already abundant evidence already on the record before the group.

So it's not that the IGOs are simply refusing to show such information but it's simply that that information has already been provided notwithstanding the fact that we do not agree with that need in the first place. So the need for showing evidence of harm is, for us, a matter of principle that we should not be obliged to demonstrate.

But even if we were to accept that this kind of evidence has already been provided through other documents including the GNSO report I think of 2007. So just to make that point very clear that it's not simply a matter of bad faith or laziness but it's simply that first of all we have a matter of principle to apply and secondly that any such information even if we were to forget that principle has already been provided, just to make that clear. Thanks.

Thomas Rickert: Ricardo, I was not suggesting that there was reluctance to provide information in the first place; I was just stating that additional information - you know, that you didn't indicate to be willing to provide further information. But certainly the information that is on the record has been publicized on the list.

But my understanding as chair is that the information that is already known to the group would not be sufficient to answer or to respond to their concerns. Chuck, please.

Chuck Gomes: Thanks, Thomas. I'll be brief because I am in a noisy airport but I want to follow up with what Claudia said and what Ricardo said and maybe suggest one more thing that might be helpful.

If those who would like to see evidence of harm would identify what categories of TLDs they still need to see that - I think you made the comment that there are some categories that there's already been hopefully adequate evidence of harm.

So if they could identify what areas they still need more information that would help us narrow down what their need is in addition to what Claudia said in that regard. So just a suggestion.

Thomas Rickert: Thank you very much, Chuck. And Mary it's if you had foreseen it I wanted to call upon you anyway because I hope that you will now repeat something that you wrote on the list and that is the question whether we do need to talk about harm because that would bring us closer to a content regulation.

And this is the second aspect of the question that I wanted to discuss with the group. But, Mary, maybe I'm wrong; maybe this - you wanted to say something completely different. Mary, please.

Mary Wong: Actually, Thomas, no I didn't want to say anything completely different. But I did want to address that point. So I guess you read my mind in part. And I wanted to also expand slightly because I've thought about it since.

You know, I do caution us against going down a route that could potentially see allegations that ICANN policymaking is going into content regulation

because it's hard to look at just a domain name for example, you've got to look at what it is and what it does in order to figure out whether that Website is potentially harmful however that is defined to whichever organization.

Which is why also the list, you know, and I know I've said this multiple times, you know, I'd really rather that to the extent this is a consideration at this stage that we look at abuse primarily through cyber squatting. You know, it doesn't have to relate to trademarks. You know, if it is a trademark in question obviously cyber squatting is a well understood phenomenon.

In terms of organizations of names and acronyms that are not trademarks obviously you're looking at analogous forms of cyber squatting. So I really want to encourage us to the extent this question really whether it's abuse, harm or damage we're really looking at how much - how much of a problem it is. To the extent that's relevant to this then I'd like us to limit that inquiry.

But secondly it seems to me just listening to the discussions we've had the last few weeks, reading the emails, that I wonder whether, you know, we really are looking at two questions. At this juncture really what are the principle and policy justifications for protecting certain types of organizations?

And maybe harm isn't relevant there; maybe harm is relevant at a later stage that assuming there are such justifications and I would say a large part of that answer would lie in the general counsel's response to us - assuming that that is something that we agree can be justified then the extent of the harm (unintelligible) the chart that we had and so far would be more relevant in showing us the nature and the scope of the protection mechanism that's required.

And some are arguing for reserve name list, some are looking at, you know, trademark clearinghouse type things. There may be others. So I would also urge secondly that the harm issue be more relevant to that inquiry rather than this one. And that's it.

Thomas Rickert: Thank you very much, Mary. Let me pass on that question to particularly ALAC and NCUC. Is that a path that you would be willing to walk with us?

Mary Wong: And, Thomas, this is Mary again. So that was, you know, spoken as Mary not as NCUC rep so now I'm going to speak as NCUC rep and say that I don't think that I am able to give you a specific answer to that question this minute because obviously those are discussions that are ongoing with the group.

Thomas Rickert: Thank you very much, Mary. I think that we have to leave it at that. I think we can't make much progress with this during this call unless you get feedback from the groups to see whether we can actually overcome this hurdle of evidencing harm. So I think we leave it at that. I think everything that can be said has been said. Please get back to Chuck's proposal if you want to.

And there's certainly always room for you to individually discuss and come up with proposals and we can then reopen the topic. But I will tell you that as chair I have not planned to dwell more on this. It will be in the report certainly but I think we will leave it at that for the moment.

Moving to Number 6 on the agenda that I have called last call for qualification criteria because I think that we're now at a stage where various arguments have been exchanged with respect to qualification criteria. We have discussed a lot of qualification criteria and different sets of qualification criteria.

And I have the feeling that the arguments that have been presented exhaustively present the various groups that are being presented in this working group.

What I'd like to do during this call though is to encourage all of us to consider potential ways forward. You will recall that on the mailing list I've asked the

group whether it would prefer options which I called Option A or Option B. And there were several comments made.

I think if you just count the responses the majority of the participants, although certainly this is not a vote but just a test of waters, have been in favor of Option A which was the requirement of international - of a treaty protection in combination with protection in multiple jurisdictions.

Now looking at that I could possibly proceed asking the group whether there is consensus on that. But I think - there's no disagreement that there will be some opposition to using this Option A.

Concerns have been voiced particularly by the IOC and by Greg Shatan who has - and again I'm briefly summarizing - stated that if we use Option A that the IOC might - that this might be - I think he even used the word a death sentence although I wouldn't use such a strong word - that in the absence of the string Olympic or Olympiad being protected by the Nairobi Treaty that the IOC would not fulfill that requirement.

And consistent with that the IOC has commented that it would like to see Option A to be modified to be treaty protection and/or multiple jurisdiction protection which then has caused more opposition or again opposition from the group. So I think we're facing an issue there.

We're facing another issue with IGOs where the argument has been made earlier that the names themselves would not be protected by a treaty. And for INGOs Greg Shatan has mentioned that they, by definition, have not been created by treaty at all.

So looking at the options that we have we could either step back for a while and see whether we can think of completely different criteria. And the argument has been made on the list that we have inherited these criteria but that they might not be suitable for the tasks that we have in front of us.

So I'd like to encourage Mary maybe to speak up a little bit because she came up with a proposal which I'm going to read out for you. And that would be as a qualification criteria an organization, international in scope and operation, and its primary mission to be one - to be of such public importance that some form of special protection for its name and acronym can be justified.

So that has an international dimension to it which was repeatedly mentioned by some members of the working group. But it does not have the requirement for treaty protection or multiple jurisdiction protection in it.

So I'd very much like to either, Mary, encourage you to maybe give us a little bit more background information on that because that is a solution that might be one size fits all solution that would avoid the difficulties that Greg and others have raised. Alan is first in the queue, please.

Alan Greenberg: Thank you. I'm going to make a suggestion that Evan has made before and he's not on the call today. I think we need to talk about what kind of protections would be satisfactory and acceptable to the various bodies. Because there is going to be far less reluctance to grant protections - some levels of protection - than for others.

As long as we're talking complete blocking and now we're talking complete blocking potentially with strings contained in and typos there's going to be a lot of - it's going to be hard to find the right criteria that are going to satisfy everyone on this group or even satisfy a significant number of those in this group who are not actually seeking protection.

If we could talk about the different levels of protection we're talking about the criteria may be very different and some of them may be a lot easier to get agreement on than others. Thank you.

Thomas Rickert: Thanks, Alan. The reason why I'm bringing it up now is that this proposal is sort of new so in an ideal world, you know, not in terms of a solution ideal because there are certainly diverging views. But if this were a criterion that everybody was happy with then, you know, then we will have made great progress.

Claudia please.

Claudia MacMaster Tamarit: Hello. One question just to understand the difference between Option A and Option B, how is Option A different from following what the mandate requires? I understand that we had inherited this mandate to look at organizations that were receiving protection under treaties and statutes under multiple jurisdictions so I'm not sure how choosing Option A deviates from that.

Now, that being said, I - as we've discussed in previous months I don't know how these requirements of receiving protections under treaties and statutes under multiple jurisdictions necessarily speaks to the purpose of creating a policy to protect international organization names.

But I would say just as an aside for the issue of treaty protection that - and as Greg noted for INGOs particularly I don't agree that we would be naturally excluded because we would be able to look to - especially INGOs with multinational trademark protection - to such trademark treaties as the Paris Convention and TRIPS and so on and so forth. Thank you.

Thomas Rickert: Thanks, Claudia. The reason why we had Option A and B was because these options were the ones that were discussed during the call so I think there is not that much - or there wasn't that much the need of a demarcation between the two of them but those were the two proposals that have been voiced by some members of the group and that got some support and therefore this test of waters has been done.

Ricardo.

Ricardo Guilherme: Thanks, Thomas. One thing that I would like to recall as well is that without getting, again, into too much detail but in terms of discussing possible qualification criteria and so on we also sent - actually I also sent a message on the 23rd of January to the group where one of the things that I said there, just to remind the group again, was that we had to fix a certain mistake that had been committed by the community from the very beginning which was to mix IGOs and INGOs in the same pot.

So we had to make it clear that the legal framework applicable to IGOs is totally different from INGOs as such. And of course when you look at the INGOs themselves you also have certain substantive differences. For instance the Red Cross names they are subject to a specific kind of protection that normally does not exist for other INGOs.

However what I wanted to highlight on this was that just repeating what I said before was that we, in regard to IGOs, our case was clear and we provided the elements for that so it wasn't about some sort of like subjective creation of criteria.

So this has already been, for example, this information has been sent to the GAC and the GAC has taken some advice on it. The Board has also taken some advice on it. However, on the other hand in regard to other non-governmental entities - so the so-called INGOs - we could of course continue to extend our support for the development of objective and nondiscriminatory criteria as has been debated by this working group.

You have - what I wanted to point out as well was that the - at the beginning of this process we could see that certain decisions were adopted by ICANN which, at least in the view of some, so I won't get too personal here, but in the view of some people they were just like political decisions taken to cater to specific requests or interests.

So I won't get into that again. But I think one of the premises of this working group was to determine especially where it can be determined so it's not just like the hardcore protection that exists for IGOs but in the case of INGOs you have something else that can - may still be developed by the group as a policy.

That is where you have the space to come up with some objective criteria, exactly so that no like specific entity is just named to be protected but that any organization falling under those criteria can receive similar protection.

I just wanted to make this point very clear again because from time to time we see not only in this group but in many other ICANN discussions people mixing up the framework that is applicable to IGOs with the framework that is applicable to other nongovernmental organizations.

So we had to clarify that we are a different animal from other kinds of organizations. And that is - for those other kinds of organizations that is where the group may have some flexibility to develop additional objective criteria. Thanks.

Thomas Rickert: Thank you, Ricardo. Mary.

Mary Wong: Thanks, Thomas. So I was just taking up your offer to speak a little more about the exchange that some of us had on the list. I don't think Greg's on the call today otherwise I would probably ask him to speak to this as I think he does a far better job than I do.

But essentially I think the part of the email that you read out to the group earlier was my attempt not so much to formulate a set of criteria or even one criterion but really to summarize the type of organizations that we're talking about.

So my suggestion initially would be to take that statement or something similar to it as a framework for interpretation, if you like, to say - to have this group say these are the types of organizations that may deserve certain types of protections, you know, and whatever that sentence is.

The objective criteria then can be developed within that framework. And it may well be that the criteria could be in the alternative. You know, for certain organizations they would be protected by international treaties so some INGOs they might not be.

And we might want to talk about what in the abstract some of those objective criteria might look like. I understand, you know, some of my colleagues, you know, obviously because they are, you know, in the position of advocating for certain organizations that obviously they will therefore be different criteria suggested.

And I would suggest to this group that why don't we just list them all and take a look at them and see if they fit that framework definition that I and others have offered? I don't want to get to a position where we're over-inclusive. At the same time, as Greg points out, if we adopt one of the criteria that's been suggested we might actually be under-inclusive.

So that's my suggestion to take that as a framework and then pretty much put down a list of criterion and discuss those whether they're alternatives or additional.

The last thing I will say is that I think this is obviously an exercise that will impact later discussion. So, Thomas, I appreciate the difficulty in having to guide a discussion that's chronological but which also has crossover implications.

So, for example, you know, from my - and I think my group's perspective - to have a set of qualifying criteria that's relatively large or that's in the alternative

would necessarily mean that both the kinds of mechanisms for protection later on down the road would have to be narrow and tailored. And I'll leave that for another time but I just wanted to point that out. Thanks.

Thomas Rickert: Thanks, Mary. And certainly that's the difficulty that everything that we're discussing is sort of interlinked. But I just wanted to open the floor to discussing your suggestion because that would possibly open new opportunities for us to use one criterion or one set of criteria that would fit all organizations.

I see the difficulty having listened to many of you exchanging their views is that there is little flexibility for some in the working group that point out the points that are valid for them or that are decisive for them as criteria but that are not that persuasive or that urging for other participants in the group.

So my fear is that we might lose part of the community for a consensus if we don't overcome that difficulty. I mean, Ricardo has - you have referred to your earlier communication and you have emphasized, again, some of the legal arguments but there are those in the community that do not necessarily share that - share those views that are of the opinion that there is no universal protection for the names of acronyms and that, you know, that would like to see different criteria or think that, you know, they're - that it's not a must to implement those protections.

There are those who say that there have been intentional decisions a couple of years back not to grant extra protections while you now claim that there was a mistake at the beginning that needs to be rectified by offering more protections for IGOs in particular.

And I think it would, in an ideal world, we would have one set of criteria that would be applicable to all organizations because otherwise we might have a fragmentation of criteria that could be perceived to be arbitrary.

And this is why I'm sort of trying for the last time to stimulate the discussion on maybe coming up with a unified set of criteria that we can - that we can work from that do not have the difficulties that parts of - or that some of you have voiced earlier on.

Mary, I'm not sure whether your hand is up again or whether it's still up.

Mary Wong: No, it's up again.

Thomas Rickert: Please.

Mary Wong: I agree entirely with what you just said, Thomas. So - and I also wanted to highlight something that Greg said in his - one of his last emails to the group which is, you know, that this question of international treaty and/or statute, I mean, that was inherited, right, and you made mention of that earlier that this group should not feel constrained to only discuss that option.

So I was trying to look back at some of the spreadsheets and documents that we have but I haven't quite found them. Would it be productive to literally have a list of the possible criteria that this group has developed or can develop and to see how alarming that might look in order for us to decide whether that is a unified set, as you put it, Thomas, or whether there should be alternatives or whether there should be categories before moving forward.

Thomas Rickert: Thanks, Mary. Ricardo.

Ricardo Guilherme: Thanks again, Thomas. Sorry for taking your time. No, it's really a quick comment. I'm not naïve enough to expect that we're going to have - everyone is going to be in agreement with each other's statements. So of course we understand the diversity of the community that is participating in this group.

And we - it would be would be really kind of a surprise for me to have - to receive consensus here or acceptance of all the statements that someone makes in front of this group.

But again I would just reinforce one point that I made before because you were talking about as much as possible establishing like a single criteria applicable to all. But once more we are not talking about the same animals here.

We're not talking about the same fruits. So we have apples and we have bananas. And the IGOs they are a distinct group within this environment. They are subject to specific legal framework. And for that specific group there is going to be a specific set of criteria.

In regard to the other INGOs that is where perhaps the group may wish to establish constructively some objective criteria that like may be more or less inclusive then it might be up to the group. And I don't want to really get into too much detail there.

But if you simply say, well, the nomination of the INGO or the names related to that INGO they have to be specifically protected by treaty then I'll be very clear to you, the only one able to claim that protection would be the Red Cross.

So on the other hand if you're talking about some other criteria which may be related to international scope of the organization, to humanitarian character of the organization or whatever, and this is just like really some examples from the top of my head, then this group may have the possibility to further develop some criteria for those INGOs.

So, again, just to make it clear that we are not necessarily talking about the same sets of criteria for the same organizations. We have - the IGOs as a very distinct group, then we have the INGOs where - for which this group may

have some additional flexibility to develop criteria more or less along the lines of what Mary was saying. Thanks.

Thomas Rickert: Thanks, Ricardo. And also thanks to David who has made a comment in the chat. Before I move to Alan let me just say that I have the impression that, Ricardo, with your statement now and your last statement you said that, you know, you have your position and that the group can work on suggestions for other types of organizations.

Let me just say we are the group; you are the group. It's us. So it's not, you know, it's not...

Ricardo Guilherme: No, no, absolutely.

Thomas Rickert: Yeah, so it's - I think it's - and this is why I'm trying to take every opportunity to sort of unify the group and come up with a common solution rather than a fragmentation of solutions. And, you know, I want to take every chance that we maybe come up with something jointly.

And to stay with your analogy maybe this group chooses to protect fruit because fruit is different than meat or vegetables. You know, and so that fruit would be the decisive factor or enough justification to come up with a special protection.

And in that sense it wouldn't make a big difference whether you're an apple or a banana. And so if we found this criterion that would satisfy the needs of IOC, RC, IGOs and INGOs then, yeah, David, you're correct then we would grant protections to fruit salad.

But I, you know, just to make the point clear I think that we have the chance of having a solution for all that would encompass and not discriminate any subset of the group then that's something that we should consider. And I

thought that Mary's idea was a very prudent one in order to maybe steer the conversation into that direction. Alan, please.

Alan Greenberg: Thank you. Ricardo and I obviously disagree on what the criteria or lack of criteria should be for IGOs. But I think his overall statement has a lot of merit. I believe we should be separating the various classes of organizations that we can recognize just from the, you know, the outer skin so to speak, and trying to understand what it is we want them to satisfy in order to get the protections.

If in the end we end up with the same list for both then fine, we've found the unified one. But I don't think we should presume it's unified because I think that just makes it much more complex to try to satisfy the various groups and various needs. Thank you.

Thomas Rickert: Thanks, Alan. Ricardo.

Ricardo Guilherme: No, thanks Thomas. Just a very quick comment. I was just laughing at David's sentence there like fruit salad. It was - it made me laugh. It was a - I mean, it's always good to have some sort of humor put into the debate.

But just to emphasize once more based on your last comments it is, at least personally, it is a pleasure to participate in the group. And, you know, of course you can count on me and the participation of the UPU. And may I say on perhaps the other IGOs as well that of course we want to give very constructive feedback and inputs into the activities of this group.

So don't worry that we are absolutely committed. As you may see from various interventions that we had made to the group that we want to have as much as we can an objective and legally compliant policy. So you can count on us for that contribution. Thanks.

Thomas Rickert: Thank you very much, Ricardo. I think it was two or three calls ago when I asked whether we should have different criteria or discuss different criteria for the different types of organization. And at that time there was objection to that which is why I kept the communication, you know, trying to encompass all the four different types of organizations. But we need to, yeah, make a decision on that during this call I think.

Kiran and/or Jim.

Jim Bikoff: Yes, I was just going to say that listening to - and reading Mary's suggestion I think it has some merit. And I think that if we can maybe have some time to look at that in depth and comment on it it may be a solution as a first prong to have a standard that will be broader such as the one she suggested.

Thomas Rickert: Thanks, Jim. My suggestion in terms of next steps is that we do the following in parallel and that would be working on Mary's suggestion to maybe have some overarching criterion that we can work from but in addition to that work on criteria for the different groups. Because I think that we will not be able to each common ground enough to come up with a single set of criteria on the basis of what we have so far.

So I guess we need to spell out what the criteria are for the IOC, RCRC, IGOs and INGOs. And unless we come up with sort of an umbrella criterion that binds them together again I think we will have to put out the various options, the various groups, as parts where we seek approval or disapproval from the community separately.

That would mean that we - or I see Claudia's hand up, please.

Claudia MacMaster Tamarit: Hi, Thomas. Just to say in terms of the different sets of criteria because I, for one, had been advocating to have just one set of criteria. I do want to say that I think that if there is, right, some per se reservation of names on the basis of existing legal protection that organizations can look to

and say because of this particular legal schema there is automatic, per se, reservation of our names in either second and/or both top levels.

Then obviously there's no need for criteria for these organizations. ICANN needs to just give us (unintelligible). If there is a policy reason for including some international organizations, for example, INGOs that say, for example, have only legal protection for their name in trademark and do not make the statement that their name is reserved per se in second levels and top levels, then I think we should be honest about it and acknowledge, okay, what are the policy reason for protecting these international organizations.

And if it's because they have quite a bit of legal protection, okay, that's a stating point. If it's because they have a - they have a global reach and they have a international public service that you can look to for different reasons because of their mandate, because of existing legislation, because of the number of member countries, because of X criteria that we could come to.

Then I think that we - then there's no reason to have various different criteria for the organizations because all of those, as Mary said, those organizations that we imagine should be included in this framework would be able to apply regardless of whether they have 52 countries where their trademark is registered or they have 32 countries where they have (unintelligible) legislation or whatever reason. Thank you.

Thomas Rickert: Thanks, Claudia. Alan.

Alan Greenberg: Yeah, two points. Number one, if my recollection is - even in the GAC request or GAC proposal they are talking about coming up with a explicit list of IGOs which they believe would qualify. So even in the GAC interpretation it's not every IGO in the world but a subset that they believe qualify.

So, you know, we've got to be careful that we don't try - we're not trying to do something even far wider than was ever asked for, you know, by the GAC. That's number one.

Number two, I'll reiterate that the list of criteria may well be different depending on what level of protection we're talking about. You know, if the protection we're talking about is the equivalent of a claims notice, as we discussed in an earlier meeting, that's going to be a much lower threshold that you have to meet than if it's absolute blocking in all TLDs forever.

You know, I just cannot imagine that we will believe that one level of protection is sufficient for both of those extremes. So I know it's nice to not think about it but I believe it's going to have a substantive impact on being able to reach closure. Thank you.

Thomas Rickert: That's certainly true, Alan. And certainly the various questions that we have in front of us need to be interlinked. But, you know, I came to the conclusion that we have no other alternative at hand at the moment rather than to look at the organizations in isolation and work on solutions for them.

I think we can't afford to wait for the silver bullet solution to come from somewhere. You know, at least I don't see it in sight. If you - if somebody has a good suggestion please speak up but I think for the time being we should be working with the four different categories in mind and craft protection responses to that.

And if we can unify the solutions at the end of the day that's okay. But for the time being I think we have more or less four options that we need to work on with the appropriate responses may it be blocking or notices or what have you. And then ask the community where they are supportive of that or not.

But again, those who don't think that we can manage to have overarching principles that would suit all of them please do work on that. But as chair I

need to be cognizant of time and therefore I think we need to work on these four areas in parallel in order to make sure that we come to conclusions rather sooner than later. Any further comments on that?

Okay so I think we have, for IGOs and for the RCRC we would be able to work on the basis of Option A, which is treaty protection plus protection in multiple jurisdictions. The group I think needs to answer the question whether it wishes to have a name specifically mentioned in the treaty.

But I have - at least if my memory doesn't fail me - I haven't seen any opposition to it being sufficient that the treaty - or that an organization is created on the basis of the treaty but that the name itself doesn't have to be in there.

Which would mean that the RCRC and IGOs could be covered by Option 1. If you extensively construe a treaty then even the IOC might be covered. We have learned that the five rings are protected by the treaty and not the names but the organization is a treaty organization.

So I open this question up to the group whether that could be sub-surmised under Option A or whether we would need a different category for the IOC as well. And then the last point would be INGOs where I would like the group to come up with proposals for criteria as to - covering IGOs. And that these criteria certainly should be as objective as can be. Alan, please.

Alan Greenberg: Yeah, thank you. I'm not really answering your direct question. But as we're talking I realize we are continually talking about protecting the names and yet I sense that we're not really talking about protecting the names, we're talking about protecting acronyms or shortened forms. And I think it would be useful if we all were talking about the same things and I'm not sure we are right now.

You know, are we talking about just the acronyms? Which I think is what the GAC was talking about, but I may be wrong. Or are we talking about - when we say protecting the names we really mean the names, the formal names of the organization? And if we're talking about acronyms are we talking about the versions that are used in multiple languages?

I'd like a little bit of specificity to know exactly what it is we're talking about because I'm not sure that we have a common understanding of it.

Thomas Rickert: Certainly using the term "names" would not be accurate. I think we've been using designations for quite some time during our discussions, which should be closer to the legal reality.

But actually the question of what is being protected is pretty much a question of how far we would respond to the request made by those seeking protection and that would be names, acronyms but then we also have the question that has been recently discussed on the list of similar strings or combinations of the exact match plus keywords and stuff like that. Ricardo, please. Sorry, Alan?

Alan Greenberg: Yeah, just a clarification; I understand that there are more subtleties that we're introducing now of strings contained in or typos or things like that but still I'm not sure what the basic strings are. So when we're talking about any particular acronym, any particular IGO, are we talking about just the ones that they may have listed on a letter if they sent it to us or are we also talking about the French and Spanish acronyms, which may be different?

Thomas Rickert: Ricardo...

Alan Greenberg: I'm not sure I know.

Thomas Rickert: Alan, I think we'll get back to that...

Alan Greenberg: Yeah, okay.

Thomas Rickert: ...later on. Ricardo, please.

Ricardo Guilherme: Thanks, Thomas. No, just in answer to Alan's question - and I already wrote under the - in the chat section there it is the names and the acronyms so not only the acronyms or not only names, it's both.

And the issue of language is still being discussed with the GAC. But - so I won't provide you any further answer on this specific point right now. But the - we can already make sure that we're talking here about the names and acronyms of the - at least in the case of the IGOs. Thanks.

Thomas Rickert: Ricardo, I don't want to lead you in temptation to disclose any secrets of your discussions with the GAC but as far as your organization is concerned do you have any idea of what, you know, whether it would be the UN languages or more languages - would it be an exhaustive list that you could provide us with or would there be some unknowns in there?

Ricardo Guilherme: I know you want to tempt me to answer something, Thomas. But I really cannot, at this point, it's really something that even from my own organization I cannot really express a definitive answer. I would say at the very least - at the very least so I emphasize this - it would be the UN languages but at the very least. We still have to - we have a lot of discussion on this still.

Thomas Rickert: Okay thank you, Ricardo. Kiran and/or Jim.

Jim Bikoff: Yeah, just to answer Alan's question. For us we're talking about the words and we're talking about them in the UN languages plus the three others that are included in the Guidebook, no acronyms.

Thomas Rickert: Thanks, Jim. Would any of you like to comment on the question whether the group wishes to, quite extensively, construe the treaty requirement and have

that encompass the IOC as well under Option - or what was called Option A? Because even the IOC was created by virtue of a treaty although the names or the designations are not mentioned or protected by the treaty.

So the reason why I'm asking is as others mentioned rightfully earlier on the only organization that has its designations mentioned and protected under a treaty would be the RCRC. So if, for the cases of the IGOs, one were of the opinion that it is sufficient for an organization to be - to having been created by virtue of a treaty then we might say that this would also apply for the IOC and then the IOC would potentially also fall under category or Option A.

Can I take your silence as approval or objection? Or let me specifically ask is there any opposition to us proceeding on that basis? Greg, please.

Greg Shatan: Not speaking in opposition - and I'm sorry I've just joined the call so I know I've missed a lot. But I guess the question in my mind or maybe we haven't gotten there yet - is what are we doing about the other INGOs and also, you know, beyond the IOC, you know, the IGOs with regard to treaties and especially with regard to naming as a part of that treaty?

Thomas Rickert: Greg, I guess it would - we would need to fill you in a little bit on the discussions that we had so far. The idea was to - or we started our conversation based on the proposal made by Mary. But that didn't find universal support so we chose - or my proposal was that we would look at the four different categories in isolation and work on criteria for them but still in parallel work on potentially a one-size-fits-all solution as proposed or as kicked off in terms of discussion by Mary.

Mary, please.

Mary Wong: Thanks, Thomas. And, Greg, I'm happy to talk offline as well about the points that were made earlier. So, Thomas, I just had a question for clarification for you on your question. When you talk about protection by way of international

treaty, you know, obviously there is one question as to whether it's name or names and acronyms or names and acronyms and something else. I mean, that was discussed by the group.

I guess my question is protection of an organization by international treaty - are there organizations that don't have an international scope or a public interest or in (submission) that would be protected by such treaties? I realize that maybe we don't know the answer to this; maybe general counsel does or doesn't.

But it seems to me when we say protection by international treaty that in and of itself may not mean that a protected organization is the type of organization that we envisage as justifying protection. Does that make sense?

Thomas Rickert: It makes sense and I had encouraged the group to come up with variations of Options A and B as some of you have. And I take good note of your suggestion that additional criteria should be added, in your view, to provide adequate responses to the question that is currently in front of us. Ricardo.

Ricardo Guilherme: Yeah, thanks Thomas. No, just - you were mentioning - and maybe the IOC can correct me if I'm wrong - but you were mentioning the IOC has been created by an international treaty; that is not the case as far as I know. The Nairobi Treaty only talks about the protection of the Olympic symbol and nothing else.

There is a reference there to the IOC as well as to International Olympic Committees but that is a totally different matter. So they were not, as far as I know, they were not created by international treaty. Thanks.

Thomas Rickert: Ricardo, that's very useful. Maybe Kiran or Jim can speak to that but that would actually mean that we can't include the IOC in that category. Greg, is that a new hand or is it still up?

Greg Shatan: Actually it's a new hand but it's maybe more a question than an answer. There is something called the Olympic Charter which - but I don't know whether it is a - technically a treaty or not. But it appears to be the entity which either, you know, creates - the document that creates or governs the existence of the IOC.

Whether the Olympic Charter is a treaty is a different question. But I think if we have - if we're talking about that document and not the Nairobi Treaty we have something else to at least consider with regard to IOC eligibility.
Thanks.

Thomas Rickert: Thanks, Greg. And I think that - well, Jim, please.

Jim Bikoff: No I was just going to say going on Greg's comment it was - there was a charter and it was participated in by a number of countries. I don't know whether it was formally called a treaty but it was certainly a multilateral group that created the charter. And I think it must have been - I'm trying to think back now, I'll have to check it but 40 or 50 countries back in the 19th Century.

Thomas Rickert: Thanks, Jim. I suggest that we move this discussion to the list and that we actually work on criteria for the respective groups. I understand that the IGOs would go, you know, would stand by their correspondence on the mailing list so we can derive it from there.

I think we might need some feedback on the question of the IOC and whether that can be dealt with in combination with the RCRC and the IGOs or whether we need to deal with that separately. And finally I guess we need to work on criteria for INGOs.

Greg, again, is that a new hand?

Greg Shatan: Yes, and...

Thomas Rickert: Okay, there you go.

Greg Shatan: With - just with regard to the IGOs just want to reiterate what I've said on the list before which is that, you know, by and large it seems that the, you know, at least a definition, a working definition of an INGO is an organization that hasn't been created by treaty at least in general, the IOC may be a different animal in that case.

But a definition that requires treaties when we're dealing with an organizational type that by and large is defined by not being created by a treaty would seem to be exclusionary and on an arbitrary basis and not intended to distinguish, you know, good organizations from bad.

So at least with regard to the INGOs I think we need to get away from the treaty requirement. And I think we have, you know, somewhat of a lack of representation on this group from INGOs other than the IOC and the RCRC and therefore no one necessarily to speak for their concerns. But it's one that we should recognize since we're not, you know, just here to represent kind of stakeholders but also to try to, you know, do, you know, the business of ICANN. Thank you.

Thomas Rickert: Thanks, Greg. And you surely have missed that part of our conversation where we concluded that we do not have in sight a universal criterion for all types of organizations that we're discussing which is why we - why I have proposed to split the criteria for the various groups which means that we can come up with or we need to come up with suggestions that work for INGOs and certainly that would not include the treaty requirement.

Alan, please.

Alan Greenberg: You know, I was just going to follow on on that my understanding - and I maybe wrong - is that - hello?

Thomas Rickert: We can hear you.

Alan Greenberg: Okay. Is that even though the Red Cross is not created (unintelligible) treaties would protect certain aspects of their operations. So if we're looking at INGOs in general and not just the specific two named ones then, yes, we're going to have to go away from the treaty definition so that's...

((Crosstalk))

Alan Greenberg: ...this group to what extent we want to widen that but I don't think we have much choice. Thank you.

Thomas Rickert: Thanks, Alan. With this - unless there are more comments I think with this we need to close on this specific...

Stéphane Hankins: Maybe - excuse me, I can't raise my hand. This is Stéphane Hankins, Red Cross Red Crescent.

Thomas Rickert: Stéphane, I have...

Stéphane Hankins: May I say a word please?

((Crosstalk))

Thomas Rickert: ...but it was lowered in the meantime so I thought that you didn't want to speak...

Stéphane Hankins: Well I don't know, I had trouble wondering whether the hand is up or not this little figure. Anyway I thought we - just to contribute, you know, the Red Cross Red Crescent perspective because it has been mentioned.

In our past communications we have - most recent communication - we have outlined a little bit where we would stand. As regards, you know, the international protection of the designations although, you know, the Red Cross Red Crescent movement is not created by a treaty these are - the designations Red Cross, Red Crescent, Red Crystal, and Red Lion and some are protected under public international law treaty so they would clearly fall under that criteria.

So as you have seen we, you know, we would require in line with the clear terms of the 1949 Geneva Conventions and their additional protocols to have the protection of the designation in the six UN languages, which are, also, by the way, the working languages of the International Federation of Red Cross Red Crescent Societies.

So, you know, that would be the first requirement which is more or less the list which is in the Applicant Guidebook. In addition to that with regard to the actual names of the organizations and their acronyms, you know, since the strings Red Cross and the strings German Red Cross are distinct as far as we have been told in that case, you know, we would call for the protection of the names of the 188 National Societies of the Red Cross Red Crescent and the International Committee of the Red Cross and International Federation names and the latter's two acronyms, which have a level of international recognition because they're formulated in resolutions of the international conference of the Red Cross Red Crescent in which states participate.

So I don't know how, you know, how to move forward with that. I mean, we obviously, you know, would be in a position to provide the list of the names of the organizations in addition to that is already in the Guidebook list. So I don't know what, you know, what - how to proceed with that.

The other - and in that regard, you know, there is also the language issue, which we've also spelled out in our recent communications, which is, you know, the names of the respective organizations would have to be also in the

national language in which the respective organizations operate. The German Red Cross name would a priori need to be protected also in German where the German Red Cross obviously operates and is incorporated under domestic law.

So I - this has been spelled out in recent communications communicated. And I don't know whether we need to do that again or what is the expectation from the side of the chair and from the side of the group. Thank you very much.

Thomas Rickert: Thank you very much, Stéphane. Your request for protection, also in terms of scope of protection, has been noted. I think that the group has - or I hope the group has understood - at least I have digested what you wrote and I've understood your request which is why you have seen topics such as the requirement or the wish of a string similarity review at the second level and other aspects of your intervention have been included in our discussions.

I think that at this time - at this stage, at least for me, it would not be necessary to require you to compile the whole list. But certainly I open that question up to the others.

I think that as we move on sooner or later you might be required to come up with a list because I think the group depending on the protection mechanisms that we work on might need an exhaustive list of strings that can be incorporated in such a tool and that would need to be revisited or revised. But for the time being, Stéphane, I think there is no requirement for you to further specify the designations that you would like to see protected. Does that answer your question?

Stéphane Hankins: Thank you very much, yes.

Thomas Rickert: You're most welcome. In which case I think we can move to the next agenda item. And I have received a signal that Brian Peck is now with us so before

talking about protection mechanisms I'd like to invite Brian to give us an update on the general counsel request, please.

Brian Peck: Thank you, Thomas. And I apologize to everyone for not being able to be on the call sooner. Just wanted to let you know I checked with - or met briefly with the general counsel's office earlier. They've confirmed that the raw research has basically been completed. They're now reviewing - all the material. And they expect to be able to provide a full response to the working group's specific questions within the next couple of weeks. And that's their current plan.

They did note, again, that, you know, they're still reviewing all the research from the various jurisdictions that they've collected the research in and to date still that there's been nothing to, you know, that's contrary to the trend that we've heard earlier in terms of what they found so far. So the main thing is that they are looking to provide you a formal response to the specific questions within the next couple weeks.

Thomas Rickert: Brian, is there any way we can encourage general counsel to put a date to our request?

Brian Peck: I can certainly try. I've been asking them quite often. You know, when I talked to them earlier this morning they mentioned within the next couple weeks but I can ask them if we can get a specific date.

Thomas Rickert: Well I guess it has been a couple of weeks for a couple of weeks now so we might have a different understanding of a couple of weeks. But...

Brian Peck: Sure.

Thomas Rickert: ...that's not for me to decide. All I can say - and I hope that the group agrees is that for us to be able to come up with a policy response to the questions that we've tasked with we do need the response from general counsel. And...

Brian Peck: Sure.

Thomas Rickert: ...we're not able to time our work without knowing when to expect the general counsel response. And, you know, I have on my mind already to ask the GNSO Council chair as well as the ICANN Board to maybe schedule for extraordinary meeting so that we can get our work done as quickly as we can.

But for that to happen we definitely need to know when to price in the general counsel request. So it would be great if you could maybe urge for the provision of a delivery date.

Brian Peck: Sure, I can totally do that. And I think, I mean, again too, Thomas and to the group, you know, the trend that we've been - that they've been providing, you know, an update on the last few weeks again they haven't found anything to date that is - has run contrary to that trend, which is, again, there is - they've yet to find anything, there's any specific treaty or domestic law that specifically precludes the registration of a domain name of any of these organizations.

We know - for anyone in the registration chain whether it be ICANN, whether it be a registrar, whether it be a registry. You know, there's certainly a myriad of domestic laws and treaties that provide causes of action or from which, you know, you could seek protection or to challenge any such registration. But again that's been the trend that, you know, is over the course of the research.

And now that the research has been completed - at least, again, they're doing a final review of the more recent jurisdictions that just came in. But to date there has not been anything to find that would run contrary to that.

Thomas Rickert: Thank you very much, Brian. And it's my understanding - or at least I have tried to convey this message to the group that we're working on the basis of

the assumption that general counsel will not provide a response that absolutely prohibits or makes it illegal for ICANN registries or registrars to engage in such registrations or delegations.

And that we would need to completely reconsider because it (were) out of our scope if general counsel actually (asked) and responded in the affirmative. So I think on the basis of that assumption we're moving forward but nonetheless I guess the group is well advised not to conclude its work on the basis of guesses but on a solid legal assessment.

And I think David and Ricardo are completely right that the legal assessment needs to be done right. And certainly I would like to see it rather sooner than later but it has to be correct. Thank you very much, Brian. Are there any questions to Brian?

No? In which case we can spend the remainder of this call to talk about questions surrounding the protection mechanisms. You will recall that we discussed it would be one part of potential policy recommendations to open up existing RPMs to those eligible for protections under the special protections should they ever come to light.

And I have asked David Maher, who is chair of the subgroup dealing with protections, whether he would be willing to lead on the drafting of policy recommendations in that respect and he has thankfully agreed. And Claudia has also indicated that she would be willing to work on that.

I'd like to encourage all of you to help work with that because I think that's definitely something that we can do now in parallel with our other work and that is to look at the existing UDRP and to look at the upcoming URS and the trademark clearinghouse and see where the organizations that we're now discussing would not be eligible for protections and that we make recommendations as to how to fix that.

Which would help us responding to one of the concerns voiced by those that have (sought) protections and that is the protection against similar or identical strings in the retrospective or curative way. So that might be one part of the package of recommendations. And so please do participate in that because I think we can make good progress with that.

On the other hand we have to work on the requested proactive or preventive protections. And you will recall that I have suggested that we - that we work from an analogy to the trademark clearinghouse, i.e. based on a two-factor infrastructure with a database or a central repository as we've refined the language of data that would, at the minimum, include the strings that should receive protection as well as the organizations that have sought the entry in this central repository and that additional services would be built on top of that.

You do know that, for the trademark clearinghouse, those would be the sunrise service and the trademark claims notice. But that is just to give you the analogy so we can work on inventing or thinking of completely different mechanisms.

So we've heard a couple of times that the responses in terms of protections should depend on what is actually being protected or to put it the other way around the harsher the response the harsher the qualification criteria should be. Maybe we could use that as a formula for that.

And so I'd like to confront the group with a few statements and just get some immediate feedback from you. So what would you think of a protection mechanisms which has one part consisting of identical matches and acronyms and that these names could not be registered by anybody? So blocking for exact match names and acronyms, that has been one of the requests.

So while you're thinking let me maybe broaden up the question a little bit. An alternative to that could be to not block registrations but to check the eligibility of the entity or person requesting a registration. I see Avri Doria saying no. I see Ricardo saying absolutely.

Okay Mary Wong opposing to blocking. David is supporting it.

Wolfgang Kleinwachter: Wolfgang...

((Crosstalk))

Thomas Rickert: Okay so Ricardo is just verifying that his absolutely was with respect to David's remark but I'm not going to repeat everything that's being in the chat now. So can I encourage you to speak up? I think we need to come up with a starting point for a discussion. We have exact matches and acronyms.

We then have the variations that Stéphane, for example, spoke of which are the names of the various national chapters. So we have differences in terms of the strings to be protected and we have a variety of responses.

So nobody wants to speak but the chat is very active. Alan.

Alan Greenberg: I'm dumb enough to speak. I will - but I'll say what I said earlier; in general ALAC would be opposed to blocking. There are probably some criteria which would satisfy ALAC that blocking - with exceptions because we believe blocking must always be accompanied by some exceptions; the existing TLDs and registrations in the case that exceptions are warranted.

You know, ALAC might be willing to accept blocking for some situations but the criteria would have to be stringent. So, you know, the answer is maybe. Not really a strong likely, to be honest, but yes, ALAC, I believe would accept blocking in some situations but not globally to a large number and not exclusively without any exceptions. Thank you.

Thomas Rickert: Thanks, Alan. Kiran or Jim?

Jim Bikoff: Yes, going on from what Alan said, I would like to support blocking with exceptions. I think that with all of these names there's going to be some type of legitimate right that can be exerted at some point by someone and I think we've seen some of those off line on the chat.

So I think there ought to be a way to have a blocking mechanism but to have an exception to it so that if somebody does show a legitimate right to use a name or acronym then they should have the right to do it.

Thomas Rickert: Thanks, Jim. Mary.

Mary Wong: I'm going to follow Alan's example and speak as well. So two points, I think the first is more I'll defer to Chuck and Avri's recollections of some related discussions in the GNSO even before the new gTLD process. I mean, that may or may not shed some light on the - I guess the implications of recommending a blocking mechanism for this particular issue.

The second point is at least recently in the new gTLD program, you know, blocking has come up a number of times including in the trademark context; stronger or less strong or in various guises. And that's been opposed by many aspects of the community not just by the non commercial actors. And there's been many reasons put forward.

So I would say that if there is to be a recommendation for blocking or even blocking with exceptions - I can't imagine what that would look like but even so coming out from this group then I think we would have to be prepared to say why this specific issue is one that does deserve the blocking mechanism when others that have come up have not.

Thomas Rickert: Thanks, Mary. I think we need to come to a common definition of blocking. At least as far as I'm concerned I would not use the term blocking if there were exemption procedures. You know, if a name is blocked that would be as if it were put on the reserve names list so nobody can get access to it because it's blocked from reservation or from registration.

But we can agree on another type of terminology. But I think it would be stringent to say blocking, you know, prohibits registration from anybody including the entitled organization itself. So once - and this is basically the reason why we're not talking about a reserve names list because that would exclude - unless you go through the cumbersome (RCEP) procedure - exclude the entitled organizations themselves from using the designations.

But if we had exemption procedures that would be - would not be deemed blocking at least as far as I'm concerned. Claudio, please.

Claudia MacMaster Tamarit: Hi, Thomas. I'd just like to lend my support to the idea of having - and whether it's called blocking or reservation of names I'm not so sure. But obviously I think that the idea for some would-be applicants would be to have some sort of a reserve name list potentially also with exceptions to make sure that theirs the interest that are protected.

But in the alternative that this group doesn't recommend that I don't want - I would urge the group to consider other possibilities just like what Alan was saying and I think also what Avri was saying in the chat. If it means that it would be accepted for some organizations some TLDs would be more troublesome than others.

There might be the potential for much more confusion in certain TLDs than in other TLDs. And if that's the case then perhaps one way of finding some sort of a compromise would be to allow - to allow certain organizations to apply directly with the TLD in some sort of a parallel sunrise kind of procedure so that the applicant itself can make that determination of what are the most

important TLDs to reserve the name where there would be the highest likelihood of confusion for the internet users.

And then to make sure that there's a lower burden if that's going to block acceptance of any protection at all for registrars and registries out there that will lower hopefully their burden in granting protection. Anyway just an idea to possibly have some sort of a compromise. Thank you.

Thomas Rickert: Thank you, Claudia. Greg.

Greg Shatan: Thank you, Thomas. I think blocking has become somewhat of a dog whistle word in ICANN circle. I think it's almost a word that when you use it you kind of know where people stand just by the fact that they've chosen to use it or not.

I think - I agree with you that a complete reservation against all use by any party, you know, would constitute a block and I wouldn't apply that term to other mechanisms that are proactive as opposed to curative but that involve some level of either choice on the part of the party such as a sunrise type of mechanism like the limited preventative registration or a mechanism where there is, you know, an appeal or other type of process so it would allow, you know, third parties.

Anne and I would be supportive of certainly those mechanisms, those non blocking proactive mechanisms. I think, you know, reserve names approach is the most extreme. And I think it not necessarily in its - at least the pure form that we've discussed all that helpful to the organizations that are intended to be protected by it since it wouldn't even be available to them even if they would want it.

And that I think doesn't, you know, create an appropriate solution to avoiding inappropriate third party use of these strings. Thank you.

Thomas Rickert: Thank you, Greg. Ricardo.

Ricardo Guilherme: Thanks, Thomas. No just to second David's statement in the chat already. We are - regardless of the terminology used by ICANN what we're talking about, as least as far as IGOs are concerned, is the prevention against third party registration.

So if you call it - if you want to call it blocking or prevention or non registration or reserve lists that's a different matter. But that's the main concern that has been manifested by IGO community, prevention against third party registration of course on a non-curative basis. Thanks.

Thomas Rickert: Thank you, Ricardo. Alan.

Alan Greenberg: Yeah, Ricardo has effectively said what I was going to say. The difference between absolute blocking and blocking but allowing the organization in question to get it is just a matter of wording it properly.

We're really talking here about the third party registrations and that's the substance of our discussion not whether, you know, as the Board demonstrated in their interim resolution we may make blocking more - less attractive by saying if you're - if you block it you can't get it yourself, which is what they said.

But in terms of a long-term direction I think we have to look at the real substance of third party registrations and not quibble over whether we're using the inability to register it yourself as the incentive for not asking. Thank you.

Thomas Rickert: Thanks, Alan. I agree but still I think we should be on the same page in terms of our understanding of the various mechanisms.

Alan Greenberg: Indeed but I wouldn't quibble over the difference because it's not a substantive difference in terms of policy.

Thomas Rickert: Thank you. Avri.

Avri Doria: Yes, this is Avri. And I'm afraid I'm going to be quibbling. I think that first of all I think that we have to talk about name reservations as they are currently defined which means we create additions to the reserve name list or we don't. Call that blocking or call that blocking plus because that's blocking for all including those who are urging us to protect the name.

And I think that if we are then also thinking of creating a new kind of list that is the special reservations list that blocks third parties but not the entities themselves or perhaps not the entities themselves and their friends then, k we need to define that as a separate entity.

So to avoid using the word blocking I think there is a difference between a reserve name list as we have now, a special reserve name list as I think is being demanded by some that, you know, everyone but us is blocked. I think we have a third category in there of the special permission - I mean, special reserve plus licensing or, you know, other methods of exception from that and we have to talk about those.

And then we have to talk about, you know, the separate curative methods. I know that I'm personally much more willing to see a name put on a full reserve list even though I'm against blocking, I'm much more willing to see a name put on the reserve list and we say this name is so precious that it is better that it be totally reserved.

Like the name ICANN was totally reserved then that it should be allowed to go to anyone versus, you know, a special reserve names that I think creates all kinds of problems, all kinds of gaming opportunities, all kinds of whatever that if we do create a notion of a special reserve name list we, A, need to be

intentional about it and then, B, we have to subject it to a full gaming analysis knowing how ICANN and all of the people involved in ICANN react to any rule that creates a new opportunity. Thank you.

Thomas Rickert: Thank you very much, Avri. And we have seven minutes to the hour which means that our call is coming to a close shortly - to an end shortly. But I'd still like to share two or three ideas with you which we hopefully discuss further on the list.

We're now talking about these absolute reservations where nobody can get access to certain designations or of the option where only the entitled organization, if you will, can get access to the name. But there are more options.

You could, likewise, say that certain designations cannot be registered as domain names unless you have proven your eligibility. So that if you send a request for the creation of a domain name to a registrar and it is an exact match to the list that is in the central repository then your create request would only be successful if you have proven your eligibility.

And in that case one could even go as far as saying that the organization that has filed for the entry in the central repository does not necessarily prevail over some other registrant if that registrant evidences legitimate use. So there are nuances to that.

One might also go to the other extreme which has been mentioned earlier on in our discussions and that would mean that you only issue notices but that reservations are still carried out.

One might also think of the staggered approach whereby in, you know, as a basis protection let's say, the names and acronyms of these organizations unless general counsel responds that there's absolute protection, cannot be registered or can be registered if the registrant confirms the equivalent of a

trademark claims notice saying okay I intend to use this name legitimately. I have understood that this name is receiving special protection but still I'm going to proceed with the registration.

And that may be if there is one case or five cases, 10 cases, whatever the group might choose to pick, where despite of the notice abuse has occurred that you would then elevate it to the next protection level which could then be a proactive protection mechanism.

You know, this is just to think out of the box and to give you some food for thought for a good discussion on the mailing list. But I think what we need to do is not only say that we need to think of protections in connection with qualification criteria but that we actually spell out concrete protections that we want to have and maybe not only that we want to have but of which we think that they could get somewhat near consensus.

Because, you know, the more consensual we work the higher the chances that the protections are actually going to see daylight. As mentioned earlier the difficulty for us with the work plan is that as long as we don't know the - when the general counsel response is coming in we can't really predict firmly the next step so we will get back to that once we hear from general counsel.

The next meeting is going to be next week, two hours later, which is, I think 19 hours UTC. And with this I'd like to thank you all for your participation and for your contributions. And I look forward to continuing the discussion with you on the mailing list. Thank you very much.

Wolfgang Kleinwachter: Thank you. Bye-bye.

Thomas Rickert: Bye-bye.

Nathalie Peregrine: Thank you very much, (Tonya). You may now stop the recordings.

Greg Shatan: Thank you. Bye-bye.

END