

**ICANN
Transcription
IGO-INGO Protections Policy Development Process (PDP) Working Group
Wednesday 11 September 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 11 September 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-20130911-en.mp3>

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

Attendees:

Griffin Barnett – IPC/IOC
Jim Bikoff – IPC/IOC
Elizabeth Finberg - RySG
Chuck Gomes – RySG
Alan Greenberg – ALAC
Ricardo Guilherme – RySG / UPU
Stephane Hankins – Red Cross Red Crescent
David Heasley – IPC/IOC
Judd Lauter – IOC/IOC
Osvaldo Novoa - ISPCP
Sam Paltridge – OECD
Christopher Rassi – Red Cross Red Crescent
Thomas Rickert – NCA –Working group chair
Greg Shatan – IPC
Claudia MacMaster Tamarit - ISO
Joanne Teng - WIPO
Berly Lelievre Acosta - WIPO

Apology:

Guilaine Fournet – IEC
Mason Cole – RrSG – GNSO Council Vice chair

ICANN Staff:

Berry Cobb
Mary Wong
Julia Charvolen

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

Nathalie Peregrine: Thank you, (Kelly). Good morning, good afternoon, good evening everyone and welcome to the IGO/INGO Working Group call on Wednesday 11 September 2013.

On the call today we have Jim Bikoff, Elizabeth Finberg, Chuck Gomes, Stéphane Hankins, David Heasley, Judd Lauter, Griffin Barnett, Osvaldo Novoa, Thomas Rickert. We have - yes, I'm sorry, we have apologies from Guiliane Fournet. And from staff we have Berry Cobb, Mary Wong and myself, Julia Charvolen.

May I please remind all participants to please state their names before speaking for transcript purposes? Thank you very much and over to you, Thomas.

Thomas Rickert: Thank you so much, Julia. Welcome, everybody, to this week's telephone conference. We've scheduled this, again, for two hours. And given the level of activity on the mailing list I think that we might pretty well exhaust that. And I would love to be pleasantly surprised to see that we can end it early. But we will see that in the course of this call.

First of all I'd like to ask you whether you have any questions with respect to the agenda? And also whether there are any updates to statements of interest?

Okay hearing and reading none we can move straightaway to the second agenda item which is the review of the draft final report which only went out to you quite shortly before this call so we would very much understand if you didn't have the opportunity to go through the report and get back to us with your requests for changes or just applause, which is also possible.

But I guess that anyway our task and challenge for today is to discuss the assessment of consensus level for the various recommendations that are on the table. So I guess that we should start with that.

Okay so I thought I heard somebody making an intervention. So I guess we should start with that. And I guess that we - or I would like to hear from you whether you had any questions with respect to the approach that I took?

I know that I've been quite brief in my explanations in the covering notes that I send out together with the assessment of the consensus level. And I refer to last week's call where I have described the approach that I took. I do not want to repeat myself in great length so in the absence of any questions from your side I would recommend that for the sake of saving time we enter into discussion straightaway.

But before I get to the first comment that we received I wanted to give you the opportunity to ask clarifying questions with respect to how I approached this challenging task.

Okay so don't be afraid that you lost an opportunity to ask questions if you don't speak up now or if you don't raise your hand now please do so later as we move along. But then I would suggest that we maybe talk about a question that was raised by Chuck in his email. I guess Chuck was the first person to respond to the consensus call with quite a detailed response to my assessment of the consensus level.

And, Chuck, thanks so much for taking the time to do so. And I have to say that this was very helpful for me to receive your feedback and to see whether I was sort of in, you know, it was sort of a sanity check. You were the first person to help me.

Chuck, I would like to give you the opportunity to ask the question again about the specific recommendation that you alluded to but also feel free to touch upon other recommendations that you had questions about.

Chuck Gomes: Thanks, Thomas. The - first of all let me qualify what I'm going to say with saying that I'm perfectly willing to accept your assessment as-is. I thought it might be helpful to discuss it a little bit. Your assessment didn't seem quite as clear as some of the others to me. All of the others I was personally comfortable with in terms of the assessment.

The second qualifying comment is is that I think it's important for us to discuss anyone's like the one I identified today. But at the end of the meeting I would hope that we can agree to move forward as quickly as possible with the final report and get that to the Council.

If our assessments aren't - if your assessments aren't perfect I think there's opportunity through the comment period and through the bottom-up process with the Council for us to iron out any places where maybe there might be disagreement among us.

That said, I think I said on the list my comments in an exchange with Alan on the one recommendation that wasn't as obvious - it was one of the INGO recommendations. It wasn't clear cut to me. The - one of my concerns as I communicated to Alan was is that there was one stakeholder group who supported the recommendation and one advisory committee representative that did so and several individuals.

And I guess my concern looking forward was, okay, this is ultimately going to be reviewed by the whole GNSO via the Council. And with no other support from SGs or constituencies I wondered whether it should be called strong support.

Now I confess, I don't know whether we should be looking at it that way or not. But that's the way that I looked at it and all I'm doing is sharing with you. And I welcome and respect other people's views on this. Thanks.

Thomas Rickert: Thanks so much, Chuck. And if I remember correctly your email you also asked - or you said that you would be eager to hear my rationale for that specific point. And I'm certainly willing to share my thinking with you.

Now what we - what we have received as written responses to the consensus call is sort of a snapshot of the thinking of those who actually took the time or had the opportunity to respond in writing to the consensus call.

Nonetheless what we did in this working group was an iterative process. And as you will remember when we looked at the Working Group Guidelines the finding of consensus or the determination of consensus should be an iterative process.

And so I thought it would not be accurate to completely neglect the opinions and the views that have been shared by the groups that have joined our discussion but that have not provided us with written statements or I should rather say that have not yet have provided us with written statements.

So I actually tried to go through all the documentation that we had an also looked at some of the calls that we had to determine what the consensus level is. And certainly this is true for the other recommendations as well but I have to confess that this very recommendation was a specifically challenging task.

And I would also like to use this opportunity to elaborate a little bit on or add to the exchange of views that has taken place on the mailing list in the last couple of days and that's with respect to not all groups in the GNSO, in the Contracted and in the Non Contracted Parties House having participate in the consensus call.

And there was mention of the BC, of the ISPs and the Registrar Stakeholder Group. And in fact we have reached out to all three of them. We do not yet have feedback from the BC other than (when) feedback saying that they're

seeking to provide us with input. But I was sort of (building) in the dark with respect to that group.

I had the opportunity to exchange thoughts with Osvaldo from the ISPs who have only a few minutes back provided their written input. And I also had an exchange of thoughts with the Registrars who I expect to provide input in written form very shortly.

And this is - these are views that I also incorporated into my thinking when determining that for this particular recommendation there would be strong support but significant objection.

So Chuck pointed out and this is just the fact that we have support for the position from NCSG and that ALAC supports it but that apart from that there is no support from any other of the groups that I just referred to.

So I would like to give the members of the working group the opportunity to chime in and join this discussion. Certainly I'm - I have not encouraged you to help me making this determination if I didn't have the plan to seriously take into account your suggestion. So I would very much welcome your feedback on this one.

But I guess that once we move to other recommendations that have been commented we will have more opportunity to discuss what has been - what has been proposed by me as the appropriate determination of consensus.

But nonetheless I guess we all have to remind ourselves that this is not done by mere counting. And this shall reflect the views inside the working group. It's not a vote. And therefore I didn't just add up the responses that we got but I tried to put this and amalgamate this into a bigger picture.

But I see Chuck's hand up so please, Chuck.

Chuck Gomes: Thanks again, Thomas. Since I was hoping others would speak up but since they're not is it fair to me to assume that I'm the only one that has a concern about Thomas's categorization of this level of support for Recommendation 3 under INGOs?

If so, then I think we can just move on and use his assessment in that regard pending whatever he receives in the very near term from any other SGs or SOs or participants in the group.

Thomas Rickert: Thanks, Chuck. So you've heard Chuck's question and I think it's a very wise approach. And thank you for your flexibility with this, Chuck. Flexibility I mean in the best sense. But I guess we will have to go through this exercise with other recommendations as well.

Again - and I hope to have made this sufficiently clear in my covering notes as well as during last week's call. This discussion is not about whether you think that the recommendation is a recommendation that should be implemented or whether you're against the substance of the recommendation.

This is merely - not merely, I mean, it's quite a huge task - but this is actually to see whether I have grasped the atmosphere inside this working group and the wider community that is not with us today in this call adequately.

So I thought this would be some support with significant opposition. And unless others join Chuck in his concerns that - actually it would be closer to divergence than to strong support with significant opposition - I think we should set this item aside. Certainly there is the opportunity for you to get back to this as we talk and then move to the next item.

And - in order to do that I have to look at an email sent by Alan. And, Berry, maybe you can help me finding the next recommendation that we should look at.

Berry Cobb: Hi, Thomas. This is Berry. His email response was from September 10 replying back to Chuck's, I believe. And I pasted what he sent in his email over on the left hand pane. And I believe he was first talking about the Olympic Committee protections which...

Thomas Rickert: Okay so let's talk about the IOC recommendations then. So the first item - is Alan with us already? No. And, Julia, did you mention an apology from Alan or can we expect him to join?

Julia Charvolen: I have not noted Alan's apology.

Thomas Rickert: Thank you, Julia.

Julia Charvolen: There are no apologies for Alan.

((Crosstalk))

Thomas Rickert: Okay thank you. Thank you. So maybe Alan's going to join. But nonetheless I guess we should proceed with our discussion on this. So IOC 1, that's the top level protection for exact match full name (unintelligible) 1 identifiers. He said that this looks more like strong support with significant objection to him. And I would like to open the floor to discuss this.

I guess that Alan has clarified in his exchange with Chuck that he has based his comments primarily on the - on the written responses that we received. So I should note that this has changed in the meantime so we have the ISPs supporting this recommendation and we can expect the Registrars also to support it.

I would have loved to ask Alan whether this adequately addresses his concerns but I think we're safe to say that, you know, it's incorporating those

views that actually we do have - I think I called it consensus, right? Any more views on that from the group?

Berry Cobb: Yes, that's correct. The document you sent out did show consensus for 1 and 2 and I believe strong support and significant opposition for 3 and 4.

Jim Bikoff: Thomas?

Thomas Rickert: Jim, please.

Jim Bikoff: Yeah, I would just note that I received an email - I think everybody received an email earlier from Sam Paltridge at the OECD where he says in his memo, which is about IGOs predominantly, but he does say that he supports the GAC advice which is a broader statement and I think reflects on the full GAC advice for all groups.

Thomas Rickert: Thanks, Jim. And certainly reference to GAC advice is possible and thanks for reminding the group of the existing GAC advice. I think that this is a good opportunity for me to comment on that. I wanted to keep that for later but now that you referred to the GAC advice I'm happy to put it on the table now.

Jim, you're certainly correct that the GAC advice that was referred to speaks in favor of the IOC. Nonetheless the Working Group Guidelines and other documents related to our work do not specify any obligation for PDP working groups to ensure that they're consistent with GAC advice.

So GAC advice is binding for the ICANN Board; it's not binding for PDP working groups. I have mentioned this and when we started our work already because I think that our bottom up consensus-driven work should not primarily focus on following advice that has been raised by supporting organizations or advisory committees.

It is, you know, and I hope you forgive me or that you can follow me with this broader statement. The GAC's role is certainly a special one with the nature of GAC advice given.

But there's also advice coming from (FSAC), for example, when it comes to security aspects. And all this external advice is certainly something that the working group should know in the course of its deliberations. And we spoke earlier about the risk of having a policy clash which would be regrettable if there were parallel discussions coming to different results.

Nonetheless in the first phase from a policy perspective or from the perspective of the framework that we're working in the GAC advice would not be binding for us. So I perceived the statement that was made by the IGOs more as a minority statement that should go into the report highlighting the fact that they do not think that their views have been adequately respected or followed particularly in the light of the GAC advice.

But our discussion at the moment should focus on the assessment of the consensus level which is a completely different matter. And I guess that we can talk about the recommendations that made their way into the table of recommendations that we voiced. But I guess that there have been ample opportunities for each and every group as well as each and every working group member to make themselves heard.

And I guess that - and the group has confirmed this that the recommendations that we put into the consensus call pretty much reflected what the atmosphere inside the working group was.

But let's move to Chuck now and then to Greg.

Jim Bikoff: Thomas? Thomas, can I just reply to - I think you misconstrued my comment.

Thomas Rickert: I didn't mean to but please do clarify, Jim.

Jim Bikoff: My comment was not about the GAC advice per se and the working group's obligation to either follow or not follow it. My comment was that the IGOs have indicated a support for the GAC advice as far as the three groups that the GAC advice is directed to which was a new thing because in the chart that they - the responses they made on the consensus call they left all the groups except themselves blank.

Thomas Rickert: Thanks for this, Jim. And I didn't mean to misconstrue your statement. I guess that it was just a welcome opportunity for me to respond to the issue of GAC advice in a little broader manner. So...

((Crosstalk))

Jim Bikoff: I would add one other thing, Thomas, and that is obviously you've mentioned that we're waiting for a response from the Registrar group but also I would mention that the Business Constituency who have been absent from a lot of our calls, have in the past supported the position on both Red Cross and IOC.

Thomas Rickert: Yeah, thanks for reminding us of that. And I guess that as we - as we discussed the various recommendations we will also take into the equation the responses from the ISPs as well as the Registrars. And I guess we should also look at what the effect of an answer of the BC would be and whether that would actually affect the consensus level.

But thanks for that, Jim. And now it's Chuck's turn.

Chuck Gomes: Thanks, Thomas. And I want to thank Sam for the message he sent. I had hoped to respond to it on the list but this call is preceded by a two-hour Registry Stakeholder call so there wasn't opportunity.

First of all I totally agree that we should respect the GAC advice. In fact I can say that the respect that the Registry Stakeholder Group had towards GAC

advice on these areas was a big matter in terms of the decisions that we made in terms of what recommendations we support. Now we didn't support all of the GAC recommendations, as you know.

But we need to - as Thomas said, the GAC is an advisory committee and it is advice. If we were to - any time the GAC gave advice on what they determine to be public policy matters that we just take that as verbatim and that's what we do then we've all of a sudden made the GAC a policymaking development body and that would drastically change the ICANN model for policy development.

So respecting their advice and just taking it as-is and if the GAC says that it's policy we have then turned the GAC into a policymaking body. Now with regard to the - I guess the second paragraph where it says the subjects of international law with the States, you know, one of the things we did as a working group was to try and get guidance from the general counsel's office with regard to the clarity of international law with regard to these issues.

And if international law was explicit no questions asked, it would have been an easy task for us. In the Registry Stakeholder Group we didn't see it as being that explicit or clear with regard to domain names. So the - and I think we spent a lot of time in the working group about that.

So the fact that there are differences with GAC advice I think is a reasonable outcome and that kind of outcome has occurred in other PDPs in the past. And so unless we're going to make the GAC a policymaking body it's appropriate for us as a working group to take that advice, respect it, consider it strongly but then come to our own conclusion. Thanks.

Thomas Rickert: Thanks, Chuck. Greg is next.

Greg Shatan: Thanks. This is Greg Shatan. First, you know, Chuck said quite a lot of what I wanted to say so I will concur with what Chuck had to say. I think that there

are obviously bigger issues at play here in the relationship of the GNSO and the GAC and the Board and the development of policy and implementation of those policies.

I don't think that there is a relationship between GAC advice and GNSO policy that requires us to respect that advice in the sense of respecting it as final writ. We can respect it and the GAC can also respect GNSO policy as a matter of respect among bodies which are in - to some extent co-equal, you know, playing different roles. But, you know, we're not bound to follow GAC advice.

We may agree with it. We may agree with a lot of it. But that doesn't mean that we're somehow restricted by it. You know, I think there are larger issues that, you know, may need to be, you know, visited and revisited whether it's by the Policy and Implementation Working Group or by other bodies within and around ICANN. But, you know, this is - it's not something that we are bound to follow.

And I don't think, you know, again, the international law that we were made aware of, you know, to my mind doesn't require preemptive protections, does require or, you know, seems to require some avenues for protection or some avenues that would be desirable. But there's no, you know, particular outcome.

You know, obviously we'd love to be able to say that preemptive protections should be available for, you know, trademarks and other forms of intellectual properties. Well, I haven't found a basis for that. I don't think there's a separate basis, you know, for IGOs that would require, you know, any preemptive or preventative protection.

And, you know, saying that they must receive it is a position. But I don't think there's any legal basis for the must in that position. And, you know, I think that GNSO or, you know, gTLD policy is to be set or at least the

recommendations, you know, for the Board are to be set, you know, in the GNSO. And that's a question, you know, that's something that the GAC should respect.

So, you know, and I think, you know, I would also mention picking up on something I think Jim said earlier, I was disappointed to see that some, you know, groups or individuals that have participated in this working group, and I thought were participating in this working group as kind of full members when it came to the consensus call really only just responded with regard to their own interests. And I'm, you know, very disappointed in that.

You know, I think that everyone who participates in a working group should participate in the development of policy recommendations and not merely as lobbyists or shills for their organizations. And, you know, the - I don't particularly have any dogs in this fight so I'm happy to provide on behalf of the IPC, you know, advice on all of the recommendations.

But I think that, you know, there needs to be some thought given perhaps to organizations that are - or, you know, individuals that are participating as mere lobbyists as opposed to, you know, those that are participating in good faith to develop policy recommendations more broadly.

And maybe we need to look at how those roles are defined in the future because I think it somewhat perverts the kind of the working group dynamic and even its credibility. Thank you.

Thomas Rickert: Thanks, Greg. And I think we're not close to (unintelligible). I like the analogy. And you will remember that I, on multiple occasions, encouraged working group members to respond to each and every specific recommendation. And for those that have not yet done so, you know, you can still (unintelligible) this opportunity.

Alan is next. And I would suggest that we cut the queue on the GAC-related discussion after Alan and then get back to discussing the policy - or the recommendations. And should we have more time left then we can get back to the statements made by the IGOs. Alan, please.

Alan Greenberg: Thank you. By the way I apologize for being late; I had to go out and didn't make it back as quickly as I hoped. I find myself agreeing almost completely with everything the last few speakers said.

And I particularly want to restate the - what Greg just said of the rather - the new phenomena that we're seeing in this working group, which I don't believe we've ever seen before in a PDP working group of groups who are here just to - I guess lobby is the correct word if they're, indeed, not participating in the other parts of the discussions.

And that does change the working group model significantly. And, you know, it's hard to understand - it's hard to accept how those views should be put into a consensus call result when, you know, they're taking one position only and not involving themselves in the other parts and putting a stake in the ground so to speak. So I think it's an interesting new problem in the overall discussion of PDPs that we haven't seen before.

With regard to GAC advice I'll simply point out that the Board is not obliged to take GAC advice; they have to come up with a rationale. Why? There's a process to be followed. But ultimately there are issues in which the Board may choose to differ.

And I can't see why the GNSO or a PDP would be held to more stringent requirements of obeying without thinking the process through itself. I mean, I'm part of an advisory group - I would be delighted if everything we said was simply implemented and no questions asked. But there's, you know, multistakeholder means multistakeholder; there is more than one view here. Thank you.

Thomas Rickert: Thanks, Alan. You brought up something which you, yourself, called the new facet or the new aspect of working group work and that is how to deal with parties participating in a consensus call that do not respond to all aspects of the consensus call.

And I guess that while it would have been advisable and while I did as chair encourage every participant to respond to all recommendations that were made I also pointed out that certainly there is no obligation or no way for us to force everybody to respond to each and every recommendation.

And, you know, I would have some difficulties with excluding those views that my view are valuable and also the things that remained unsaid or unwritten in the formal consensus call do not tell the whole story. So, you know, in the consensus or in the assessment of the consensus level I also (unintelligible) the atmosphere with respect to the other recommendations where no written feedback was provided.

So I think that unless you - unless more people in the working group would like to open the discussion on whether those views should be entirely concluded - excluded from (unintelligible) we should, I suggest, just leave it as-is and take the information that we have.

Next is Judd, please.

Alan Greenberg: Thomas, if I might give a clarification? I wasn't saying they did anything illegal or that you should have acted any differently; I'm just saying it raises a new aspect which we haven't thought of before.

Thomas Rickert: Which is correct. And if I, you know, before moving to Judd let me add that I guess that this particular working group is also very particular species in the ICANN environment with so many recommendations that are being

discussed. So I think that, you know, maybe it's due to the nature of the work that we've been tasked with as well that we see this - these new phenomena.

Judd, please.

Jim Bikoff: It's Jim, Thomas.

Thomas Rickert: Excuse me. Jim, please.

Jim Bikoff: I just wanted to say that I agree with Alan and I agree with Greg to the extent that if somebody is a member of the working group they should participate on all the subjects in the working group and not just on their own behalf.

And I think we and the IGOs have followed that by commenting on other groups and answering most of the questions. And you can see it in our responses and I think you could see it in the response sent from the IGOs this morning. So I think at least two of the four groups have followed that - your advice on responding to more than just their own concerns.

Thomas Rickert: Thanks, Jim. Now we have taken a look at the IOC 1 recommendation. And, Alan, just to fill you in briefly I explained that - and this is also relevant for the IOC 2 recommendation where you thought it would be - or think that it should be more strong support but significant objection.

I also took into the equation the feedback that I got from the ISPs which you now find in the document in the Adobe as well as the feedback from the Registrars which, in my view, makes the determination for both recommendations IOC 1 and IOC 2 consensus.

Alan, I don't want to put you on the spot because you joined this call just a moment ago. But nonetheless I'd like to be interested in hearing whether your concerns with my assessment have been addressed with the facts that I just presented.

Alan Greenberg: If you now have strong support or support from two other groups you didn't have before then that - at the very least differentiates 1 and 2 from 3 and 4. I'm assuming you didn't have similar support from them on 3 and 4. In which case - or if you did I'm not sure - are you changing 3 and 4 also now?

Thomas Rickert: No, I have not planned to change...

Alan Greenberg: Okay then my question is what's differentiating 1 and 2 from 3 and 4?

Thomas Rickert: Okay so you...

((Crosstalk))

Alan Greenberg: I can't scroll - if whoever is controlling the screen is now showing me 3 and 4 I don't remember - I didn't memorize 1 and 2. Are 1 - in the original document you sent out 1 and 2 were virtually identical with 3 and 4. Is that still the case?

Thomas Rickert: They are not identical. (Unintelligible) it's difficult to juggle the documents now.

Berry Cobb: This is Berry. I've given everybody else individual control on the document. But to Alan's point I think he is correct that essentially the same responses - this version that we have in front of us includes the ISPCP response that was just sent out this morning. It's not what I've sent out to the list in previous.

And as we get the Registrars and hopefully the BC's in the near term I'll send that back out. But, again, to Alan's point even before the ISPCP the responses that were in the cells were virtually the same I believe.

Alan Greenberg: I'm trying to understand the difference between 1 and 2 and 3 and 4.

Thomas Rickert: Well, if there is actually no difference then they should all be consensus.

Alan Greenberg: My recollection is - okay - I'm sorry, I'm having trouble parsing this right now. My recollection is in general if you found two large groups, as opposed to individuals, objecting to something you tended to use strong support but significant opposition. Here I'm not quite sure, is NCSG supporting these or not supporting these?

Thomas Rickert: They're not.

Alan Greenberg: Okay then I'm not sure why this is different from the others where my recollection is in any case, when I did this, is that two, you know, non individuals or two groups, objecting to something yielded strong - significant support but strong opposition whereas one group objecting to it yielded a consensus.

I'm just looking for consistency. You know, as long as we're being consistent through the document then I'm fine. But I don't sense that we have that level of consistency here.

Thomas Rickert: Okay so you would tag it all consensus now, right?

Alan Greenberg: No, if we have NCSG and ALAC objecting I think that pattern in other places yielded strong support but significant opposition. That's my recollection. If someone wants to point to where I'm wrong I'm happy to, you know, to disagree. I don't have all the documents in front of me with the previous versions.

((Crosstalk))

Jim Bikoff: Thomas?

Thomas Rickert: Yeah, yeah.

Alan Greenberg: Let's look at some other strong support but, you know, the next one on Section 5 is in that category.

Thomas Rickert: I guess that, Jim, you were a millisecond earlier than Chuck raised his hand so please.

Jim Bikoff: I was just going to say I think, you know, nobody is saying there's full consensus here but I think that with the addition of the two groups and also we think the Business Constituency will weigh in in the same way I think that while not full consensus I think consensus is a position where a minority disagrees but most agree especially if we factor in the Business Constituency which has not been done yet.

But I would think that that would be enough to at least get to the consensus level for 1, 2, 3, 4.

Thomas Rickert: Thank you. Chuck.

Chuck Gomes: Thanks, Thomas. And thanks, everyone else. You know, I think Alan raises an interesting point. I hadn't looked at it exactly that way. But if there are two - it kind of makes sense to me that if there are two significant groups rather than individual interested parties or individuals that do oppose something, I mean, I personally wouldn't care if we changed it to significant - or strong support with significant opposition. Obviously it's a - all of this is a judgment call.

And like I said, I'll go with whatever Thomas decides as chair. But I think his - I also tried to look for consistency. I missed this particular one. But I think that it's worth at least considering what Alan is suggesting.

Alan Greenberg: Yeah, I - Thomas, I'm looking, for instance, at one of yours that you rated strong support but significant opposition, that is the INGO Number 1. And

there everyone supported it except, in terms of groups, except the IPC had a divergence of views and the NCSG is against it so that's sort of one and a half against it and that was a strong support but significant opposition.

Thomas Rickert: Yes and - yeah.

((Crosstalk))

Thomas Rickert: The answer to that is that the Registrars do not support it. And with these IOC recommendations we know the Registrars do support it. So I'd suggest that we try to deal with the areas one after the other. But I would - would be fine to change the support level for (unintelligible) IOC recommendations to consensus given the support from the ISPs as well as the Registrars.

And then you would also have your consistency with the INGO recommendation getting strong support where the Registrar support is absent or it's a little less than.

Alan Greenberg: Thomas, I will tentatively accept that, you know, with the proviso that I certainly want to be able to look them over as a whole. But I object very strongly to making a consensus call based on information which has not been - not presented in the document that's being used for the consensus call.

I'm happy with you to say the Registrars support it and write a line saying that saying they didn't send anything in but based on previous discussions we know they support it. You know, they can object or agree at a later date.

But otherwise there's a huge gap in between the document being presented and the judgment on to what extent consensus has been reached which, from a point of view of the historic record, you know, just is not acceptable.

Thomas Rickert: So Alan...

Alan Greenberg: I'm willing to accept your position of what you think their position is in the absence of them saying something but that's got to be documented.

Thomas Rickert: Yes, and I had simply hoped that the written feedback would have arrived on the mailing list before we did our call as it goes through for the ISPs who've just submitted written feedback a few minutes before the call started.

And you're certainly right that everything needs to be well documented. But I wanted this documentation to come from the organizations themselves rather than from me. But I would certainly be more than happy to add that should we not receive that information in time. Chuck, please.

Chuck Gomes: Chuck again. I mean, I think you just responded in a way. Alan's given us an out here. If they don't get it in on time we need to state what you did and what your perception of their support was. So I don't think we need to belabor this. Either way whether we get their input in a timely manner or we don't we've got a workaround on this. Is that right, Alan?

Alan Greenberg: Well either we - either in the absence of knowledge we ignore them, which is the only thing we - remember these are consensus calls of the working group. If someone has chosen not to participate we can't do a lot about that. And every working group has worked under those guidelines.

If we believe they are participating to some extent but haven't responded to the consensus call I'm willing to accept that Thomas summarizes what he believes their case is and that summary, which is used in the consensus call, in the judgment of what level of consensus there is, and at least there's something on record which someone can go verify, can deny, can follow through. But otherwise...

((Crosstalk))

Chuck Gomes: This is Chuck again. I get that.

Alan Greenberg: ...otherwise if we - yeah. If we, for instance, if someone was to - the working group process is if I disagree with Thomas I can challenge him and that goes up to the GNSO if I remember correctly.

What does the GNSO have to work from if it's purely, you know, something which is in someone's head and isn't documented? How can they check whether the position taken was rationale?

((Crosstalk))

Chuck Gomes: Alan, this is Chuck. I support what you're saying...

Alan Greenberg: Yeah, no, no but I'm saying we either need to ignore it - their position if we don't have one or put something in writing.

Chuck Gomes: And Thomas said he would put it in writing.

Alan Greenberg: Yeah, no, no...

Chuck Gomes: Okay.

Alan Greenberg: We're violently agreeing with each other right now.

Chuck Gomes: So let's move on.

Thomas Rickert: Yes, I suggest we do move on. And just for your information both the ISPs as well as the Registrars have provided written input at an earlier stage so there is already something that we can take information from. The situation with the BC is slightly different. And I mentioned earlier during this call that I have particular difficulty in factoring them in, which I didn't for lack of feedback that we got as a group.

((Crosstalk))

Chuck Gomes: Thomas, this is Chuck again. I keep hearing you say IOCs, I think you mean ISPs, right? Am I just hearing wrong?

Thomas Rickert: Well maybe I'm articulating badly but I will make reference to the ISPSCP in future.

Chuck Gomes: Oh no that's okay. I just wanted to make sure I was clear. I think it's probably my hearing so that's okay, thanks.

Thomas Rickert: But thanks for giving me the opportunity to clarify. So the three groups that we've been uncertain about were the Registrars, the ISPCP and the BC. And we have been able to check back with the Registrars and the ISPs - the ISPCP, I should say. The ISPCP has since provided its written input. The Registrars have confirmed that their earlier written input would remain unaltered. But I'm - I guess that will be confirmed on the mailing list.

And for the BC we are still uncertain as to what their position will be. And, you know, the Registrars have been represented by Mason Cole on this list. And the ISPCP has been represented by Osvaldo Novoa so it's not like we're trying to incorporate each and every group that has not been represented in this group. Actually we're talking about two groups here that did have representation in this working group and also participated actively.

Okay I hope that the question of the IOC's recommendations is thereby clarified. And I would suggest that we move on to look at the General 2...

Berry Cobb: IGOs.

Thomas Rickert: IGO 2, sorry, I was too fast. So let's look at IGO 2 which, in Alan's view, should be strong support but significant opposition. So now we have the

ISPCP supporting it as well. And, Berry, please do remind me this one was tagged consensus, right?

Berry Cobb: Correct, which I've pasted over in the lower left.

Thomas Rickert: And I guess the reason for that though is that the Registrars as well as the ISPCP provided support for it.

Chuck Gomes: So this is Chuck. Isn't this a similar situation then that you need to document that like Alan suggested, which I think is right, until such time that we get the official response from the Registrars and maybe the BC.

Thomas Rickert: Well I'd certainly be happy with that. I just want to make sure that no opposition against my assessment is developing in the background without my knowledge. Because I think, as I mentioned earlier, this is also an exercise that should have - should be backed up by everybody in the working group.

So let's move to IGO Number 4 then. That looks like consensus to Alan. And with the Registrars only - also supporting it and unless you object I would suggest that we tag this consensus. And thanks, Ricardo, who also confirmed this in the Chat.

Alan Greenberg: Thomas, this one was already consensus.

Berry Cobb: This is Berry. Yeah, Alan, your response in your email from yesterday, I believe, was that IGO 4 said it looks more like consensus to me but if review to the document it was already listed as consensus. But I just wanted to make sure we covered it...

((Crosstalk))

Alan Greenberg: Let me see what I said then because maybe I typed something wrong.

Berry Cobb: And, Alan, I have your response pasted in the left hand pane below the Working Group Guidelines piece.

Alan Greenberg: Ah.

Thomas Rickert: And maybe you just want to compare this...

((Crosstalk))

Alan Greenberg: I must have meant - I guess I must have meant 5 because - and on my piece of paper. Sorry, my notes just have a tick mark on your consensus on 4 but I do note on 5 that you did have strong support.

Thomas Rickert: So let's finish off the discussion on Number 4. So obviously mistakenly you brought up the issue of this not being consensus for whatever reasons but we have consensus attached to it and it should be consensus. Right? And I see that Ricardo and Berly also...

((Crosstalk))

Alan Greenberg: As far as I can see.

Berry Cobb: Right, and this is Berry. I think the difference here why Number 5 was listed as strong support significant opposition is because of the IPC statement not supporting it whereas the ALAC did and the NCSG was support with opposition.

So that original indication was still strong support but significant opposition. And, again, perhaps just like we've discussed with the ISPs as well as the Registrars and BC this may change but we need their written response.

Alan Greenberg: So are we saying this one remains strong support?

Thomas Rickert: Well I think it's a borderline case. If the group is of the view that this should rather be support I would not object to that. I would gladly take your - take the group's advice.

Alan Greenberg: Yeah, I - it's Alan again. I'm having trouble understanding what the criteria is. You know, maybe some groups have more importance than others in this rating scheme and I'll grant that could well be the case. But what I see here is two groups not supporting something which I think we're now using as a standard for consensus. So if that's the case fine.

Chuck Gomes: This is Chuck. Do we know the Registrar's position on this one?

Thomas Rickert: For the IGOs - or, Berry, do you have the information at hand because I would need to check back with other documents.

Chuck Gomes: Chuck again. The determining factor in the previous ones has been knowledge of the RySG position that, again...

((Crosstalk))

Chuck Gomes: ...documentation as needed. But I don't know that the RrSG, the Registrars' position is on 5.

Thomas Rickert: Yes. And, you know, my memory just needed a few second to dig it out but the Registrars had previously spoken out against acronym protection. That was the reason why I tagged this strong support.

Chuck Gomes: Yeah but do we know - Chuck again - do we know specifically though that they were opposed to it being entered into the trademark clearinghouse because that's a little bit different than just supporting - acronym support as you now by the Registries position.

Thomas Rickert: Yes, and I hope to get clarification on that very shortly. But their last written input, if I'm not entirely wrong, mentioned that there shouldn't be any acronym protections at all.

So why don't we do the following? We - you know, I want the group to understand or to at least not object and accept the assessment of consensus level that I came up with. So you were asking for consistency and so let me ask you this, do you think that the consistency that you're looking for is given if the Registrars do not support this recommendation?

And if this were the case I would suggest that we leave this item sort of open and either I will confirm in writing that the Registrar's position is a do not support and should they support it then I will change the consensus level.

Chuck Gomes: And help me out, what was your recommendation on this, Thomas? This is Chuck.

Thomas Rickert: It's strong support but significant opposition.

Chuck Gomes: So if they support it you would keep that. What if they oppose it?

Thomas Rickert: No, if they support it I would sort of elevate this to consensus. And in the absence of their support it would remain strong objection but significant opposition.

Chuck Gomes: Okay, Chuck again. So we would have - oh okay, the NCSG was split on this one so that's probably why. Never mind, that's fine. So we have one...

Thomas Rickert: Thank you.

Chuck Gomes: ...Chuck again. We have IPC opposed, NCSG split, and if the - so if the Registrars opposed it that would be a - like two and a half of the larger SGs

or constituencies so okay. I'm okay I think. I needed to run that through my own mind.

Thomas Rickert: So I just wanted to confirm in this point to Berly or Berly, I hope that I'm pronouncing this correctly, and Ricardo's comment that there's no consensus on that specific point. But strong support but significant opposition would also be a recommendation to adopt the recommendation.

Okay the next item on the list is general - General 2.

Berry Cobb: Hi, I'm sorry, Thomas, this is Berry. Real quick I'd just like to maybe try to get some clarification for Number 5. As particularly with the - what we have listed as the IGO response, so the premise here is that there didn't seem to be support for reservation of acronyms. But there did seem to be more traction of allowing those acronyms entry into the clearinghouse for claims service.

So I'd just like to have the IGOs or representatives of the IGO - and you don't have to answer it on this call but respond back to the list. Essentially I took the statement here as that you don't support this recommendation because you do support reservation of your acronym.

But in the absence of a reservation being applied to an acronym would you still support access into the clearinghouse? And I think that that's, you know, the important distinction here with this Recommendation Number 5. Thank you.

Chuck Gomes: And this is Chuck. And if I recall correctly in Durban the GAC seemed to come around to some alternative ways for dealing with acronyms like using trademark clearinghouse for that. Correct me if I'm wrong on that but I think - again, showing some respect to the GAC advice here it seems like they kind of came around that they might be willing to accept that kind of approach as well.

Berry Cobb: And, Chuck, I think - in clarity the GAC did discuss it. They - as far as I understand they haven't supported that yet and that the advice still stands in which the Board is still considering that advice with respect to the acronyms. But nothing definitive has been stated.

Chuck Gomes: Thanks, Berry.

Thomas Rickert: I have Alan and then Berly.

Alan Greenberg: Yeah, I just turned the page in my document and I realize my - when I had IGO 4 looks more like consensus to me that - my error was that should have been INGO. So if you can scroll back and look at the Number 4 just before the one we're on the screen right now that's the one that I said at the time before you had (ISPC) in looks more like consensus.

Thomas Rickert: I'm not sure I can follow. You are looking at INGO 4?

Alan Greenberg: INGO - I had a typo - I left out an N in my memo. The screen was in the right place, why is it moving again?

Berry Cobb: Because, Alan, you said...

((Crosstalk))

Berry Cobb: ...it was INGO and I'm moving to INGO - INGO Number 4.

Alan Greenberg: I think you were just there. No?

Berry Cobb: No that was IGO.

((Crosstalk))

Thomas Rickert: ...still with the IGO Recommendation Number 4.

Alan Greenberg: Okay sorry.

Berry Cobb: Which we can get to. But I think we need to clear up Number 5...

Thomas Rickert: Yes...

((Crosstalk))

Alan Greenberg: Okay sorry.

Thomas Rickert: Let's stay with Number 5. And, Alan, we'll get back to that...

((Crosstalk))

Alan Greenberg: Okay, sorry, I was...

Thomas Rickert: Not to worry. I have Berly or Berly, maybe you can help me there pronounce your name correctly.

Berly Acosta: Berly is fine. So I'm Berly Acosta from WIPO. I just wanted to clarify again that at Durban it is true that the GAC might have opened the door to a TMCH-like model but when they did that it was based on the understanding that the protection to be granted to both IGO names and acronyms would be of a preventative nature.

So it's not - the GAC did not say TMCH, we would be okay with that. They said if we do grant preventative protection at the second level for the IGO acronyms we would be open to a TMCH-like model in case a legitimate registrant would seek to register a domain name that would be the exact match of the IGO acronym. So I think it's an important distinction to make.

Thomas Rickert: Thank you, Berly. And I have Alan next.

Alan Greenberg: Sorry, I didn't understand that. I thought what Berly just said is if we grant them protection, which I took to me blocking protection, then it would be okay to put them in the clearinghouse. Is that what you just said?

Berly Acosta: No, what I said - well, what my understanding is from the GAC advice is that if there were to be preventative protection for IGO acronyms at the second level the GAC was opening the door and IGOs, as well, in fact because that was a proposal that came from the IGOs. We would be open to a notification process.

Some of them have described that notification process as a TMCH-like model through which an IGO could be notified if a third party would seek to register a second level domain name that would constitute the exact match acronym.

In that case the IGO would be notified and the IGO would be in the position to either consent to that registration or oppose the registration in question. So that's the model the GAC Durban communiqué foresaw. But it's not a TMCH model without preventative protection.

The word preventative is all over GAC advice both at the Toronto meeting and the Beijing meeting and at the Durban meeting. So it's quite clear that the TMCH model is only, yeah, could only stand with preventative protection.

Alan Greenberg: Okay well that explains the confusion because that's not currently a TMCH function. The TMCH function right now post-sunrise is to allow the registration if the person asserts that it is not violating anything.

It also notifies the original holder but it doesn't prevent the - there's no prevention. So this is a brand new...

((Crosstalk))

Alan Greenberg: ...functionality to the TMCH that was not discussed before.

((Crosstalk))

Berly Acosta: If I may just to clarify? I don't think it's the GAC itself nor the IGOs themselves who have labeled this notification process as a TMCH model. So if there's a misunderstanding maybe it came from somewhere else.

Thomas Rickert: Okay, I guess we need to end this discussion on the GAC advice. Berly, thank you very much for providing this information. I have read the Durban communiqué and this group has also deliberated on the Durban communiqué. And it was, from the - at least from the words that were used by the GAC it was not as specific as you now explain it, which is the reason why we threw our chair, Jonathan Robinson, the GNSO Council chair, have asked the GAC to be ready or to work with us to further clarify these issues.

So I guess this is not the time to discuss what the GAC has meant. I understand that you are seeking preventative protections for acronyms. The working group has deliberated on these extensively. There has also been the discussion on permanent claims notices. There also has been the discussion on whether there should be reservations followed by consent by the organizations that receive protections, you know, to consent and legitimate third party use.

All those proposals have been discussed and ultimately did not make it into the recommendations or the set of recommendations or did not qualify for consensus. So I would very much like to encourage the group to now focus the discussion for the remaining part of this call on the determination of the consensus level.

Berly, I'm not sure whether your hand is still up or whether it's a new hand.

Berly Acosta: No, no, it's an old hand. I'm sorry.

Thomas Rickert: Okay thank you. Berry, you hand your hand raised.

Berry Cobb: Yes, Thomas. So I hate to bring this up again but I think this is very important for the IGOs to consider in your statement that was submitted for this Recommendation 5. I think everybody in the working group understands that your preference would be to have a reservation of that acronym however there doesn't even seem to be strong support for that.

So in the absence of even strong support for that protection would you still be against it being able to enter the acronym in for trademark clearinghouse and 90 days claim notification that there does seem to be support for? And so it doesn't need to be answered here but I think it would be prudent to post to the list that possible clarification for any of these recommendations. Thank you.

Berly Acosta: Thank you. Thank you, Berry. This is Berly again. So we'll get back to you on that. I completely understand your point. On the preliminary basis I would say that we would - I think we would oppose it because we find it's not an appropriate level of protection. But let me, again, that's a preliminary view. Let me - let us come back to you in writing in this regard.

Thomas Rickert: Okay so for the time being we understand that the IGOs keep up their opposition to this - to this recommendation. Good. Now I guess we can move to the next item and the next item actually seems to be the item that we mistakenly took as IGO Number 4. So we're now looking at the INGO Number 4 Recommendation.

And this is the one that Alan thought should be consensus. And my assessment included the Registrars saying no to it but also in line with - yeah - Alan, please.

Alan Greenberg: Yeah, I think we're going to need some more specificity on the weighting. Either we say - and I'm not going to fight it, I'm just saying we need to say it, that a Registrar support or not support equals two ALACs or NCSGs or IPCs or they're equally weighted and in the previous cases we have said if only two groups object then it's still consensus, you know, with some opposition.

So again, for clarity we either need to understand...

Thomas Rickert: I guess we - yeah...

Alan Greenberg: ...the weighting between the various groups or we need to apply consistency.

Thomas Rickert: Yes. Well consistency is certainly something that I would strive for. I guess the difference to the recommendations that we've previously looked at is that the IPC support is in square brackets which I - you know, there are some recommendations that are support without square brackets and then there are those with square brackets which I understood as a little less than full support by the IPC.

But I would certainly be willing to follow your advice here and change this to consensus unless Greg can provide us with more information on the consensus level inside the IPC. But before - or while we're waiting for Greg to get back to us let's hear Claudia.

Claudia MacMaster Tamarit: Hello, Thomas. Claudia here. First of all in general I have to say, Thomas, really we appreciate the work that you've done. I think in general your assessment of consensus on most points is really spot on. And I can't imagine how difficult this was to weigh.

That being said, I'd also - I'd also like to give some support this in terms of just to understand a little bit better and to have sort of a - of an easy way to understand how, you know, one support or not - turned into consensus or strong support. Just to get an idea of are - did you look more towards the do

not supports and if there was two do not supports or three do not supports that lent to something?

Or was it more a question of okay I see, you know, three or four groups supporting and then that meant there was consensus. I mean, I really do want, Thomas, you to understand that we really do think that you did a very, very good job.

But just on some of the niceties, some of the recommendations it would be nice to kind of have a little bit of a better idea also so that we can make sure that it's, you know, it's fully consistent. If that's possible, Thomas. Thank you.

Thomas Rickert: Claudia, let's hear Greg first and then I'll respond to your point.

Greg Shatan: Hi, it's Greg Shatan. I'm trying to figure out what we meant by those brackets but I would not read too much into them. I'm continuing to research that and hopefully I'll have an answer before too long. But I don't think it was intended to imply some sort of qualified support. Thanks.

Thomas Rickert: Thanks, Greg. And, you know, getting back to Claudia's question and also to the question or to the point that Alan brought up, I guess there is no such thing. And I guess it's not feasible to have this bread crumb trail in the process of evaluating level of consensus.

As we discussed earlier on this is an iterative process. You will remember that I did test on the consensus level multiple times as we conducted our deliberation. So I guess you, you know, there's a distinction between counting and assessing consensus level.

If you do counting and if you maybe attach multiple or only one count to the groups and their respective sizes then certainly you have something that's fully auditable. With the determination of consensus particularly as it stems

from an iterative process there is no binary solution to that so you can't say spot on, spot off, this is consensus and this is not consensus.

I have, to the best of my abilities, taken to account the views of the respective groups that were voiced as well as provided in written statements in the course of our deliberations.

Certainly I also weighed the - sort of the size of the community or the groups that have presented their views. So I guess it would be ignorant to say that the voice or the opinion of an individual would have as much weight as the voice of ALAC or of the Registrars.

But on the other hand it would be simply false to only go by the size of the respective groups because I guess that it was Chuck who mentioned in the last call that the Registrars would easily outnumber each and every other group in the community.

So it's basically a mixture, an amalgamation of various factors. But certainly there is no clear and unambiguous solution to that. You will have - you will remember that Chuck said that on various occasions, you know, he might have made a different determination that he would be okay with my assessment.

And I guess we have to live with a certain degree of uncertainty or at least ambiguity of the consensus level which is why I have asked you repeatedly that I need your buy-in, I need your support with this because as you can imagine, you know, with this task in front of you you are almost the loneliest person in the world given the importance of this subject.

Greg, please.

Greg Shatan: It's Greg. I've just gotten to the bottom of the bracket question just - the brackets should be removed. Those were just - they were tentative positions

with, you know, within the IPC just based on trying to collate our earlier response from the public comment and collate it to this chart which was, you know, somewhat different in nature.

So having received no significant objection to those supports within the IPC those should be considered to be bracketless. Thank you.

Thomas Rickert: Thanks. And let me suggest again that I would be okay with tagging Item Number 4 consensus. So this will be changed to consensus. And we should move to the next recommendation which is General Number 2.

Greg, I understand this is an old hand or have you raised your hand again?
Thanks.

Now this is...

Berry Cobb: Thomas, real quick - this is Berry. Just to put working group members at ease this version I haven't - we had a separation of tables from general recommendations and then it was - this one was originally titled Recommendations that didn't receive enough support.

Since we did the formal consensus call those two have been collapsed together as one and in the next version I'll make sure that they reflect that here, it's just not showing up on this version just yet.

Alan Greenberg: Yeah, Berry, the Number 2 I was talking about was the Number 2 in the original list of general recommendations so it is the one - it is the second one labeled 1 in this case. The one that says top level protections of exact match.

Berry Cobb: Great. Thank you.

Thomas Rickert: So, Berry, can you refresh the group's memory on the consensus level? That was divergence?

Berry Cobb: Give me just a second please. Yes, it is divergence.

Chuck Gomes: This is Chuck. We have to be careful with this one because we're - I think we're dealing with double negatives here on this particular table. These were not included so when we say divergence, I mean, it looks like pretty strong opposition to this being included which is actually support of not including it. So...

Berry Cobb: Again...

Chuck Gomes: You see what I mean?

Berry Cobb: Yeah, Chuck, please don't pay attention to the title. For the consensus call all of these were lumped in together under general recommendations. And I think everyone that responded for the most part did respond back to each of these individually.

It's my mistake that in this version of tracking the individual responses I did not combine those tables yet into the general table that all of the groups responded to. So please ignore the title about not receiving support. But for the Registries, as an example, you guys did respond back stating that you didn't support this particular recommendation. So I hope that's clear.

Chuck Gomes: We didn't support - this is Chuck. We didn't support it being included.

Alan Greenberg: Right, you did not support the recommendation.

Chuck Gomes: Yeah, that's correct. Okay.

Alan Greenberg: Yeah.

Thomas Rickert: Okay I don't have any difficulties with tagging this a minority view.

Chuck Gomes: But - Chuck again. So the conclusion on this is there's divergence?

Berry Cobb: Correct. And to Alan's response - and I think he put in here a general should - it looks like a minority view. And I'm assuming that you're stating that to the working group that the ALAC will submit a minority view about this recommendation, is that correct?

Alan Greenberg: No. No, minority view is one of the classifications of consensus. It's the one below divergence.

Chuck Gomes: And this is Chuck. And what I'm looking at this I'm seeing that it's - looking at it that way that this is a minority position not even divergence.

Alan Greenberg: That's what I'm - and that's what I'm saying too.

Chuck Gomes: Yeah, okay. Good. Sorry.

Alan Greenberg: I mean, the only groups that support this are the IGOs and there's a divergence of view within the IPC. That sounds like a minority supported but it has no more than that. Divergence says it's sort of equal on either side.

Chuck Gomes: Yeah, yeah.

Thomas Rickert: Yes.

((Crosstalk))

Chuck Gomes: ...I'm with Alan on that.

Thomas Rickert: And I'm okay with classifying this as minority view. And with respect to Ricardo I guess the uncertainty came from the fact that divergence is a defined term in the Working Group Guidelines. So we have - so you shouldn't

take it from the literal sense multiplicity of views but actually there is a consensus level or the lack thereof which is below divergence and that is the minority view.

And if the group thinks that we have less than divergence then I'm, you know, I'm happy reflecting that in the document. But, Ricardo, you've now raised your hand, please fire away.

Ricardo Guilherme: Hi, Thomas. Can you hear me?

Thomas Rickert: Yes.

Ricardo Guilherme: Okay sorry. No the - I would still stick to divergence because we're talking here and of course I'm not taking the literal sense here; I know what the rules of engagement are.

It's really to say that we're talking here about a situation where you have no strong support for a particular position but many different points of view. So we have a number of people or a number of groups or a number of stakeholders supporting such a recommendation. You have also a sizeable number not supporting and you also have a divergence of views as expressed by IPC.

So Greg has said in that Chat that you cannot count IPC as support or opposition. So this multiplicity of views for me would be - should be seen more appropriately as divergence instead of minority view. Thanks.

Thomas Rickert: Thanks, Ricardo. Well obviously we have at least divergence on how to tag this. My question to Alan specifically is since Chuck has said earlier that he would be following my recommendations on this is, Alan, whether you would be okay with leaving this as divergence or whether we should further discuss a solution on this one?

Alan Greenberg: I just pulled up the definitions and now I am confused because what it says is it lists minority view as - in the same category as full consensus, consensus, strong support, divergence. And then says refers to a proposal where a small number of people support the recommendation.

This can happen in response to a consensus strong support but significant opposition or no consensus or it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

I'm not quit sure what to make of this. I categorize that last phrase, "It can happen in cases where there is neither support nor opposition to a statement made by a large number of individuals," I'm not sure.

I can live with divergence. I'm not 100% convinced anymore that a minority view is one of the classifications based on the statement that - and I'll reproduce this in the Chat so other people can see it.

Chuck Gomes: And this is Chuck. I can live with that too.

Thomas Rickert: Thanks, Chuck. I have Ricardo again.

Ricardo Guilherme: Thanks, Thomas. No, just to support what has just been said, when you look at the rules of engagement again you see here that in all cases of divergence the working group chair should encourage the submission of minority viewpoints.

So we're exactly in that kind of situation in which - by which I will see that a minority view is not exactly a so-called recommendation or designation per se.

Alan Greenberg: We may have a formatting problem in the working group rules.

((Crosstalk))

Ricardo Guilherme: Thanks.

Thomas Rickert: Thanks, Ricardo and Alan. And as you will have seen from the assessment that I made I did not specify any of the recommendations as minority views because I thought that the methodology would be more consistent by tagging the least level of support as divergence and then actually having minority statements introduced by those that support these minority views.

But I would be more than happy to follow the group's view on that and also mention that in the assessment of the consensus level. But I think that the conversation sort of becomes moot and now that we're starting to agree with each other.

Ricardo, I'm not sure whether this is an old hand or a new hand? Greg. Greg, maybe you're no mute?

Greg Shatan: Yes, sorry, I was on mute.

Thomas Rickert: We can't hear you.

Greg Shatan: Yes. It's Greg Shatan. I think it should be looked at like this, which is is there strong support for the recommendation that top level protections of exact match acronyms should not be included as strings ineligible for delegation?

You know, that in itself is the - it's the flip of the recommendation that is placed here. But I think that if there is strong support for recommending that they not be placed in then that is the way this ultimately really should be expressed.

Chuck Gomes: Greg, you're sounding like me. This is Chuck.

Greg Shatan: I'll take that as a compliment.

Thomas Rickert: And you should.

((Crosstalk))

Thomas Rickert: Alan.

Alan Greenberg: Yeah, Greg, semantically you may be correct. If there's virtually no support for putting them in then there is support for not putting them in. I think those are logically equivalent statements. So that probably means we should write the final report so it's understandable. And I can't disagree with that.

In terms of the minority view, just to bring closure to that, I've now convinced myself this is a formatting problem in the work group rules and minority view should not have been bulleted like the other four classifications.

Greg Shatan: I think that's right.

Alan Greenberg: That's not how the words read.

Greg Shatan: It's not really a level of support.

Alan Greenberg: Yeah.

Chuck Gomes: This is Chuck. I agree. I'm looking at it right now and I really believe it's a formatting problem.

Alan Greenberg: The work group rules were one of the few groups I didn't participate in so I take no responsibility.

Thomas Rickert: Nice one.

Chuck Gomes: You should have participated, Alan.

Greg Shatan: Plus one.

Thomas Rickert: Okay so I guess we have resolved this now. And, Berry, if you could just move the document to the next item that we need to discuss. And that is...

Alan Greenberg: I think, Chuck, on the next one, which is Number 2 here but is 3 in your consensus report, you had strong support but significant opposition. I tended to agree. But, Chuck, I think said it may well be divergence.

Thomas Rickert: Well we discussed this earlier on and I'm happy to...

Alan Greenberg: Okay fine. In that case...

Thomas Rickert: No, but, you know, we've exchanged a lot of thoughts on how to come up with the appropriate result so I'm more than happy to address that again. And I'm not sure, Greg, whether this is a new hand? And if so, it's your turn.

Greg Shatan: It's an old hand, thank you.

Thomas Rickert: Then Mary.

Mary Wong: Hi, Thomas. Hi, everybody. And I apologize if I haven't been following the last few minutes as closely as I should. I just wanted to clarify from the perspective or really rather from the GNSO Operating Procedures which is - which includes the Working Group Guidelines and the PDP manual that there is a bullet point for minority view.

I think Alan and others are correct that the minority view does not designate a level of consensus but it is a level of agreement or disagreement that should be in the final report, however worded.

And also from the Council's perspective I think those of you who have been on the Council will also appreciate that that will be useful information for the Council because in its deliberations as is specified in these procedures they are to take into account all stakeholder views and as many of the different perspectives as possible.

So this is not to disagree with anybody but just to clarify to the extent that any people who may not be as familiar with the standard methodology and the Working Group Guidelines may have some questions about.

Thomas Rickert: Thanks, Mary. That's very helpful. Would any one of you like to comment on the fee waiver recommendation?

Chuck Gomes: This is Chuck. Do we know - let's see, let me look at the - so can you put the - it looks like we don't have control over the screen anymore. Can you put that one in front of us please? There we go.

So the ISP said no they don't support that recommendation. IPC doesn't support. NCSG is mixed. We did not support it. And then there's mixed with some individuals and groups. ALAC supports it. Boy this sure doesn't look like anything more than divergence to me.

Thomas Rickert: And the Registrars are also against it. So I open up the - Ricardo.

Ricardo Guilherme: Hi, Thomas, again. In response to Chuck's remarks, I'm also trying to get some clarity here. We're talking about Point 2 on the screen, right?

Alan Greenberg: Correct.

Ricardo Guilherme: And I see here that we have one, two, three, four, five levels or five degrees of stakeholders supporting it. And then one, two, three, four against. I ask myself this question, are we talking here about support with significant opposition or just divergence?

Thomas Rickert: Well I guess that divergence is more than justifiable. And as I said earlier this was one recommendation where I had considerable difficulty in coming up with a suggestion to the group.

Ricardo Guilherme: Okay.

Alan Greenberg: If you're factoring in the Registrars also who do not support it I think strong support...

Ricardo Guilherme: Are we supposed to presume that or...

Thomas Rickert: Ricardo, I couldn't hear the last of the word from...

((Crosstalk))

Ricardo Guilherme: No, I mean, just a question to Alan. Are we supposed to presume that lack of support from the Registrars?

Alan Greenberg: I think I heard that from Thomas.

Thomas Rickert: Yes, and I can confirm that. This has been conveyed to me orally and we're waiting for written confirmation of that.

Ricardo Guilherme: Okay so that - in that case it would be divergence, yeah. Thanks.

Thomas Rickert: So we'll change that to divergence and thanks for your contributions with respect to this one. And I guess we have one left, right? Is it Number - oh, the sunrise, yeah.

((Crosstalk))

Thomas Rickert: So, Alan, you need to help me with this because that's - that stems from the days when you still thought that minority view was a consensus level, right?

Alan Greenberg: That's right. I don't think there are any more left here. Not based on me anyway.

Thomas Rickert: Okay. In which case I would like to open it up to the group to ask more questions about other recommendations. You know, on the mailing list we also had interventions from the RCRC. Alan, please.

Alan Greenberg: Yeah, I just one rewording which I can do in writing if Berry thinks is necessary. But on the one with fee waivers for the trademark clearinghouse, I don't know what number it was. Where we said we would support it only if it's extended - no, I'm sorry, not - not fee - yeah, okay, fee waivers.

I want to make sure that when this comes out the "But only" part in the ALAC is, you know, is factored in because that wasn't part of the original proposition. And similarly on the one on the trademark - on the permanent trademark claims the way the IPC worded it is better than the way I worded it.

That we said we support it only if; they said they don't support it unless. And I think their wording is better so if you could use their wording for the ALAC I would appreciate it.

Berry Cobb: Okay, I'll make sure to update both of those.

Alan Greenberg: Okay.

Thomas Rickert: And, okay so Berry and Alan, you're going to work this out because I could not 100% follow. But I'm sure that Berry will keep track of it. Chuck, please.

Chuck Gomes: I don't think this necessarily has to be stated but I don't want to miss it either. Let's please make sure that on these - this general category that it's very

clear because when we, who have been working on this, are confused on this one imagine what the possibilities are for the rest of the community.

Alan Greenberg: Well let's not renumber them halfway through the game is one of the rules.

Chuck Gomes: Yeah.

Berry Cobb: Well they weren't renumbered but the charts did shift into one group. And I didn't anticipate that we'd be going through these in this detail again.

Alan Greenberg: No, no but they were one group in the document that - of Thomas's evaluations of consensus levels; they were all one group numbered from 1. In the document showing the - summarizing the individual responses - collating the individual responses they were two groups and the second group renumbered.

Thomas Rickert: Yes, which is true but, Alan, the reason for that reformatting is that actually one of the recommendations got more support than anticipated so it was escalated to the ones that actually did make it to the consensus level.

Berry Cobb: This is Berry. Just to make it clear, the reason why they were being shown in two different portions is because it was me firefighting with a last minute submissions to get this up. And unfortunately I didn't collapse them into the same table that it was presented for the actual consensus policy.

Alan Greenberg: No, Berry, I've lived that world and sympathize. I'm just saying that's one of the reasons for the current confusion.

Thomas Rickert: But to sum it up we will make sure that the wording is unambiguous so that, you know, no person unfamiliar with the work of our working group will be misled by headings and words.

Now I guess it's time for me to thank you for your support with this. This has been very helpful. I guess that unless there are changes because of more statements coming in we sort of have something that maybe not all of you are happy with but something that at least everybody can live with.

And I would like to use the remaining minutes in this call to talk about the work plan but also on the framework or in the course of discussing the work plan next steps in how this can be presented to the Council.

But, Alan, I guess you wanted to add something? Please.

Alan Greenberg: I just want to add two things. First of all I do want to thank you for all the work. I'm sounding very negative but it's easy to poke, you know, poke fingers at the parts you don't like. I understand the amount of work you've put into it and do appreciate it.

And the second thing is we've made a lot of substantive changes in this document so I hope we'll have a - at least a reasonable opportunity to review the - this next version and make sure that we're nodding our heads properly. Thank you.

Thomas Rickert: Thanks, Alan, for both of your statements. And the time that you get can be seen from the work plan. And, Berry, if you could give us a brief update on this one that would be much appreciated.

Berry Cobb: All right. Thank you, Thomas. So as you'll see we're on the 11th of September today. We've reviewed through the consensus levels. As Alan pointed out, things have changed. I will be - I sent out last night two versions of the draft final report that was to include the level of consensus for each recommendation.

I need to update that based on today's outcome. I will be sending this out in the next 30-40 minutes. Specifically Section 5 is what contains the consensus

levels. And I will also include the updated responses by all the groups in a separate document. That is not part of the actual final report but it is referenced to - it will be posted on our wiki for anybody that wants to review the individual responses.

When I send that out today it will only include the ISPs; it does not include the Registrars and the BC as we're still waiting for those formal written responses.

At any rate, you'll have the latest draft final report that has the proposed recommendations in the appropriate tables that was submitted for the consensus call. Again, that's Section 5. But I do ask all working group members review through the entire report because it has been updated to remove references to the initial report, to state that this is a draft final report.

And as you know, per Working Group Guidelines we need to submit this for a public comment period just like we did with the initial report for a total of 42 days.

So we will have a meeting next week to provide the opportunity for working group members to put any last minute input into this draft final report. In the meantime please use track changes to submit any changes that you may have to language or suggestions or changes that you may have to the language in the report. And I will collate those back into the master.

We will meet again next week to review the final changes and any other last minute discussions about the level of consensus that's contained within the report. And hopefully with everybody's agreement we can initiate the public comment period next Thursday the 19th.

As you will notice that this - the reply period closes the exact timeframe that we have, the 31st of October Council meeting, so we have missed the opportunity to have the Council deliberate this.

Presently it still shouldn't stop Thomas from briefing the Council on the recommendations that are loaded in the report but do understand that that's only a briefing to inform the Council; it has no impact on the final report.

The last thing that I'll state is once the public comment period is closed the working group will have one more opportunity - we have to have one more opportunity to review the comments that were submitted, make any final updates to the final report or adjust any of the recommendations based on the feedback from the community.

And I forgot to mention one other thing, it's clear that there were several groups that will wish to submit minority statements. What you will not see in this version is I have not imported those in yet. But there is the opportunity to provide those to me and I will get them loaded into the subsection of Section 5 for the recommendations themselves so that those or - are directly correlated with the recommendations that fits within there.

The deadline to have any responses back for any suggested changes to the report will be Tuesday at 1600 UTC as well as if you wish to submit a minority position statement that has the same deadline. That should allow me about 12 hours to get all the changes incorporated into the master and also make sure that we have the minority positions in there.

I do ask that for those that are submitting minority submissions that you try to keep it as concise as possible. There's - if a recommendation is in support of what - of the protection that you agree there's no reason to restate that. The minority position should only be for those recommendations that you don't agree with. And so that we can try to keep them concise as possible in terms of the rationale, why you think it should be supported or not.

But what I hope to avoid is three pages of a minority position statement when it can be condensed to maybe perhaps a couple of paragraphs and concise to the recommendations themselves that there is (unintelligible).

So I think that that's all that I have to state for now. I'll put all of this into an email. And like I said I will get all these documents out to you within the next hour and a half to two hours for everybody to review and consider.

Thomas Rickert: Thanks so much, Berry. I know that it's ambitious and Alan has called this the dreaming in Technicolor. Some of us do remember what Technicolor is. I guess that, you know, two or three observations.

The timing for the conclusion of our work is ambitious. Nonetheless I guess it's imperative for us to do it right rather than fast. I would very much like for the group to be seen to be successful with its work, to be able to pass on the results of our work to Council as you can see on this plan.

So I guess that, you know, in case we see difficulties with, for example, analyzing public comment we may well call for a longer meeting. You know, the last GNSO Council meeting was scheduled to take three hours and not two hours to make up some time and get work done because there was no meeting in August. So I guess we should try to find solutions to deliver on time yet not neglecting that our work should be of highest quality.

Also I'm very conscious of time but I would like to briefly respond to an issue that has been brought up on the mailing list with respect to the role of the GNSO Council with this and whether the Council can pick up recommendations and say yes to them or where the working group has said no. And there was a question of the role or no role of the GNSO Council to make policy.

I guess that there is no doubt that the role of the GNSO Council is not policymaking function but a function of steering and managing the policy development that's taking place inside the community.

In order for enabling the Council to adequately reflect the views of the whole group we do plan not to ask the Council to vote on the report and adopt the report as one. You know, that's the usual procedure that you would - would adopt the final report and the recommendations therein.

But we would rather stick to the idea of slicing it so that the Council gets the opportunity to also have a vote on the various recommendations inside the report. And that would also allow the GNSO Council to actually adopt a recommendation that did not receive full support or that did not make it to consensus in the course of our deliberations.

So, you know, this is - to give more flexibility, you know, we have multiple recommendations on the table with multiple different - or with different outcomes with respect to the consensus level. And we also want to pass on flexibility to the Council in this regard.

And you should take this as a - as concluding remarks for today's call. I thought this was a very constructive meeting so thanks again for participating in that and helping us taking a further step in our work.

We will hear each other again at 1600 UTC next Wednesday. Thanks again and have a great day everybody.

Mary Wong: Thanks, Thomas.

Jim Bikoff: Thank you.

Claudia MacMaster Tamarit: Thanks, everybody. Bye.

END