

## **Transcription ICANN Beijing Meeting**

### **IGO/INGO PDP Meeting**

**Saturday 6 April 2013 at 11:30 local time**

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Jonathan Robinson: It's only IGO, INGO, PDP to be led into by Thomas Rickert who is ably chairing that rather challenging working group. So Thomas we look forward to hearing from you.

Man: Sorry to interrupt but we actually need more than just like ten seconds. It takes about 30 seconds to stop the stream and then to get it back going again. So we need just like 30 seconds.

Jonathan Robinson: No problem. We'll pause and if you can give us a hand wave or indication when you're ready to go.

Man: We're good to go now.

Jonathan Robinson: We're good to go.

Man: Thank you.

Jonathan Robinson: Thanks over to you Thomas on the IGO, INGO PDP.

Thomas Rickert: Thank you very much Jonathan. And I'm cognizant of the fact that it's me between the counsel, and the audience, and your lunch break but I guess that subject that we're discussing now that we're about to discuss is of great importance.

Some, you know, and I'm hearing this over and over again. Some think that this is a minor detail they say well why are you talking about these few designations so long? Just give the organizations their names and we can move on to more important subjects.

But in fact as you will hopefully appreciate after I have made my short introduction you will see that the level of complexity on this question is astonishing.

And that this is a huge mine field and that there are a lot of concerns at almost every single step that we're discussing.

The working group is working very hard on this subject. As you know we have started a couple months back. The counsel has started the PDP at its last meeting or in October I think it was.

And since then we have had weekly two hour telephone conferences and - for the exchange of thoughts on the mailing list.

To give you a little bit of background and I'm not going to dwell on this for too long because you may or may not have heard that.

Our charter was to look at whether there is a need for special protection at the top and second level for IGO and INGO names in new gTLDs as well as in existing TLDs.

So the outcome of the PDP might be a consensus policy which as you know will be binding for the existing TLDs as well.

And should we determine that there is a need we should look at the current special protections that have been granted by the board as provisional protections and see whether those should be made permanent or whether additional or other recommendations should be developed to provide for an appropriate level of protection.

We thought that it was adequate for the group not to base its decisions or recommendations on our own thoughts or in the quotation of law.

As you will know treaties and national laws have been cited to base protections upon and the board as well as the GAC have claimed that there are legal and statutory protections that are the basis for the provisional protections.

But the group was uncertain as to whether we should actually do the determination of what should be - how the laws should be read?

So we asked General Counsel to enlighten us about that. And in particular to find out for the group whether there is any jurisdiction in which a statute, treaty, or other applicable law prohibits either both of the following actions by or under the authority of ICANN.

The assignment by ICANN at the top level or the registration by a registry or registrar accredited by ICANN of the domain name requested by any party of the second level of the name or acronym of an intergovernmental organization, IGO, or an international nongovernmental organization receiving protections under treaties and statues under multiple jurisdictions.

Now this is important because if there were laws that would prevent ICANN, or registrars, or registries from allowing registration of certain designations then it would not very much be a policy matter because then the law would prohibit these actuators from allowing certain registration from happening but

then it would be more a matter for compliance to ensure that players are actually not infringing applicable laws.

No we've been waiting for General Counsel advice for a couple of months which was unfortunate but as you can see from the time it took General Counsel to come up with a response you can see that it wasn't very easy for our General Counsel to answer.

And that I think is good evidence showing that what we're talking about is not the thing that you can easily answer by yourself.

So in essence General Counsel said they were not able to look at each and every jurisdiction in the world.

So they were looking at a couple of jurisdictions. I think were 20 jurisdictions. And Brian correctly if I'm wrong but I think it was 20 in the ICANN region that General Counsel reviewed.

And the result of what they said is basically that only two laws were identified which would make it illegal to register certain names.

And in this case it was IOC and PIFA in Brazil. And in Mexico the unauthorized registration of a domain name using the IOC name was prohibited.

All other laws or treaties that General Counsel reviewed with the assistance of external advice did not explicitly prohibit certain - these designations from being registered.

Now the question was what do we make out of that because it would have made our work possibly easier if it were illegal for contracted parties or ICANN to allow certain registration.

And now we're faced with the challenge that the law does not confirm what certain people that raise their voice in the process tried to make us believe, i.e., that there are absolute rights.

So that was not confirmed. And the question is then I think that this adds a lot of complexity to our discussion is how do we make the best out of that in the best interest of everybody?

We have free speech issues versus the aim. And I think that everybody in this room will subscribe to the fact that we do not want abuse to take place right?

So if there is a catastrophe. And the Red Cross designation is for example used for fraudulent activities that's nothing that we want to see.

But at the same time if you look for example at the six (unintelligible) list which is attached to the Paris convention and which is the legal basis for IGO protection that for example would only prevent commercial use of certain designations.

So we can't usually we say there should be absolute rights but at least there would need to be exemption procedures to allow for legitimate third party use.

I gave the example of the six (unintelligible) list. Another example would be designations such as Olympic Paint, you know, or Olympic Airlines which have identical names with the International Olympic Committee.

But still these designations can be legitimately used. And how do we provide space for legitimate use? So there is a lot of balancing to doing this and then you will see that there is even more complexity to this.

So in our deliberations what we were discussing is to find out how many of these organizations are out there that should be protected?

So is it a couple of hundred? Is it a couple of thousand? Is it 100,000 designations that we're talking about?

You know, what is the scope of existing protections under international treaties laws and so on and so forth that's what General Counsel thankfully answered for us.

We need to talk about qualification criteria -- I'll get back to that in a second -- and distinguishing substantial differences between RCRC, IOC and other IGOs and INGOs because, you know, when we started our work I proposed to the group that we should try work on a set of criteria that would be a one size fits all because that would be easier but we currently found out that this is nothing that would be a solid basis to move forward. So we had to split our activity and discuss each of these four categories of organization separately.

As at least the council members would recall from the briefing that I gave to counsel a couple months back we tried to slide our work into different areas. You will remember that both the GAC as well as the board have attacked this PDP case study.

And so if you look at these five areas of work one would naturally think that you would be working on those one after another but that might be too time consuming and take too long in the long run. And so we chose to work on the various areas in parallel and we created subgroups to do that.

So the first group dealt with the question of the nature of the problem. There was some that said is there a problem?

A lot of the abuse that we see going on is not taking place by using exact matches of the names and acronyms of these organizations but of similar strings which is, you know, at least some would say which is not in the mandate of our charter. So we might work on something that doesn't really address the problem.

Then we were looking at qualification criteria. We can't just say okay we like these organizations or certain organizations and so we - we're going to give them extra protection.

But this is a very difficult subject because we need to make sure that we don't open the floodgates for each and everybody that has certain likes and certain designations that then also want to receive special protection.

So the question was what qualification criteria can we define for these four categories of organizations to really make sure that, you know, only eligible parties can get access to protections whatever these protections might ultimately look like?

Then we talked about the eligibility process, you know, what do you need to do to show that you belong to the group that fits the qualification criteria?

Then we talk about admission to protections, you know, should there be additional conditions that you need to meet in order to be added to the program and then types of protection.

So the best that we could come up with at the moment is the following set of qualification criteria. But I have to add the caveat that some said that we should not talk about, you know, qualification criteria for whatever protections we might consider be they at the top level, at the second level for identical matches or for similar strings but that the colleague qualification criteria should be matching the concrete protection mechanism or the area that we're trying to address.

So that depending on the severity of the protection mechanism you might need or ask for partial qualification criteria.

So if - let's say if you only use as a protection mechanism some sort of claims notice that wouldn't prevent anybody from registering a domain name you might ask for less harsh criteria rather than if you want to block a name completely from everybody to register because it's less intensive there's less impact. So it's I guess a matter of proportionality that we're having in mind there.

So the first proposal that we worked on was that the organization needs to be international in scope and operations. And that the primary mission of such is of such importance to the public interest -- so we have the public interest in there -- that it receives multilateral or multinational protection such as protection by treaty, or protection by a multiple national jurisdictions, or inclusions in the ECOSOC list and that some form of special protection for its name and acronym can be justified.

Now you see that there's already, you know, I hope that you have some questions when you go through those but rest assured that a lot of thinking has gone into this.

You might note that we have an or between treaty and multiple jurisdictions. And that is because INGOs for example are not created by virtue of treaties.

So you would completely eliminate the INGOs if we were asking for an and there international treaty plus national laws.

The second proposal was pick one of treaties .INT list, ECOSOC general consultative list, or maybe some other list yet to be discovered.

So you see there we're still looking for more ideas there. And pick one of that you have protective laws.

And at these 25 nations or that you have protective laws in and have protective laws in three countries in four out of five land regions.

So this is actually something which is almost braved by the group because it was - it took some time for somebody to be courageous enough to spell out a figure.

You know, when we were talking about multiple jurisdictions but what is multiple jurisdictions? And the difficulty is always not to be seen to be arbitrary you're picking the figure to suit certain needs but that we are actually trying to define criteria that are as objective as possible.

Now the areas of concern and we're going to look at potential recommendations that we're discussing. But the big areas of concern are preventive versus curative measures for protection.

You will - you do know we have both of them already in the system. So we have a reserved names list which is a preventative measures. So, you know, the names that are on the reserved names list can't be registered.

And we have reactive or curative measures as well. So the URS or the UDRP would be curative. But the organization asking for protection say that these curative measures are not good enough because they might need, you know, these might only help them after fraudulent activity has already taken place.

So they want protections that help before or that help prevent abusers behavior registrations or use domain names in the first place.

So that's a big issue. So we have basically two camps one of which says we're not allowing for preventative protections because that might open the floodgates for everybody else to ask for preventative protections.

And they say that the curative measures that we have in place are already good enough. And I'll get back to that point as we move on.

There's also difficulty and the need for different qualification criteria for different levels of classes for protection.

You know, some members of the group have stated that they want different levels of qualification criteria for different measures but they haven't yet come up with concrete proposals.

So as a working group chair I have the difficulty that certainly I'm trying to facilitate the discussion but the group or the community has to come up with something that can be discussed.

So we need ink on paper or, you know, dots on the screen. People need to put substance to their proposals at this stage. I think it's high time to actually come up with more substance than - in this area.

Then we have divergent views on how to structure an exemption procedure for protections for protecting organizations identifiers.

I mentioned to you that the six (unintelligible) for example prevents unauthorized or prevents commercial use. So the question is how do we identify legitimate third party users?

So you need to set up a process for that. And the question is how is that process designed? And we have one proposal on the table which basically says that if you want to register a designation that shall be protected then you need to go to the organization that is the holder of this designation and ask for their approval.

Another (unintelligible) unacceptable that you need to go to these organizations and ask them because if you're a legitimate user you don't need them to approve but you are - you per se have the right because it either written down in law or, you know, there is no - nothing in the law that prevents you from using a certain designation.

So that's a very difficult subject to answer. Then we have divergent views on whether there is a need to demonstrate additional (unintelligible) evidence of harm as a requirement to qualify for certain protections of an organization's identifier.

There have been some in the group who have claimed that if there is no problem there shouldn't be protection. So we need to know that we are actually fixing an existing problem.

So if let's say 99 out of 100 organizations that might be eligible for these protections never has faced any difficulties with cybersquatting or fraudulent activities then we're not willing to grant these protections because we're fixing a non-existing problem.

And the organizations that some of them like the IOC and the RCRC which, you know, the drafting team phase which was - which took place prior to the initiation of the PDP they have provided lists of domain registrations, and a monetary list they have provided documents.

And they said okay we've given you an awful lot of evidence of harm. But the others said that's not enough. We think that even in these lists there's an awful lot of domain registrations that are actually legitimate.

And so we asked them those who were asking for evidence of harm so what exactly would you like them to show you? Well they said we can't exactly tell it's difficult to say.

And the others say, you know, we've given you something and we're not really willing to give you more without knowing that the list of your requirements is going to be exhausted because, you know, we're trying to avoid this moving target discussion, that we provide evidence, and you say this evidence is not good enough so there is an issue there.

At the moment the situation is that those that are requesting evidence of harm have not really specified what exactly would satisfy them to address their concerns.

And the other camp those who say we've already provided you with evidence that's good enough. And others say we have protections by law and the law doesn't ask us to provide evidence of harm so why should we proceed this evidence to the group?

So that's the situation that we're living with. And I as chair have encouraged both sides to maybe work together to find familiar ground there because the mere fact that no evidence of harm is shown or that it is not sufficiently demonstrated might lead to the result that certain parts of the community will per se not support any protective protection measures.

But nothing further has happened there. So I think that's the situation that we have to live with at least for the time being.

Now what were the protection measures that we've been discussing? And I, you know, this is the part where I would like to - like us to be interactive right?

So please if you have questions or concerns please do voice them because I think this is not just an update to the counsel but it's an update to the whole community which, you know, thankfully is represented here in great numbers.

And I guess the group would very warmly welcome suggestions that can advance our discussions because here at the moment the situation is that the camps are standing firm by their positions.

So they're not really, you know, everybody's reiterating and reiterating their positions, you know, like we have the law behind us so please protect us.

And the others say well you don't really have the laws behind you so we're not willing to protect you. And nobody's coming up with very concrete proposals.

So what I chose to propose to the group is that we're going to publish initial report prior to doing a consensus call in order to get community input.

And then take community input into our consideration prior to doing the consensus call afterwards. And we now have this little can you see how thick this is?

This is the draft initial report that we have on the table. It's not yet ready for publication but we hope that it will be by the end of April. But we would be very thankful for any substantive and constructive proposals.

My fear is that we're putting an awful lot of time into this exercise and that we might end up with divergence.

I'm not saying that I'm advocating one of the other outcome but we may be facing a situation where we can't come up with an answer as an outcome and whereby other stakeholders for example the board just makes a decision.

And then we have another case where we might be disappointed because we feel circumvented or that we are too slow coming up - to slowly coming up with our results.

And I have stated to the group during the last call that this is the situation that nobody might be happy with.

Those seeking protection or at least some of them might feel safe because the board has provisionally granted them protections.

So they might say okay I don't need to advance this PDP too much because I already got what I want or at least a variation of what I want but this is for the first round only.

And I think that both the board as well as the GAC will take good note of our deliberations and our work and they might say okay it's not as crystal clear as we thought.

So the provisional protections might not be perpetuated. So the organizations asking for protection might be - might turn out to be losing their protection.

At the same time those who are against protections might lose an opportunity to shape the protections in a way that suits their needs better.

So I think both sides the whole group is very well advised to work together constructively. But I think there we're at a point where we need a little bit of outside triggering or, you know, new food for thought in order to advance our discussion.

So what we are discussing in complete terms is at the top level, you know, you have to remember we're talking about the top level, we're talking about the second level, we're talking about names of the organizations, we're talking about acronyms of organizations, we're talking about different languages we're talking about identical strings.

And the Red Cross has even asked for string similarity be at the second level. So it's, you know, there are a lot of areas that we talk about.

Top level first of all let's add the designations, you know, if certain qualification criteria are met to the reserve names list.

Might be an easy solution the reserve names list is already there. So we can just add additional designations to it.

The downside to that is that even the organizations that have asked for protections or other legitimate third party users can't use them. And it would require an RSTEP procedure which is quite cumbersome to get names off the list.

So I guess that even those seeking protection might not be too happy with the outcome of that. But still we have, you know, that's just a proposal on the table. But it's nothing that we have consensus on but it's a less liked option.

The other option is not to add top level protections because there are already safeguards in the applicant guidebook.

So we have the string similarity review for example, we have the possibility to object against designations or applications for TLDs that infringe upon a products rights.

So a proposal might be or recommendation might be leave it like it is the top level protections are good enough.

But then the argument comes that filing objections might be too resource intensive or too expensive for these organizations.

So another recommendation might be that subject to certain qualification criteria we would give these organizations a comparable status to the GAC or ALAC who can use the objection tools without cost.

Then we have another option which is let's review it for the next round. We have an evaluation of the new gTLD program.

So far I guess at least for the top level we have only very limited number of conflicting -- I think it's four in total have been dubbed ECO as an IGO in Iran that has been challenged. And then we have the.uno application.

But apart from that, you know, there are no big problems to be expected so one might as well leave that to the evaluation whether additional safeguards are needed at the top level.

Now before we move to the second level I want to ask for questions and John please.

John Berard: Not so much a question. I wanted to give you a chance to catch your breath and to provide just a little context for your report.

You were giving me the impression that we - that the working group has chosen sides which is a binary vision in my mind. Is that true?

And is there some - the GNSO has a pretty rich diversity in its organization. Is that diversity represented on the working group or and is it possible that some of the - if it isn't if they - if that diversity could be recruited to the working group might help you work through some of the back and forth that you seem to be caught up in?

Thomas Rickert: As to your first question it is not as, you know, I'm it's not as binary as it appears. So there is also some gray in the middle.

But we have quite firm views for both sides. You know, there are those who would say absolutely no protections.

Then we have those who say by all means protections. And then there are others who say well we might consider protections if the conditions are restricted enough because certainly the challenge is to make a demarcation of the organizations that can benefit from these protections versus everybody else that has certain rights.

So it's, you know, we have an awful lot of questions on the table. And even the - from question to question the camps are changing.

So it's a huge variation of views in there. And as to your question whether the whole community is represented I think that we have members from every group except for -- well (Mason) is now an observer so the registrars are also on board -- but they haven't been for quite some time but now with (Mason) I think we have the whole community representative.

I haven't - I think I saw your hand first and then Brian's.

Jeff Neuman: I think this is sort of - this is Jeff Neuman. This is indicative of part of the problem with working groups that many people go into working groups with kind of as view it as a lobbying that they have to lobby their position and their firm and they never want to move off.

We need to encourage the group and maybe hear from members of the group and not just the chair as to how - what they're doing to work through the issues as opposed to just standing firm and not, you know, again it's not a lobbying organization, it's not - it should be a group that works through the issues not a group that just holds firm on their position.

And if all they're doing is holding firm on their position then we need as a council to figure out what we can do to help them move along or, you know, try a different tactic.

But you can't allow the working groups to be just a place where people lobby and just hold firm with no incentive.

I often think a lot of times there is no incentive for people to back off their positions or to work to the middle.

And I don't have a solution right now but it's something that perhaps we can ask some other members of the working group that are present, you know, what their thoughts are.

Jonathan Robinson: Thanks. Jonathan. Just a small remark the - you might get the impression that everybody's not working in a constructive manner.

What I'm displaying now is the status that we're facing now for the next couple of months the work has basically - the group has been working.

I guess we've made very good progress in defining how we can move on. We've come up with a methodology to approach the issue.

You know, so a lot is on the table. But I think that we're now at the decisive point in time where everybody needs to play their cards openly and say to what extent they can compromise. And I think that we - this is something that needs to be one way or the other triggered Brian.

Brian Winterfeldt: Brian Winterfeldt IPC. A quick question I wanted to go back you spoke earlier about the research that was requested from the General Counsel's office and I apologize if I missed this earlier.

But I'm curious why the query that was given to the GNSO Council was so narrow and requested that the research will only be conducted with regard to specific statutes or treaties that relate to the domain name specifically.

I mean a lot of treaties and laws, when they were promulgated, didn't contemplate domain names, which I think is sort of obvious in the answer that you got from the question you asked, sort of tracking the IOC and the RCRC debate.

And frankly a lot of people who have been vehemently against protections for those organizations that specific point about actual research being conducted

in a manner that was unbiased and being presented about the level of protections that those organizations do have globally.

I thought that was the research that we were going to finally sort of have done in an impartial way. And so I'm very disappointed, in a way, that it would really ask in such a narrow, narrow way and we have sort of lost the opportunity to finally have an organization step forward with that information.

Thomas Rickert: Thanks Brian. I guess there's a, or there might be, a slight misunderstanding there. The research that was asked for, or the advice that was asked for, was not specifically saying that we were looking for treaties or laws that mentioned domain registrations because obviously most of the laws and treaties have been crafted prior to the existence of domain names.

But the question was whether these - whether laws or treaties are in place that would make it illegal for registries, registrars, or ICANN to engage or allow for a certain registration, so that even, you know, the laws are general and abstract so, you know, the question was whether those created that. That's in fact very short. It says I have a queue?

Man: Yes I mean I could add to it because the request actually stemmed from the original working group and then was carried forward. So in the drafting team the request was - because we kept hearing the GAC and others say, "The law requires registries to do this, the law requires registrars, the law..."

And so the basic genesis of the whole legal research was, okay let's test that out. Does the law really - even if there are protections for these marks in jurisdictions is it really a violation of law if a registry allows a third party to register the mark? That's the whole genesis and that's why it was done on that basis.

So it wasn't, you know, is the Olympics protected in XYZ jurisdiction or (IDR) is protected, but it was more a narrow focus because that was what we were

being told at the time was the law required you to reserve the names, or the law required you to protect the names. It's a very different question. It's esoteric, but it's one that's critical and it was critical to the registries and registrars in starting this whole thing.

Brian Winterfeldt: So because I thought the whole debate sort of the whole time was sort of, well why are these organizations getting special protection? And, you know, there was the idea that we've spoken about - I really apologize if I don't remember there being, you know, it's illegal for registries or registrars, or they're legally bound and required to grant those special protections.

I think, again, I don't think anyone - well I'm not surprised that the answer was what it was when you asked that question, but I thought the whole point was to demonstrate that there was a significant global threshold that was sort of met with the treaties and the laws that granted these organizations special protections beyond other organizations.

And in sort of setting criteria to contemplate adding other organizations potentially to those types of special protections I thought we were really looking to really try and demonstrate, okay what really is the quantity of protections out there. And I feel like we've kind of missed an opportunity because we tried, or you or whoever, tried to prove like this very narrow point, which isn't surprising to me.

But then we sort of missed the opportunity to really catalog what really is out there research wise as far as what protections do exist for the IOC and the RCRC and how those compare to these other organizations and sort of looking forward in how you are going to add potentially other organizations in for protection.

Thomas Rickert: Okay. (Alan) to that specific point?

Alan Greenberg: Yes something similar. I just want to capture, and not just looking at the (unintelligible) view. I (unintelligible) two extreme position. People gave the protection and people who want protection. But my own observation in the working group is that there (unintelligible) middle ground there seems to be consensus.

I can't hear you mentioning the (unintelligible) grant that we discussed, especially in the areas of trademark (unintelligible) like resource like, which (unintelligible) identify and planning out something like that. I believe a lot of people (unintelligible) to that. That seems to be consensus about that.

In other words a good number of people would like protection, but they don't want blocking. I remember that when the Asia blocking was mentioned a good number of people raised objections to it. They don't want blocking.

But it was (subscribed) to other form of protection, which is like identify and planning out that was mentioned. So you do mention that in your presentation and I think this is quite useful.

In other words there's no strict objection to protection, but there is objection to blocking. So we need to get that right so that we don't go with the impression that there is a complete objection to protection. I think there's some support for protection.

Thomas Rickert: And I have tried to, at least tried to, clarify that there are positions in the middle (unintelligible) controversially. And the idea is like a trademark clearing house like that would come on the next slides.

I wouldn't go as far as taking any of the recommendations as having consensus. I think that some are really close to divergence and others might have consensus with strong opposition, but we shouldn't also not give the group the impression that we have consensus on certain subjects.

I now have Evan. I know that Kirin wanted to make an intervention. Then I have Zahid, and Joy, and Chuck.

Evan Leibovitch: Thanks this is Evan from ALAC and I want to go briefly back to the issue of harm, which has been a big issue within At-Large, and also to what you were saying before about how you thought that one of the things that was necessary, that perhaps a stumbling block is the lack of a serious definition of what constitutes sufficient harm.

And I guess I would want to come back with asking you of saying, well if we took the effort to actually do this would we not run into the proponents just saying, "We've already demonstrated sufficient harm. No matter what you do you've wasted your time." In some of the conversations it's almost seemed like that where the - where some of the proponents of protection have said that harm has already been demonstrated, or it's implicit in what they're asking for.

So when you come back and say that we need to come back with a definition of what constitutes sufficient harm would doing that really get us past an obstacle in your opinion or would we - or are we potentially just wasting our time with a diversion?

Thomas Rickert: Well if you spend time on it I can't promise that it won't be wasted. But I have encouraged the participants of the working group that have taken either side of the one or other position to have discussions amongst themselves to see whether there is common ground.

You know, like what can you give us; what can we ask for; and to see whether there's congruence of what the organization is asking for protections can easily provide and whether that would suit the needs of ALAC, in particular, because ALAC and (NT&T) have been asking for the evidence of harm.

And my hope was that in, you know, the ALAC discussions that you might come up with a set of criteria that you could sort of come to an agreement on, but that didn't take place.

Evan Leibovitch: But if the proponents have already said, "We've already given you enough evidence of harm." What's the purpose of coming up with extra definitions?

Thomas Rickert: Well that's the situation that we're having now that we have those two sides and both of them, you know, one side says, "I'm not going to work on the criteria because the others are not willing to provide information." And the others say, "We have provided information and we're not going to provide any further information."

And I have encouraged discussion to come over that and maybe encourage those that were unwilling to provide information to reconsider. And I keep - I would like to repeat that encouragement, but unfortunately I - at least I'm not aware of any discussions going on in the background on that. So Kirin please.

Kirin Malancharuvil: Hi thanks Thomas. This is Kirin Malancharuvil and I'm here representing the IOC. And I wanted to just thank you, first of all, for all of your work and everybody in the drafting team, or the working group, has been working so hard on this and we express our appreciation for that.

The first point I'd like to make is we want to renew our willingness to provide any additional information that would help regarding a demonstration of harm. And I think the IOC and also the Red Cross has done a lot of work on that so far and we're willing to do whatever else you'd like.

So any additional specific questions or definitions, you know, we would be happy. Obviously I can't speak on behalf of IGOs, or INGOs, or on behalf of the Red Cross, but certainly we in the IOC are happy to present any

additional information that you would want to help us to reach consensus on that issue, which of course is a threshold issue.

I also wanted to express our support of what Thomas said about the general counsel request response and just also one point of clarification. I think that what our main concern was, was not whether or not it was an explicit violation of the law to allow for a registration of these domain names, but rather does providing - does allowing these registrations provide a cause of action for the organizations to - which would expose the registrars, the registries and the registrants to liability?

And I think that part of why we're pushing for these protections is not just for the sake of the organization, but also to protect everyone in the chain of registration from kind of exposure to these causes of action, which I think the general counsel stated that there was.

I think that the quote was nearly all of the sample jurisdictions provide protection to the IOC and/or the RCRC for the use of names and acronyms and those protections are understood to apply to domain names and that there could be, as Thomas rightfully stated, exposure to liability up the registration chain.

So I think that hopefully that provides some clarification for you, Brian, and also for you, (Jeff), about what - the reason why it was drafted the way that it was and the way that we're viewing the response.

And I think our last point is, we're going to sound a little bit like a broken record here, but I hope that, you know, we - this comes across very loud and clear, the IOC specifically has never stated that we have absolute rights to the names. The law does not give us absolute rights in the names. There are legitimate interests and exceptions and we have always acknowledged that and are very willing to provide exceptions where warranted and where

necessary. And that's why we have taken the lead and been very participatory in drafting the exception procedures.

And where we say that you can come to the organization for a letter of non-objection, certainly that wasn't the sum total of our recommendation on the exemption procedure. We just think that might be the easiest, and cheapest, and fastest step for registrants, especially in a situation where we understand the law and we know that there are people with legitimate exceptions. So we just, you know, thought that that might be an easy thing for the registrants to do to come to us first, to the organizations first.

And then, you know, in the event that they don't want to do that or they're worried about what kind of schemes we have up our sleeves, which we don't have any by the way but, you know, we would of course then move on to something more structured from a third party perspective.

So I hope that adds some clarification as far as our position in the IOC is concerned and again we're happy to continue working to move this toward consensus, and to compromise wherever we can, and to acknowledge and appreciate everyone's position on this. Thank you.

Thomas Rickert: Thanks Kirin. I have ended the queue now. We only have a few minutes left and I'm going to take the - take Zahid, Joy, Chuck and (David) now and then I'm going to (unintelligible) show you (unintelligible) our thought at the second level. Zahid please? Can I ask you to keep it brief please?

Zahid Jamil: Thank you. Just two points, one on the counsel advice and one on harm. On the counsel advice I think if I remember what you said Thomas was that, you know, as a result of the advice now we know that whatever some people were telling us that they had protections, and I assume you meant the GAC; or the governments; or the IGOs, we can now go back to them with this opinion and say, "Well, you know, counsel advice doesn't say exactly, or doesn't - is not consistent with what you had informed us of."

I think we have a problem with that because if the intention was to go back and say, "Well, you know, what are the protections of the law for these entities?" You know, linking does the law protect or does the law prohibit and then saying registrars or registries undertaking this you're falling for the same problem, which is that registrars did not exist when these protections were created. So I think we're circling back to the same problem.

I can tell you and, you know, I've seen the, I think it was a draft memo or the memo of the counsel's advice, sure there were (battery) assessments given in the subcontinent, it's a criminal offense to violate, say the RCRCs marks, etc., and pretty much, I mean I work with (RCCDLD), if something like this happened and somebody lodged a criminal investigation or inquiry into it you would have the law enforcement come to the registries office and say, "Well, you know, we have a complaint and this is the special law under which this is - you're not allowed to do this."

Now it doesn't specifically say domain names, it doesn't specifically say a registrar or registries, but basically that's how it would sort of implement itself because most of those countries of the world that haven't got specific legislation on domain names or registrars - I mean if they don't have it on domain names, forget about registrar or registries being named.

So I think it is a very narrow scope that was given maybe to counsel and I do not think you can go back with that to in some way shame those people who said that they were, you know, that these protections exist. I think that that would be - we need to be careful of that, you know, at least not using that as one of the tools.

The second on harm, you know, I understand that, you know, harm is useful to be a factor for providing protection, but the argument as I saw you sort of developing, you know, this is what's happening in the groups, two groups

there, was that, you know, despite the existence of a law harm needs to be shown as a factor.

It kind of reminds me, and I'm not from the U.S., but the debate on the voting rights, well there is no discrimination of voting rights anymore therefore maybe you don't need a voting rights law. And maybe that's, you know, it's a circular argument. Maybe it's because the law exists that these harms haven't been seen.

So are we going to have to come back here and say, "Well now that we see harm arise the GNS needs to relook at this." Or should we work on the basis of principle? Just my two cents thanks.

Thomas Rickert: Unfortunately we have to take this offline, but I think that with the general counsel advice there, you know, we need to talk about that more. I think there is some slight misunderstanding potentially. I have Joy now, followed by Chuck.

Joy Liddicoat: Thanks, Joy from the non-commission stakeholder group. A couple of reflections, just listening to your report there Thomas, one is that in thinking about the terms of reference given for the work that you're (unintelligible), and thank you for your work effort, it seems to me from what you're reporting that there is no (unintelligible) in which there aren't - there is not consensus.

It doesn't seem to be a clear message that the fundamental policy frame mix of the counsel around this is somehow broken. In other words there is no particular - I don't hear you saying that there is a need for an entirely new approach across the board, that this is a quite specific issue to a quite narrow topic. And I think is that useful to hear?

I think the other thing is just mindful of the conversation we had this morning about policy (unintelligible) implementation, I am curious about the feeling you're getting, for want of a better word, about the trajectory of consensus

around this policy? I understand that there are some views strongly held, which are polarizing, including some from our own (unintelligible) constituency group. But nonetheless do you see any areas of rough consensus emerging?

And secondly, particularly mindful of the last part of the terms of reference for the working group, the implications of this public policy beyond the narrow (unintelligible) of the particular organizations we've talked about this morning, do you see any emerging consensus around what are the public policy issues that counsel should be focused on in choosing between these options?

Because I think that would be helpful for guidance and advice is if there's some kind of summary of what are the public policy (concerns) that are bubbling up beyond the specifics of the particular organizations because if it goes ahead, policy that applies more broadly, I think that would be a good thing to know.

Thomas Rickert: Sorry for the - since we have some time constraints now I will respond to those questions on the (unintelligible). Chuck if you could keep it brief please?

Chuck Gomes: Sure and I won't repeat what Zahid said because he gave a little bit of background for the request that was made to the general counsel, which was initiated from the registry stakeholder group. And bottom line is the general counsel's response clearly was not definitive with regard to international treaties and laws. It showed some good trends in the countries that were surveyed.

If the international treaties and laws, according to the general counsel response, were definitive then this would be a compliance matter. It's not, so and none of us were terribly surprised by that, so it's just important that we have that context. And Zahid is right that some people in the GAC were

saying, "Hey why is the GNSO doing a PDP on this? The laws already cover it."

And we needed that to set the stage there. Not that that left us off the hook. It actually, as Thomas said, makes it a little more difficult for us. But we now know from our source, as a policymaking body in the GNSO, that we can't just hang our hat on international statutes and laws alone. We're going to have to base it on some other criteria.

Thomas Rickert: Thanks Chuck. (Dave)?

David Cake: Knowing that I'm the last person, everyone, it will likely to be quick. I just briefly wanted to comment on the issue of risk. We are always going to fail to find a solid risk that occurs from registration itself. You know, apart from a very small minority of cases where it's illegal to register those names. We - most of the time the problem - the (unintelligible) that harm caused.

The harm caused from registration itself in most cases is going to be minimal. We - extensive harm can be caused by the usage, which those names (unintelligible), but we don't necessarily know that until afterwards. The question of harm may be more relevant to, you know, post registration solutions like APWG, sort of take down procedures.

If we keep looking for harm caused by registration itself we're going to be looking a long time, but that doesn't mean we shouldn't be looking at - we should be considering mitigation and risk exposure and so on for these things quite capably. And hopefully that will be the sort of spirit in which those issues continue to be looked at. Does that make sense?

Thomas Rickert: Yes it does. Thank you very much (Dave). And before we close the session let me briefly go through the recommendations that are being discussed for the second level.

Obviously one could just add designations to (unintelligible) interests, but then the same problem occurs at the top level that these names can't really be used by the organizations in question or legitimate third party users.

The other proposal is not to add it to that list and maybe come up with an idea of something comparable to the TMCH and in order not to use the TMCH acronym we thought that it might be an identifier clearinghouse or something of that kind.

The central repository where those qualifying for protections can have their names validated and entered and then for (fee) to the contracted parties and one could talk about fees for, fee reductions, for the use of that and actually base either a claims service on it. That's I think an area where we might get at least some support. I am not courageous enough to speak of consensus, but since a claims notice will not prevent registrations from happening I think that something that people might be going for.

Those asking for protections might say that this doesn't go far enough, but that's yet to be seen. And one could make this claim service possibly permanent to give warning notices to those that are trying to register certain designations. The organizations in question would get these notifications once their registrations have taken place and then they can choose whether they are going to do a UDRP or a URS.

Then the question is certainly not all of them can use URS or UDRP. We're now coming to another area where there's broad support and we might even have something of consensus with a stronger position that we might recommend opening up the RPM's to all of the beneficiaries of potential protection mechanisms so that these can use these security measures.

And then another proposal was that you - let's say there is a registration request. The registration request would be pinged against the ICH or TMCH variant and if there's an identical match to it the registration request would be

pending (create) and then there would be eligibility checks for the registrant to see that - whether it's a legitimate third party user and if it is then the registration would go through, if it is not the registration couldn't take place.

The question then is how shall this exemption or eligibility process be designed? And there, again, we're at a point of discussion where some say that approval is required from the organization in question, others say that this shouldn't be the case.

And then we have the more fundamental question of whether it is even agreeable that registrations will be put on hold for at least some time for eligibility checks. And we have some in the group that say that this is not acceptable because it doesn't allow for needed registration and that this already harms freedom of expression and the use of certain designations.

I think I'll leave it at that. I hope to have encouraged you to join the club, participate in our discussion. We are going to have a working group session on Monday, at which time, Brian, can you - wonder if you remind us?

Brian Winterfeldt: (Unintelligible).

Thomas Rickert: Four-thirty in which room?

Brian Winterfeldt: (Unintelligible).

Thomas Rickert: We can send that to the list, so please come join and provide your input.  
Thank you so much.

Man: Thank you very much Thomas. I personally just would like to add my own compliments to you for dealing with an exceptionally challenging subject with that, you know, this is both challenging as a subject and challenging as an - to execute the work of the working group and sort of lead this group too. So you've done a fine job.

I recognize, and as we all can, that there are a series of open questions, but the fact that you've distilled it down with the colleagues in the working group to a set of key questions, and the set of issues and the set of questions that you have, to my mind, is an achievement in and of itself. And clearly we're going to give you the support and take your request for additional support or contribution to try and bring this to a close.

My understanding of, for what it's worth, my personal understanding of the question of the question to general counsel was there was a question mark over the legitimacy of the work of the group, of our PDP being undertaken.

And to some extent, which I think is the point that Chuck was making, is that this would - that was about insuring that this wasn't an issue that was already predetermined and that there was indeed, there are indeed, a series of important questions and outcomes that need to be determined by the thorough work of a working group, which I understand is being undertaken. But there's clearly a lot more to discuss and run with this.

We, myself and Thomas, are in fact going to have a meeting to talk with Heather Dryden, Chair of the GAC, briefly and for the next - in 20 minutes time and going to give her a personal briefing on the work of the working group, so I hope that will be fed back to the GAC. And to Volker's earlier point we will see what comes out of that and then obviously update the counsel.

Now it's time for our lunch break until 1:30. We very much welcome obviously everyone who's in the room and encourage you potentially to stay for lunch if you would like to, but if you could kindly give the counsel the opportunity to have a first opportunity.

I know there's some sensitivity and we very much welcome and appreciate broader community input into the counsel's working sessions and don't want to be mean about sharing our lunch, but we do want to ensure that the hard

working counselors are all fed. So thank you very much for a good morning session and we'll see you all at 1:30.

END