

**ICANN  
Transcription  
Coordination call on IGO/Red Cross protections call  
Thursday, 27 October at 16:00 UTC**

Note: 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:

<https://icann.box.com/shared/static/8qwxvolztr9ydjk9ii4gf0izayvv8yy4.mp3>

Attendance:

Petter Rindforth, Heather Forrest, Donna Austin, James Bladel, Markus Kummer , Tom Dale, Mason Cole, Thomas Schneider , Phil Corwin, Jorge Cancio, Ashley Heineman, Chris Disspain , Mark Carvell, Steve Crocker and Becky Burr

Staff: Mary Wong, Olof Nordling, Jamie Hedlund, Steve Chan, Terri Agnew, Nigel Hickson

Apologies: Bruce Tonkin

Coordinator: Recording has started. Thank you.

Chris Disspain: Do we have anybody who is on the call, on the phone, that is not showing up in the Adobe room. In the Adobe room, I can see Ashley, Becky, Donna, Heather, James, Jamie Hedlund, Jorge, Mark, Marcus, Mason, Olof, Petter, Philip, Steve Chan, Steve Crocker, Tom Dale, and Mary and Terri. Is there anyone else on the call who is not appearing in the Adobe room?

Thomas Schneider: This is Thomas. Chris, I had to restart my computer and that will hopefully connect in a few, in a minute or so.

Chris Disspain: Thanks. Thanks, Thomas, that's fantastic. I think that's it. Then, we've got everybody noted for the recording.

So, I'd like to, I've got something to say. This is really about, by way of an admin call. A number of us were chatting about how Hyderabad and it struck it that this topic is going to come in discussions between the GNSO and the GAC. It's going to come up in discussions between the GNSO and the Board, the GAC and the Board, and just about every other combination that you can think of. So, of relevance. So, it occurred to us that we should probably try and at least figure out a way through the discussions in Hyderabad so that we didn't all spend a whole length of time repeating ourselves and so on.

Mary very kindly put together the decision tree which kind of concentrates on the GNSO policy recommendations. But the current situation, in very simple terms, and I stress on being very simplistic here. But the current situation in very simplistic terms is we have GAC advice, the Board has GAC advice, that says you should reserve the IGO acronyms. We have gone back to the GAC and said, "We think that's very challenging and would like to find a way of helping without actually reserving them."

We have commendations from the GNSO in respect to the top half of the problem in respect to trademark clearinghouse. Which again, I think simplistically, are putting the acronyms in the trademark clearinghouse for 90 days. And we have a working group, PTD working group, in the GNSO working on the rights of the IGO's might have to protect their acronyms. And it's entirely possible that we will end up with a second GNSO recommendation that is in conflict with the GAC advice.

In most circumstances, the Board has many options available to it. But, we want to try and find a way through, that means that we don't have to, if we can avoid it, we don't have to send all the parties back to the drawing board by rejecting advice or rejecting all those recommendations. So, Mary, does that kind of, before I open up the floor for discussion, does that cover the sort of scope of what it was that we were going to introduce and talk about?

Mary: Hi Chris, this is Mary. Yes, I believe so.

Chris Disspain: Okay. Good. All right. So, what I would like, personally I would like to be able find for us to come out of Hyderabad with some kind of pathway set out that would sort our way through this. But if we get, if the response from the community, is that, for example, and I'm just using this as an example. If the GAC was to say to us, "We are

reverting, sticking to our formal advice to resolve the acronyms and we want you to respond to that formally.” And the Board will do that and equally the same applies in respect to the GSNO and in respect to its policy recommendations.

Steve, your hands up?

Steve Crocker: Thank you. I would find this helpful. Perhaps other would too to have a little bit of further context in terms of quantifying the size of the problem. Let me offer some specific questions. How many organizations are there? How many acronyms, and there maybe more than one acronym per organization, which is why I distinguish. Are these numbers fixed or are they potentially changing over time? So, that is, do we know what all the acronyms are that we have to deal with?

Or, might there be a process that evolves over time. And finally, and I assume we're talking about only things within the new GTLDs as opposed to prior GTLDs and as opposed to prior, CCTLDs. And some clarity about which acronyms are already in use in ways that the GAC might have wished they weren't. Thank you.

Chris Disspain: Yes, Steve, there is a, these acronyms are currently in reserve temporarily, so there is a list. It's a closed list at the moment. They are currently reserved. I cannot remember off the top of my head how many there are, but somebody on the call may be able to find that out or remember. The issues that arose when we took, when we originally went back to the GAC on this advice, were that some of these acronyms are words and some of these acronyms have trademarks for organizations. The one we used as an example quite often was WHO, W-H-O, which standards for World Health Organization, is also the name of a magazine, is also a generally used word and so on.

In respect to your question about new GTLDs. Yes, it would be from the point of view of reservation. It would be in UGTLDs. And of course, if you have curative rights, however, the establishment of some form or process for IGOs to use whether it is the existing process with the out pay and rapid takedown or some other process that's set up specifically for IGOs who say that they are challenged, to use the up (unintelligible). That would be cross GTLD, I imagine, you know, which is specifically to new GTLDs.

James, your hand was up.

James Bladel: Thanks, Chris, and thanks for putting this together. So, just to tee up the discussions and possibly set the expectations and I would welcome input from other folks from the GSO, including the vice chairs. But, just to kind of tee things up here, we've received letter from the Board with the attached proposal from the small group. But while it's maybe tempting to dive into the substance of the differences between the policy development recommendations that were adopted and the proposal. I think taking a step back and going back to the decision tree that we have in the Adobe Room. We have a number of process problems that we're wrestling with in the GNSO that we're discussing.

Now, we do have a mechanism to reconvene a PDP to revisit and possibly amend PDP recommendations. But from a practical standpoint, that is particularly challenging given it's been almost now been almost three years since those proposals were adopted by the GNSO. That presents a significant challenge to revisiting this PDP. And secondly, you know, we don't take that lightly in the Council. We tend to give very strong deference to the work of the community, both the concluded work, and then the ongoing work that's chaired by Petter and Philip on the curative rights.

And I think the reason for that, as you can hopefully appreciate, is that by going back and revisiting PDPs, we both undermined the work of the community and potentially, you know, could create an environment where folks are reluctant to participate in PDPs. And instead, would just wait until the PDP is concluded and then get engaged at a later stage when they feel that the recommendations are more likely adopted either by the Board or reconciled, I guess, with GAC advice.

So, we're examining this. I think the small group proposal, and I'll let (Phil) speak to this, has been referred to the curative rights PDP. But as far as what to do with the recommendations that we unanimously adopted several years ago, that's still a topic of discussion. And I don't know that we have a clear path forward here and I'm looking now the yellow boxes on Mary's chart.

Chris Disspain: Yes.

James Bladel: Now, I don't know if this was your proposal, Chris, to go around the horn and just get a status update of where we are, what we're doing, and what we're bringing to Hyderabad. That's up to you.

Chris Disspain: I think that might be quite helpful, James, if we could, I mean, if we could just very briefly get, as you say, a status update from perhaps Thomas and so on that. I think that would be helpful. Have you got anything else you'd like to add before I go around to others? Yes?

James Bladel: Perhaps just one other point and I'll leave this (Phil). Perhaps if he wants to elaborate on the curative rights PDP and what the status and timeframe of that work stream would be. I think that would be maybe the only other that might be relevant to this decision tree.

Chris Disspain: Excellent. So, let's go, given that (Phil)'s got his hand up, let's go to (Phil) first. And then perhaps, Thomas, if you would to just say a few words about what the GAC's expecting to do in respect to this during Hyderabad. Philip, go ahead?

Philip Corwin: Yes. Thank you, Chris, and happy to be on the call. My understanding's we're not going to visit substance of this call to just process and the focus of the working group that I coach here was (unintelligible) from the Intellectual Property Constituency is curative rights protections for IGOs. Our working group has been in existence for about two years. I believe our charter was observed in June, was approved, in June 2014. We kicked off work that fall about two years ago, we have to actually halt work for quite a while and with the assistance of ICANN staff and with some very modest funding, we secured the input of an expert of International Law regarding sovereign immunity of IGOs, a generally accepted view.

The status of our work, we are close to completing our work. We're actually in the process of drafting our preliminary report and recommendations and have just about completed the recommendations section. We haven't finished with the explanatory text that we would precede it, but we will have a draft recommendation section to unveil and discuss with the community in Hyderabad. And we'll take any comments and feedback we get into under advisement and factor that into the final report, which we expect to deliver for public comment before the end of the year. And then following review of the public comment, we would issue our final report and

recommendations for consideration by Council. And if they approve it by the Board, I would anticipate that would occur in the 1st quarter of 2017.

So far as input from the IGO small group, the IGOs were personally invited to participate in members of our working group. They chose not to do so notwithstanding, we were well aware of their views during the course of our work. In fact, we invited several major IGO representatives to participate in a personal capacity in a session held in Helsinki in which we fully explored those views. And while trying to avoid substance, I will say that our final recommendations are not exactly coincident with the proposal of the IGOs. But I believe that when the full report is reviewed, it will be seen as very solid, substantive, and balanced work that actually provides IGOs. If the recommendations are followed with somewhat broader curative rights protections, then what they requested.

So, I'll stop there. I think that's sufficient to bring you up to date on our process and where things stand right now. But, we're very close to the finish line in our working group. And I will add we did devote the last two calls of the working group to an in-depth substantive discussion of the portion of the IGO proposal that was with curative rights protection. So, it has been fully considered by the working group.

Chris Disspain: Yes. Thanks, Philip. Can I just ask you a question? I also consciously, we don't want to get into substance. But, you've seen the proposal and I acknowledge that the sort of the matter of possibilities that we sent out with respect to some curative rights for IGOs was very much sort of broad brushed and lacking any detail and talked about setting a this and setting up a that. Are you, can you see, where you're likely to end up being able to give IGOs some curative rights and getting them over their hurdles sovereignty? Or do you think that it's more do with contending that there's not actually a problem?

Philip Corwin: Well, I wouldn't say it's not a problem and the working group totally respects the view of individual IGOs in regard to what they believe the scope of their sovereign immunity is. I would say that while unstated in the proposal, the underlying policy justification for what the IGO small group has put forth appears to be one, they do state that they believe there's no significant relationship between their protections and trade mark law.

We came to a somewhat different conclusion because of the existence of Article XVI of the Paris Convention which provides world globally recognized protections for IGO names and acronyms within the individual trade mark systems of all the signatory nations to the Paris Convention, as well as all members of the World Trade Organization. So, that precedence was there and the advice we received from our outside legal expert established that there's no uniform view on the scope of sovereign immunity. But then, in most cases, National courts have viewed it as more narrow than what has asserted by some IGOs. Notwithstanding that the recommendations now report establish new means by which IGOs can readily establish standing without trademark rights to utilize the existing UDRP and URS which encompass all of their stated concerns.

Because the concept of bad faith, registration and use, goes beyond the grounds they want, the propose for standing. And we've outlined methods by which they can safeguard their sovereign immunity which would only a challenged and a very rare circumstance which would be where an IGO brings a CRP. The registrant loses and then the registrant, the losing registrant, appeals to a Court of National Jurisdiction which is something that, based on the record, would occur extremely infrequently.

So, it's not a problem that's likely to arise in a great many cases. But, the full, I don't want to preview the full report, but it discusses all of this in it.

Chris Disspain: I get it. Thank you. You've given us a sufficient overview on it and I appreciate that enormously. Thank you very much.

Philip Corwin: Okay.

Chris Disspain: I'm going just, so I can see (unintelligible) hand is up. But, before I do, I promised to call on Thomas to just to talk about it what the GACs anticipating doing in Hyderabad on this topic. Because what I want to try and end up with at the end of this call if I can, is an agreement that if either it isn't worth getting everybody together. You know, everybody obviously not being literally everybody, but together in a room at some point during the week, to knock this and whether that's going to be helpful or not.

So, Thomas, what's, this is on the agenda for the GAC, presumably?

Thomas Schneider: Yes. Thank you. Can you hear me?

Chris Disspain: Yes, I can.

Thomas Schneider: Okay. First of all, a few comments. Well, again, it is on the agenda of the GAC. It is on the agenda of the Bilateral that talked with the GNSO with the Board at the convention. It's basically all over, not just in our silo, but also in the bilateral discussions. And with the GAC and the expectation, I need to maybe give a little bit of background if you allow one minute on our way to where we are, or where we hope, we are today from the GAC's point of view.

As you remember, there is GAC advice that has in our role as a liaison body to the Board. The GAC has given consensus advice to the Board on the outcome of their PDP and these recommendations. And one element was that it was clear in the GAC quite particularly that there is consensus that there needs to be some protection as we have outlined in several pieces of advice in all GNSOs. But it also became clear at the same time that given some differences between governments and amended states on how to interpret Article XVI. I'm not a lawyer, but we're going to meet to learn a little bit about these things.

The different interpretations about the relationship with trademark protection. I know that in the U.S, the system of trade protection is used also for the IGOs. This is not the case in my country, for instance, and to my knowledge in most of the other European countries. So, are there are different systems in how to protect IGO names and acronyms all over the world. And it was considered at that time that it would not and we communicate this formally and informally as we hope quite clearly that we didn't think it would bring us closer to a solution to going to the legal details of these interpretations in the framework of the GAC.

But, that we should rather try and go from a consensus that we have in terms of protections that we expect to be there from a public, interested public policy point of view. And see where the GNSO, with the Boards, with the ICANN community with the help of this small group and these diversions to start from a pragmatic point of view. What do we want to actually do and achieve and then try to get somewhere from there? So, that's also one of the reasons why they GAC did not really enthusiastically participate in the curative rights PDP because that was building on something that we had not. That we basically, recommendations that were not acceptable to the GAC



and was going in direction to some extent looking into the interpretation of the Paris Convention.

And then question of immunities and trademarks and so on, that we were convinced and the U.S. delegations, (Suzanne), and for those of you that remember, was very strong about that this was also in terms of the U.S view and their office that is competent. So, this was not the most let's say pragmatical solution that we should try and move these forward basically from the bottom up from a practical and not from a legal point of view. So, this is, and so we really hope that we'll get somewhere with this formal proposal, compromised proposal, that we have now on the table. Because that was a big effort from the side of the IGOs. They departed to a great extent from their initial expectations and requests and also the GAC would accept this small group proposal.

This is of course not the level of protection that is requested and if you look at the GAC advice. So, that would be a big compromise, but we would be aware that that would also be a compromise for the others. So, we are, and I as the Chair of the GAC, I'm really to do everything to defend a pragmatic proposal based on this small group compromise. Because to be honest, I think that I don't really see another way to get this sorted out in a reasonably and acceptable way to everybody. So, this is an expression of the hope that we can agree to work on this basis because otherwise it will probably difficult and we will continue to have a situation that we should avoid, I think. Thank you.

Chris Disspain: Thank you very much, Thomas. I appreciate that. (Ashue)'s next and then James.

Petter Rindforth: Thanks for the opportunity. Just to add to it some said, we restart on the a very early stage and ask for inputs from ideas because we preferred to have updated inputs continuously and at an earlier stage as possible within our working group, with all of them, sitting in the last minute and discussing details. But, also you have to be sure that we as mentioned, we had one meeting with three representatives from IGOs and we have got some other documentation that we have deeply considered and that will be described in our report with a plus or minus. And also, a deception on the why we came up with the decision on this. So, make sure that we have started and considered the request from IGOs in our working group. Thanks.

Chris Disspain: Thank you very much indeed Petter. James, you're up.

James Bladel: Thanks, Chris. And I just wanted to tank Thomas for his, for laying out the position, and the concerns and the interest of the GAC. I just want to clear up one potential area of misunderstanding or at least maybe just clarify the role of the GNSO Council, in particular. We're not, we're not in a position to or even authorized to I guess, what the word is, to negotiate or compromise PDP recommendations that have presented to us by a PDP working group that was adopted by the Council. We do have a mechanism to amend those and we're certainly open to discussing those.

But I would point out that any mechanisms like that and reiterate our significant concerns about invoking that process and that would do to the PDP as a whole. But also, I just noted that any decisional movement on these recommendations would not necessarily come from the Council, but from see constituted community PDP working groups. Either the previous PDP or as much of the members that we could scrape together. And of course, we probably would open to new members as well. So, I'd just want to set that out because I think I've heard mentioned they'll be no compromising on this. And it's not in a position of the GNSO doesn't compromised, it's that we're not really authorized to do that. We would have to go back to our community. Thanks.

Chris Disspain: That's completely understood, James. And I agree. I think to be fair, you mentioned earlier on and I think Philip mentioned a little earlier on how long this has been going on forward. We know, when we originally discussed, the Board and the GNSO, originally discussed the possibility of you revisiting the PDP recommendations. I think (Johnathan Robinson) was Chair and I can't remember who the Vice Chairs were, but we talked about it and discussed it as a possibility.

And no one expected that we'd still be dealing with this now and it was expected that we would sorted out fair more quickly that we had. So, it's the point about the time that it's taken and the need to pull together the same group of people is perfectly valid. And I also apologize that it's not Council, it's a genus as a whole matter. Heather, Donna, and then Thomas. Thank you.

Heather Forrest: Thanks very much, Chris. This is Heather. Just to follow-up on a point that might be obvious to us on the GNSO side. I'm coming from what James has just said, but

perhaps not to those outside the GNSO. Which is that, let's say that the three of us as leadership of the GNSO and indeed Petter and (Phil) as leadership of the PDP working group. You know, to the extent that the Council has no power to do potentially the negotiating that's been discussed. We certainly as, you know, in our respective leadership roles, don't have any authority here whatsoever to engage in any kind of negotiating. And that, I think, is something that is important to point out given that Council leadership was approached in Mari cash by representatives of the Red Cross.

And I, for one, I won't speak for Donna and James, but I feel myself extremely uncomfortable about that. I mean, I suppose it's natural that they want to have a conversation. But to the extent that, you know, the Board and the GAC can help us in dispelling any sort of perception, faulty perception, that, you know, and an approach to leadership has any, let's say, authority or power that would be very helpful. Thanks.

Chris Disspain: And Heather, thank you. Before I go to Donna, can I just pick you up and ask you a question then? And if I've misunderstood, please tell me. But, if I wanted to put, if we wanted to put people in a room together that could have a meaningful discussion about how we can bring this to a head in a way that, you know, deals with the two pieces. The reservation or the TMCH for 90 days or whatever it might, a notification from a registration, let's call it that for now.

And the second piece, being the curative rights. Who do we actually need to get together to have a discussion about that? Is it a piece by piece thing where we get some people in the room who start by saying, "We have no decision making?" Which is fine. "We have not decision making capability, but we're here to gather information and go back and do something." Or should we get a different group of people from the GNSO side? Who do we need to gather?

Heather Forrest: Chris, this is Heather. I think the point that James started off with, and what this decision tree shows, is that, you know, neither the council, nor council leadership, nor the chairs of the existing PDP are really - you know, there really isn't an appropriate body to have the conversation from a GNSO perspective.

Let's say we can have a conversation within the realm of what this decision tree shows, which as I understand it, I think, first requires that the board reject the advice of the PDP working group as a trigger. I could be wrong on that but, you know, given the procedural options here, we really aren't in a position to put anyone forward in that discussion. Thanks.

It's not that we don't want to participate, let's say. It's just that we don't really have the authority to do so. Thank you.

Chris Disspain: Okay, we'll get back to that. Donna, you're next.

Donna Austin: Thanks, Chris. I think on the question that you just asked Heather, I think the answer is we need a trigger from the board to have a conversation with the council about whether we want to re-engage the PDP working group to reconsider the recommendation.

Chris Disspain: Right.

Donna Austin: So I think that's loosely what it is. But I think we need a trigger from the board to be able to have the full council discussion to make a decision about whether to reconsider the recommendation from the PDP working group. So I think that's loosely how it goes.

Chris Disspain: Okay. That's not why you put your hand up, though.

Donna Austin: No, it's not. It's more - it's a question of process if we think a little bit ahead of where we are now. So I'm assuming that the GAC will be considering the small group proposal. And if they agree to that proposal, then there will be GAC advice that comes out in - where are we going? Hyderabad.

So I assume that the board then has to consider that advice and decide whether it accepts it or rejects it. But I don't know that the council can - it's not a value question, but I don't know that the council can actually do anything with that small group proposal until we have a trigger from a board.

So if the board decides that they want to accept that - you know, the GAC advice, maybe that's the trigger that the board then writes to the council to say, this is, you know, the way we want to go on this, and we would ask you to consider your options at that point.

But I'm not sure. So that's - you know, I think that's kind of where we are, Chris, is that we - I think the council needs a trigger from the board to be able to reconsider the PDP working group recommendations, or to have the PDP working group itself to do that.

So even if, you know, the small group proposal is on the table now, we can have a discussion about that. But I don't know that we can necessarily do anything in Hyderabad that is going to give any level of comfort, because we don't have that trigger yet. Thanks.

Chris Disspain: I understand. Thank you. Thank you very much. Thomas?

Thomas Schneider: Yes, thank you. A few remarks. Of course I know that formally the authority of the GNSO council is limited and so on about the structures. I know a little bit about the structures in the GNSO. But I think we should, again, try to depart from a pragmatical point of view, not highlighting what is not possible, but actually trying to focus on what is possible, based on the spirit of - and who - and I like - I support Chris's question.

If we don't have the right people that we speak to, if we speak to the GNSO council, who else then would we need to speak to in order to come up with the people that have the authority to actually compromise? That is one point.

Another point, talking about - come from having read Phil's remark about compromise, if you go back to the GAC advice from years ago, what we have in this small group proposal is definitely a compromise. And it may be the same - there may be the same positions or ideas you repeated for two year.

But, I mean, we've been - if you look at what the GAC advice was before that, and what is left of this in terms of - that has moved a lot, and we can't have this substantive discussion here. And it's a pity that nobody like Brian Beckham from WIPO or so seems to have been invited to this call, because he has been following

this in very detail, and could give you some examples on the spot that I'm not able to give you.

I agree, however, with I think it was Donna who said that in the end it is up to the board to take its responsibilities as the organ in the end, according to the bylaws, that has to reconcile or lead or guide - take responsibility for us finding a solution if a GNSO recommendation is considered to be against the public interest by the governments, and the government give advice to the board and ask the board to consider an advice, and take a decision that is, at least in the government's view, in the public interest.

And the board has made a first. And the board has made a first, let's say, attempt in my view, years ago, to recommend to the GNSO to reconsider its recommendations. That does not seem to have been done so far.

So the question is now, who should basically - I'm not sure whether the GAC is in a position to actually validate one-sidedly the small group proposal, because that was not - that is not a proposal that has been developed by governments or IGOs, that has been developed by a group of people in the spirit that this would be - could be an informal - not a formal, but an informal basis that could be accepted formally by everybody involved to be used for finding something that would be acceptable to all.

And our understanding was that even if the GNSO working groups were not present, at least in the beginning, in the meetings, but that through the board and the ICANN staff who was present, that these links and the communication on that side would be undertaken in a way that in the end would come out of the IGO and small group proposal would be, at least informally, consulted and would have a chance to succeed in both sides.

It doesn't make sense that we, as I said, compromise once more and say yes to something without no idea or no signal from the other side on where they stand on this. So I think we really need a commitment from all sides to enter into a pragmatic approach, not a formalistic approach, about who's authorized to do what - another, but who is willing to find a solution in the sense that Chris has said.

Because otherwise I really think, why have we done this for the past two years if there is no sign of at least signing into the ideas expressed, or some sign that we can take as willingness to work on the basis of this proposal. If there is no sign like this from the GNSO, then I'm not sure how to sell this to the GAC and to the IGO. Thank you.

Chris Disspain: Thomas, thank you. Jorge, you're next.

Jorge: Hello? Do you hear me okay?

Chris Disspain: Hello. Yes.

Jorge: Okay. This is Jorge for the record. Well I think that Thomas's logical has made many of the points I would like to make. But I really think that we have to be aware that there are two positions, or two starting positions, so to say. They stem from 2013, and they are before the board. And the board has to really trigger a process to reconcile those two positions.

I think that the small group proposal is an attempt from one side of those to positions to get to some common ground. And I think that could be taken as one possible basis for that dialogue.

But so I would suggest that the board really tries to set up in Hyderabad a process where it sits at the same table all the interested parties, to sort things out with a clear time frame up to Copenhagen or, at most, until Jo'berg. Because we already know what are the starting positions.

It wouldn't make any sense to turn again the wheel one more time to escalate the differences between the two positions. I don't think that would go in the right direction.

So I think the two positions are already before the board. The board can set up a process, because in the end it's the board who decides. And what is the specificities of the process between - in the GNSO or in the GAC, are something that can be sorted out if we are all to take part in a bona fide session in that attempt

to resolving these problems that have been lingering there for more than three years. That's the first thing I would like to say.

The second thing is that we had, in the invitation to this call, this mention to the Red Cross. I think that the Red Cross issue is something that can be separated clearly from the issue of the IGOs, and at least for what is the protection of the names of the national societies. And swift resolution of this problem would give us a good atmosphere to build on for resolving also the IGO issue.

I think that it's a very clearly defined problem. It's a problem with a clear legal basis, that really supports a swift resolution. And in Hyderabad we could send a clear signal that ICANN is able to resolve these kinds of problems in a swift manner. And that would create a good atmosphere for doing the same with the IGOs, along the lines I suggested before. So I leave you with that, and I hope this is useful. Thank you.

Chris Disspain: Thank you, Jorge. That was very helpful. Before I go to Steve, I just had sort of...

Steve Crocker: Thank you.

Chris Disspain: It seems to me pretty clear that - oh, sorry, Steve. Actually, no. You go. Go ahead.

Steve Crocker: Thank you. I suspect what you and I may be arriving quickly at the same conclusion, but I'll find out after I speak and then you say, "Oh, no, that was the wrong thing."

So I'm hearing three things, all of which are very useful. First of all, I'm hearing quite a bit of good will, and a desire for a positive outcome. And I think that that's admirable.

I'm also hearing a strong concern about adhering to the formal rules, the limitations on the authority of each of the groups, and not having the ability, for example, on the GNSO side, to undermine the PDP -- that is, the leadership does not have the right to unilaterally modify that -- and a comparable kind of effect on the GAC side actually.

And the third thing I'm hearing is that there are actually some constructive ideas; that it's very important for those constructive ideas to be seen as substance without authority; and that any attempt to say a group is convened not only to put the ideas



together, but to insist on them, is going to founder because it crosses the lines of what the appropriate processes are.

When I look at the three paths on the flow chart, what comes to mind is that the board also has a very limited set of options. The board is not going to, and does not have the authority, and it wouldn't be appropriate to impose a particular answer. One could imagine us pointing to the small group and saying, "Hey, those are good ideas. We're going to use these instead of whatever the PDP process said, and whatever the GAC advice said."

I think that would be as deeply flawed, from a process point of view, as we're hearing comparable kinds of things from the GNSO council and from the GAC.

What we can do, however, is we can, in the spirit of trying to be very constructive and helpful, is reject both. We could reject the GAC advice. We can reject the PDP. And we can do so in the spirit of saying, "Okay, this now forces us to - forces all of us to have an open mind about how to proceed," and effectively push the things down the path on the right side of this chart.

So speaking for myself, and not yet for the entire board, this is what I get out of this conversation. And as the - absent being persuaded that that's a terrible and bad course, is what you've convinced me to think about in the sessions that you're expecting the board to have. Thank you.

Chris Disspain: Thank you, Steve. And in essence, I agree. I mean in very simplistic terms, it seems to me that it's very clear that both the GAC and the GNSO are saying we need something from the board; we need some action from the board. What that action is is open for discussion. But in essence, I think what you said is right.

James, then Philip, then I'm going to try and wrap this up if I can with a couple of questions, if we can get some answers to those, as we strive toward Hyderabad.  
James?

James Bladel: Thanks, Chris. James speaking, and I'll try to be brief. I think Steve's raised an interesting idea. Look. We're not - on the GNSO, we're not shackled to our process

for the sake of it. You know, I think our PDP process is what gives, you know, these recommendations and these policies legitimacy.

And also, I believe if you look at the contracts that registries and registrars who carry out these policies - require them to follow the PDP process in order to be binding upon those contracted parties.

So just to point out that, you know, it's just not a dodge. This is not us, you know, kind of being squishy about where our authority begins and ends. I think it's a recognition that whatever the outcome, if we want it to stick, it has to be legitimate. And that means it has to follow these prescribed policies.

But to Steve's point about rejecting both the GAC advice and the GNSO recommendations, I think that - well let's just say that would definitely be the, you know, qualifying trigger that we are looking for to take a look at what we can do to go forward here.

I think the concern I have there, or the risk -- and I'm just stating this not to presume any outcomes, but just as a potential path that we need to be mindful of -- is that I'm not sure how that - I can't presume that that would - that the council would then agree to reconstitute a PDP, either the old one or take up a new PDP, and/or that we would arrive at any materially different outcome.

And secondly, I would ask -- and this is more of a - maybe an implementation question of what would happen to the temporary protections that had been installed under the bits of the PDP that were accepted, you know, throughout the course of that PDP, which could run, you know, a year or more. So I think we would have to address that question from a practical perspective as well.

So but generally I wanted to make the point that this is not a dodge. We are not trying to absolve ourselves of responsibility. We are adhering to the process to ensure that there is legitimacy and enforceability of whatever the outcome is. Thank you.

Chris Disspain: Thank you, James. And I understand what you said. Philip, Thomas, and then I'm going to wrap us up. Philip?

Philip Corwin: Yes, thank you. So Phil Corwin for the record. Three brief things that I'd like to say.

First, I'm not sure it'll help us out of the present box, but I think down the road -- and I don't know if this would require any bylaws revisions -- when there is significant disagreement between GNSO policy recommendations and GAC advice pertaining to them, it might be useful to set up some type of neutral mediation process to bring the two sides together. And then the mediator filing a report to the board, so the board isn't put in the position of being in between from the start.

Second, I'd just like to emphasize that the goal of the CRP working group has always been to help the IGOs to make sure that they have very effective and low-cost means of addressing abuse of their names and acronyms within the domain name system. And I think that when - oh, when our report is final, that will be seen.

And we have made every effort to engage with them in our work. You've heard from the chairman of the GAC that they had a reason not to engage. We were similarly advised by some of the IGOs that they did not wish to engage.

But I know we made the outreach. In fact, I remember a very early breakfast at the Buenos Aires meeting where Petter and I met with the chair of the GAC and two vice-chairs, to discuss and encourage GAC engagement.

And third, in regard to the notion of a negotiation in Hyderabad to resolve all of this, I would have to take very strong exception to that. I believe that in regard to the CRP portions -- and I'm only speaking regarding the CRP -- that the bylaws require that our working group be permitted to finish its work, to put out a preliminary report which all parties, including GAC members and IGOs, will have an opportunity comment on.

And we will take all comments under advisement, and then let the council vote up or down on our final report. But I think any notion of negotiating that issue in the middle of an ongoing, near-complete PDP should be rejected out of hand. Thank you very much.

Chris Disspain: Phil, can I just - it's Chris. Can I just - just to clarify before I go to Thomas. I think I understand what you're saying. You're saying that we can enter into discussions and

reject the stuff that's already happened in respect to a previous PDP, and indeed the GAC advice.

But in respect to the existing, ongoing PDP, that must be allowed to take its course. And any actions or triggers by the board would need to happen after it's completed. Is that basically correct?

Philip Corwin: Yes, it is, Chris. And to aim to get a compromised agreement on the CRP matter out of some ad hoc process in Hyderabad that would essentially pre-empt the final report of our working group, I think, would be a very unfortunate precedent for the entire policy-making process within ICANN.

Chris Disspain: Understood. Thank you. Thomas? And then I'm going to wrap up.

Thomas Schneider: Thank you, Chris. Just a few remarks. And I'd like to ask everybody to put yourself in the skin of somebody's who's paid for trying to defend what is considered the public interest.

If, in this ICANN structure, a policy developing organ comes up with recommendations for a policy, that then you as part of an advisory body are asked to give your advice on, to what extent do you think that this is compatible and conducive to public interest or not, you give the advice.

You come to the conclusion that elements are missing, or things would need to be changed in order that this can be considered as in the public interest from your point of view and your experience. And you give that advice to the board, which is the responsible organ of the whole institution of the whole structure.

So if then the board can either then agree that what the governments think is considered reasonably with regard to public interest, public policy, and then follow this; or the board can encourage the different parties to sit together and start informally and not formalistically try and find a solution, which is what we understood the board's attempt and our work, and like the invitation to reconsider the GNSO recommendations, and/or to engage through this informal structure of the small group.

If it turns out that there's no way to change something that has come out of the policy development process, because formally this is not possible unless the same people would agree to get together and do the same thing over again, so maybe this is what it takes, that we need to get back or that the same thing needs to be redone with the guidance from the board.

But if then nobody takes responsibility to - in case that everybody agrees that there's a public interest at stake here that has not been fully, adequately considered, what - so what's the point of this institution asking governments for advice if there's no way to actually follow up on that advice in the end?

So I'm asking quite a fundamental question, and I'm just urging you about considering what happens if many governments consider that the system does not work. They go to other institutions. They think we are not able to defend public interest in this institution. We need to go elsewhere.

And this is exactly what is happening currently at the ITU Standardization Assembly, where we have discussions about protection of geographic names because - and I'm not saying this is legitimate or not, but because some governments have the feeling that this hasn't been adequately addressed in the ICANN structure.

And I think we should do altogether a best effort to prove that this institution is able, that the structure is flexible and, you know...

((Crosstalk))

Thomas Schneider: ...conducive to solutions enough that we don't have to go to other institutions to try and find solutions, because people think that these governments, or some governments, think that this institution is not structured in a way that solutions can be found that are in the public interest.

I'm really serious about this urge that we all work together to find solutions within ICANN, because the alternative is not necessarily better. And the world is watching what signals we give, and please be aware of that. Thank you very much.

Chris Disspain: Thank you, Thomas. So I think - let me see if I can try this. Would it be - from the GNSO side -- and I hate using the word side. But from the GNSO side, what I'm hearing is that it would be quite difficult to have a meaningful discussion in Hyderabad, because you need some sort of a trigger from the board.

And part of what I'm hearing from the GAC is a similar thing, which is that some sort of action by the board is required in order to make this move forward.

Let's not worry too much about what that action is for the moment. But it seems to me that actually that is it really. What I've got out of this call, unless I've misunderstood, is that - and I want to acknowledge Phil's points about the ongoing PDP. But leaving that aside for a minute, what I got is that we do actually - we need to do something. We need to take action to move this forward. Does anybody disagree with that?

Okay, so I'm not hearing anyone disagreeing with that. Steve, I guess we need to try and find some time for a discussion on this on our agenda. Are you okay if I take that and see if I can get that slotted in somewhere? Or would you prefer to do it?

Steve Crocker: No, I'd be happy for you to do it, and I thank you very much for that. You know, quite obviously in addition to finding time for it, we should do a little bit of prep work...

Chris Disspain; Oh, yes.

Steve Crocker: ...a page or so of status and - but I'm glad that both you and I are on the call. We can - I think we can inform our colleagues pretty quickly and precisely. And, Thomas, you may or may not have time to be with us in the meeting. I hope you are. Good.

Chris Disspain: (Becky)'s on the call, Steve. Markus is on the call.

Steve Crocker: Oh, good, (Becky).

Chris Disspain: So...

Steve Crocker: Great.

Chris Disspain: ...we've got a couple of board members. All right. I am conscious that we've also got the issue of the Red Cross, which was brought up by Jorge. And, James, I've actually asked a question in the chat, but go ahead...

Steve Crocker: Excuse me. With apology, I have another call. I'm going to break off now. Thank you, everybody.

Chris Disspain: Yeah, thanks, Steve. And we're running over time. But, James, yes, did you - I'm looking at your chat response to me. You need a little bit of time to figure out whether you're comfortable to have it dealt with separately. Is that right?

James Bladel: Chris, just briefly, that is something that we are looking at. I understand that there are some material distinctions between - that would possibly cause us to think of those as separate issues. And that's something that we are looking at.

Chris Disspain: Okay. Are you going to be able to make any progress towards a comment in Hyderabad, do you think?

James Bladel: That's the goal, yes, Chris.

Chris Disspain: Okay, good. That's fantastic. I appreciate that. And I can't really ask for any more than that at this stage. The board is also aware that, you know, there is an imperative in respect to the Red Cross stuff, and I don't want to - I don't want anyone to come away from this call thinking that we don't acknowledge and accept that it needs to be dealt with, and it needs to be dealt with quickly.

I'm going to wrap the call now, unless there are any final - there are any comments. Being none, I really appreciate everybody's effort for being on the call.

I acknowledge that it was held at short notice, and I can assure you that from the board's point of view, or certainly from the members of the board who are on this call's point of view, we are - you know, we have a much clearer picture now about what needs to happen to move things forward from a process and administrative point of view, rather than from the substance.

And I appreciate everyone's effort for being on the call, whether you were just listening or speaking. So thank you all very much indeed.

Woman: Thank you. Once again, the meeting has been adjourned. Thank you very much for joining. (Annie) the operator, if you could please stop all recordings. To everyone else, please remember to disconnect all remaining lines, and have a wonderful rest of your day.

END