

**ICANN Costa Rica Meeting  
IOC Discussion - TRANSCRIPTION  
Sunday 11th March 2012 at 12:00 local time**

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Coordinator: This is the conference coordinator. This call will now be recorded.

If anyone does object you may disconnect at this time. Thank you.

Jeff: Okay let me give a two minute warning because I want to get started as close to noon as possible. So two minutes please.

Okay if everyone can please have a seat. I'll look at the operator to see if we're - okay we're actually recording.

So if everybody - all councilors could have a seat and if everyone in the back could please quiet down, have their - finish their discussions outside. This is an important topic for the council to consider.

We have a motion on it. I'd also ask if there are drafting team members to come up to the table as well.

Okay. So there's a lot of - I know we had this discussion a little bit 24 hours ago. There's been a number of developments since then.

But I'm actually going to go out on a limb and basically say that we'll maybe spend a couple minutes on it. But despite the fact that we now have a letter from the board to us and despite the fact that there's been some letters from the OECD my recommendation is that we put those aside and that we just continue to talk about our motion and going forward.

I consider the fact that we got a board letter to be a little bit late in the process at this point. The OECD letter is not anything new.

It's actually an attached - what it does is attach the same letter that was already sent to the board and to the ICANN staff months ago. So at this point in time I do not want to start a very lengthy conversation on that.

The purpose of this session is to really go through the existing motion and also the discussion topics this afternoon. So Wendy you have a quick - please make it - try to make it quick.

Wendy Seltzer: Wendy Seltzer. Very briefly what's new I think is that we are explicitly being asked for advice on the OECD letter.

Jeff: I think that's right. I don't think that that advice needs to come on the same day that the letter is delivered.

So I think that's something that the council will maybe want to discuss at the council meeting on Wednesday or later in its wrap up session. But I've never heard of a letter or someone asking for advice where there's an immediate turnaround.

So at this point I understand that's out there. But my assumption and maybe when the board comes in we can ask them about the letter.

But my assumption is that that's for future and subsequent rounds as opposed to something that we can start a policy process on with one month

left in the application process. I think Mary and Zahid and I really want to get to the substance of this because really that was what this time was set aside for.

Mary Wong: I just want to make a couple of suggestions. One is what you just said -- can we seek some clarification on the board as to whether they are expecting something for this round.

And secondly for the council that we make - depending perhaps on the board's answer. But that we make this an item of discussion for our meeting on Wednesday.

Jeff: Sorry can you just repeat that second? That we make it an item of discussion...

Mary Wong: For the council meeting on Wednesday. Because I do think we need to talk about it but as you said maybe not right now.

Jeff: Okay. Zahid?

Zahid Jamil: Thank you. Just a question I mean I know we discussed yesterday that as far as the IOC and their costs are concerned we're focusing on the top level. I read the letter which has been issued by the lead council that talk about top as well as second level.

Just wanted to see whether we're going to focus on both?

Jeff: I'm sorry say - that we're going to focus right now on both? Or that in general when we address that...

Zahid Jamil: Whenever we do address it we will have to address both top and second level as well right?

Jeff: Right. I'm assuming that we will address what the board has asked us to address in the asking for policy advice.

Okay so where we left off yesterday was the notion that we have this motion on the table. The motion is actually posted up there on the screen and it should be posted for those in the Adobe room.

This is the motion that's before the council. And I wanted to take this time to go over this motion, to go over some things that were discussed -- I know informally there were some discussions about what to do with this motion.

And so the current plan is that this motion's on the agenda and it will be voted at the Wednesday meeting. So I just wanted to start a discussion on the substance of the motions, some concerns that are still out there.

And then also when we have time is just save the last 10 minutes or so for a little recap of the discussion we'll have with the GAC. So does anybody want to start in the queue?

Or is everybody happy with the way this is? Okay, Joy.

Joy Liddicoat: Thanks. It's Joy Liddicoat from the transcribers. Just a correction of for clarification we've had since the resolution or the motion was proposed we've had correspondence with the proposed list of names.

And I think it would be helpful to have a discussion about that. And I'm not quite sure when that's going to happen.

Is that going to happen now?

Jeff: Yes.

Joy Liddicoat: Okay good. Sorry just wanted to put that on the list of things to discuss.

Jeff: Okay thanks Joy. Any other topics? Why don't we start with that and then we'll come back to Joy's on the translation issue. John?

John: The only other topic that I would want to include on this is are we in - if we were to pass this motion are we establishing a process by which other names, marks would then pursue similar protections. And I say that without - I try to take the derogatory sense out of that.

Jeff: Okay. Thanks John. Let's - and Alan?

This is just to list topics by the way. So don't address John's question.

So - okay you'll defer to when we talk about that? Okay good. Okay thanks Alan.

Alan Greenberg: I was going to answer but I do have another topic. I feel reasonably strongly that we developed the motion -- the drafting team developed the motion in the light of it being applied to this round.

I would really like to see words in it to say that if it is not adopted for this round then I think we're back to square zero. Because this round already had protection for the OIC and Red Cross.

Future rounds do not. And I think if it is not adopted for this round then I believe we do have to go back to square one, square zero and start the process over again.

That is it's not here's a motion, put it into ground one if you can or round two if you can't. I would like to really see it restricted.

Jeff: Okay. That's the third. Tom - Thomas? Anyone else? Sorry, Thomas and Steve. This is just for setting out topics and then I actually want to get to the topics so.

Thomas: I think we definitely need to talk about the question of policy versus implementation. And the impact of that.

And we might want to discuss an additional whereas which reflects our point of view regarding the process.

Jeff: Okay. Thanks Thomas. And Steve?

Steve DelBianco: Thanks Jeff. Steve DelBianco in the drafting team.

I would ask us to do an assessment of the value that the flexibility and the street similarity protection will grant to the Red Cross and OIC in this round at the top level. So by looking at that value like do they really need it, will they intend to use it by applying -- that helps us to understand the context of how much they'll value what we're doing at the top level as opposed to what we haven't yet done at the second level.

Jeff: Okay. J. Scott?

J. Scott Evans: I think also something that Kurt brought up yesterday needs to be looked at. And that is the fact that - if I understood him correctly - this is J. Scott Evans by the way from the intellectual property constituency.

He said that the - if another party should come along and prove that they have rights that exist in the marketplace and they demonstrate that they still wouldn't get in because they're too similar under ICANN standards. So I think we need to look at ICANN's broad assessment of what's similar -- it doesn't reflect the real marketplace.

And that needs to be discussed. Because it's - there's no need have any of this prove you're right if it's a feat accompli once Olympic is registered, Olympus, Olympiad, everything's out because it's too similar.

So I think we need to talk about that and then talk to staff about - and how they're going to deal with that. Because I think that's a problem.

Jeff: Okay. I think I've - okay Alan.

Alan Greenberg: Just to follow-up on that I think he - I think J. Scott has identified a real problem in the - even in the current round that we don't know what the guidance to the string similarity review panel, what guidance is going to be given to them. And that really keeps us in the dark.

If we had some idea of what guidance they would be given and what the parameters were then we'd be in a much better position to try to frame policy. Thank you.

Jeff: Okay let me get to the first topic that Joy had brought up which is the issue of translation. So the part of the motion that we had drafted talks about -- and this is recommendation number two which states that the GAC has proposed that the OIC and RCRC needs to be protected in multiple languages.

All translations of the listed names or languages used on the internet. I'm not going to read the whole thing.

But essentially we bring the notion that the lists initially provided were illustrative. But protecting the names in every single language is not feasible.

And so what we did is we asked the Olympic committee - sorry the OIC and the RCRC to submit a list of names. The OIC submitted that list a week or so ago.

And the Red Cross submitted their list of names yesterday. And, you know, there were a number of names that were on there.

There's been some e-mails back and forth on the list about the names that were submitted -- particularly the names that were submitted yesterday from the Red Cross Red Crescent movement. So in light of those lists that have been submitted what are the thoughts of the drafting team of the councilors on the status of the current recommendation and protecting all of the names that are on those lists?

Okay so J. Scott?

J. Scott Evans: I just think we need to be very clear that this is about words and not symbols or designs. It's about words and only words.

And we need to be very clear that that has always been the way it's worked for any kind of rights protection mechanism with regards to sunrises and all that. It's the word element that we're discussing here.

We're not talking about designs.

Jeff: Thanks J. Scott. And if anyone wants to join the queue after that. So I've got Chuck and then I've got Constantinos.

Chuck Gomes: Thanks Jeff. Chuck Gomes representing the Registry Stakeholder Group.

The - my understanding from the drafting team is is that the two organizations -- IOC and the Red Cross Red Crescent were going to do some coordination with regard to the separate lists that they've proposed. I know that that hasn't happened yet but I believe that they're going to try to get together this week in terms of coordinating the scripts that each of them have identified as ones that they would like protection for.

So I'd just bring up as a point of information.

Jeff: I'd actually ask to - if anyone wants to come up from the IOC or RCRC to address that. For purposes of this - for councilors the IOC and the Red Cross Red Crescent movement have been participating members in the group.

So I don't know if there's an answer to that without putting you on the spot.

Jim Bikoff: We're ready to meet with the Red Cross to discuss this. We've tried earlier but we were unable to get together.

We've submitted a list and they submitted theirs yesterday and we just had a first look at it. So we're ready to meet with them sometime this week to go over it.

Jeff: For the transcript can you identify who you are?

Jim Bikoff: Yes I'm sorry. Yeah Jim Bikoff -- I'm a member of the IPC but also representing the IOC.

Man: Okay thank you. (unintelligible) from Red Cross Red Crescent. Yes we'll definitely meet on - to discuss the languages.

For us the main issue has been to go back to all member of national societies worldwide and to ask them well what do you think of the languages which are relevant in your own country -- i.e. we believe that Japanese should be protected for the Japanese Red Cross because it would have consequences in Japan. While some other societies told us for instance in West Africa well for us French would be enough even if you speak (unintelligible) we would use the word Red Cross - sorry, Croix Rouge in French.

So we have to make sure that the languages which are selected are really reflecting the reality on the ground. And that was the line which - and also to confirm that yes we are speaking about words, not about design. No question about that.

Jeff: So just to follow-up since you're up here. There was a - so the list of names - the Red - be more specific.

The Red Crystal as a name as Red Lion and Sun as a combined name. Those words are protected under the treaties and national laws?

Man: Yeah that's absolutely right. Those names Cross - Red Cross Red Crescent, Red Lion and Sun, Red Crystal are the ones which are protected by the 1994 - 1949, sorry, Geneva Conventions on the 2005 additional protocol.

So the exact words which are protected. Again words not design.

And we'll come back I believe (unintelligible) today with some written explanations on why these words. And also to clarify that when we say that Red Lion and Sun needs protection it's not just Lion alone or Sun alone.

It's really this expression Red Lion and Sun.

Jeff: Okay. Let's me go to Constantinos is next in the queue and then I see Zahid. Is there - and then Alan.

Constantinos Roussos: Thanks Jeff. This is Constantinos from (unintelligible) drafting team and also I am the chair of NCUC but I'm speaking right now in my personal capacity.

Just a very quick comment on what J. Scott said which I really think is the point that personally makes me uneasy. And I know that makes a lot of our - the members of our constituency uneasy.

That most - well the international treaties and the national laws -- they do not protect terms. They protect the terms along with the symbol.

And this is especially in the case of the Olympic this has various implications because what we're doing essentially is granting rights on the terms. So these - to the international committee and the Red Cross but more importantly to the international (unintelligible) committee.

So this is the point that I actually see these recommendations as being sort of problematic. Thanks.

Jeff: Okay. I'm going to ask Jim Bikoff to respond to that.

Jim Bikoff: Well the statutes that are protecting the word Olympic protect the word Olympic. We're not talking about statutes that protect the design.

Those are separate statutes like the countries that are members of the Nairobi Treaty. But if we take for example the statute that's prevalent in Greece it protects the word Olympic and other Olympic words like Olympiad.

And it very clearly says that they're protected not only as marks but also for any use on the internet. We have consulted with Greek counsel and we have the statute.

We have a translation of it. And it's very clear.

Most of the other statutes do the same thing. They talk about the word.

The design and the word are combined in many countries but they're separate. The word stands alone, is protected by statute in most of these countries.

So that we're not asking for anything other than that.

Jeff: Okay.

Man: Thanks. For Red Cross Red Crescent perspective that's also absolutely true. The words themselves are (unintelligible) but the words not only the emblem, not only the design is protected by both international treaties -- the Geneva Conventions -- which means 100 of 94 states or literally all states of the world as well as national legislation.

And if you look at the national legislation that exists it (unintelligible) translates that you get a sign if you are using the word Red Cross when you are not (unintelligible) user. So it is really about the use of these words.

But if you want to talk more about it...

Jeff: Okay. Let me go then with the queue -- Zahid now and then I want to get to the next subject.

Zahid Jamil: I'm a little confused with the chart that I'm looking at. And I'm going to focus specifically on the language that I'm familiar with which is Urdu from Pakistan.

My first question is the phrases that are being - the terms that are being mentioned I'm not quite sure that they are - at least I'm a lawyer there - I'd like to know what legislative statute apparently protects these phrases. Because I'm not aware of it.

Specifically when you go to the last column you have phrases. And you have alternative phrases.

So it's like saying - and I tried to come up with an analogy but let me try to do it the best I can. You're protecting Red Lion but you're also protecting Rouge Big Cat.

It's sort of like that's the alternative. Because it's (unintelligible) means the same thing as (unintelligible).

Trouble is it says Red is defined - is translated into (unintelligible) as well as another word (unintelligible). But then in other column you've defined or translated the word Red into (unintelligible) which is not used in this column.

That's very confusing. And I have never seen that phrase being used in my country.

The only one I know is in column one and two. Three and four are completely unknown to me.

The fourth one is a sentence and a phrase I've never seen on the side of an ambulance. Plus I've never seen it protected by statute.

So I'm going to focus specifically on what I know well which is the language that I speak in the country that I come from. And those are the questions I'd like to sort of get an answer to.

The reason I'm saying this is not because I think that the Red Crescent should not get protection. They definitely should get protection.

The column one and two are something that I see and the BC has supported as getting protection. But when we get into this area what ends up happening is we seem to be losing credibility in the community.

And we'd like to make sure that we have all those facts with us to ensure that we're not sort of just putting words out there for protection which is not protected under statute.

Jeff: Okay thanks Zahid. And maybe this is something you could address in a follow-up e-mail today hopefully so that we could have that information.

Let me go to Alan then I'm going to jump onto the next subject.

Alan Greenberg: Yeah. Just for clarity if I understand correctly what we're talking about is what languages are covered if the GNSO approves this motion and if the board approves it. If neither of those have been we revert to what's in the guidebook.

And I just want to make sure I'm understanding correctly.

Jeff: Yeah I mean in order for the second recommendation to mean anything you have to pass the first recommendation. And if that gets passed then we'll send it to the board and obviously the board has to approve it.

But if the board doesn't approve it well, we don't approve it it's just whatever's in the guidebook now.

Alan Greenberg: Okay. Just wanted to make that clear. Thank you.

Jeff: Right. Okay so the next subject that's on the table is the question that if we pass this motion are we establishing a process for similar marks or in the future to - or similar concerns like the ITOs or someone else to come to us and make the same recommendations.

What I will do is I'll start out this conversation by saying that we are responding to the GAC proposal. The GAC proposal specifically mentioned two different classes of marks of the IOC and the Red Cross Red Crescent.

They initially differentiated those marks from all the others based on the fact as Greg -- a working group member -- had said on our list -- based on the fact

that they were subject to a treaty but also substantial protection under a number of national laws. And they had a criteria.

I understand there was a discussion yesterday that obviously a number of us were here as opposed to in the GAC room. That there were some members of the GAC that may have been questioning this.

On this I would just caution that, you know, there's a lot of discussions in an open environment. But until the GAC actually changes direction as an entity it's my view that we stay the course that we're on.

If they express something different to us this afternoon then we'll obviously have to deal with that. So the question I think has already been answered as are we setting a precedent.

Our intention is no. Will we get letters in the future asking for the same protection? I think the answer is clearly absolutely we will.

But we have the discretion to say no at that point in time. So let me put J. Scott and Constantinos in queue.

J. Scott Evans: This is J. Scott Evans from the IPC. I agree with Jeff -- I think we're focused on what we're supposed to and that's to answer the questions that we were asked.

I think are we setting a precedent? You know, that's like when my clients as me well am I going to be sued?

And I say well all it takes is \$100 and a hungry lawyer to get sued. The actuality is yeah anybody that's got a word processor can write a letter or send an e-mail and ask for anything they want.

But we can also just as quickly send an e-mail and say no. No is an answer.

Jeff: Thank you J. Scott. I'm going to go to Constantinos then Joy, Wolfgang and Thomas.

Constantinos Roussos: Thanks Jeff. This is Constantinos.

I think that it's very irresponsible not to take the letter that just arrived into account. (unintelligible) is responsible for setting policy.

This might open the floodgates to a really, really bad precedent. And I think that we should be taken onboard.

And as for the GAC discussions yes I do understand that there's no official change of direction. But we see some movement also within the GAC that some governments express some concerns.

And this also should be taken onboard. I mean we cannot underestimate either of those two incidents that occurred over the past couple of days just because we need to make - we need to pass these recommendations.

These are important issues that could have potential ramifications. And I think that the drafting team needs to take (unintelligible). Thanks.

Jeff: Thanks Constantinos. Let me go to Joy.

Joy Liddicoat: Thanks Jeff. And just to reiterate and emphasize the points that are being made I think it would be unwise to not be mindful of the wider landscape of discussions going on within the GAC at the moment.

Albeit that, you know, the internal discussions have been to resolve just their own genus. So council discussions are for us to resolve.

And we have different and vigorously contested views around this table which we have to work through as we work towards a consensus. Nonetheless having said that I think that it may be helpful to be much clearer and much more direct in our advice to the board that we clearly see - we see this clearly as not setting a precedent.

And I do think that the earlier suggestion that we ask the board when we're meeting jointly with them about their intention in relation to the (unintelligible) of yesterday or today asking for a joint GAC genus or advice on the IGO that's come be right with them. Because I think this pertains to the heat rather than the light that's being shed on our discussions in the drafting team.

Jeff: So I think that's a good point. And if I can ask Joy and then Alan for a point that was raised earlier.

If you have some language Joy that you could write into the motion to explicitly state that this is not intended to set any precedent that might be helpful. And Alan on the earlier point about this applying only to this round, you know, I think these are both really good points and I think you're right that they do need to be sent by the council to the board.

And in the body of the motion if you could find a place for it I think would be something that -- I'm the one who presented the motion. And I'd be certainly willing to entertain that as friendly amendments in the motion themselves.

So please do that. I have Wolfgang, Thomas and Mary.

Wolfgang Kleinwachter: Yes I think one thing should be very clear from the very early beginning that nobody denies -- the special protection of the IOC and the Red Cross. I think this is for sure and (unintelligible) as the organizations' trademarks or (unintelligible) names and things like that that leads or protections so there is a full consensus on this.

If you'll look at this in an isolated way I think what also (unintelligible) council drafting team has done. I think this was absolutely correct so that means you made a request and it got discussed and wrote a letter to the board and we got the letter and we acted on behalf of this.

So that means in an isolated way I think we have achieved a lot. And we have reached a certain moment of hopefully where we have a consensus.

The problem I have with it is that probably it was a little bit narrow minded from the very early beginning that the implications -- the (unintelligible) implications were not really, you know, visible at this moment when the process started. And if you move deeper into the issue then you see, you know, how many implications this has and how many consequences this has which are also ignored by the calculator and by the board.

So that means it's (unintelligible) and the board who probably acted rather quickly just, you know, to please each other, whatever was the motivation behind it. I don't know.

But I have very concrete questions to the IOC and the Red Cross. The first thing is what is your opinion -- what makes you so unique if you compare your own organizations with other organizations.

In particular for instance the IOC what is different from FIFA -- the football federation which is - has a similar size and a similar system of protection of all this. And, you know, what about Unesco?

Unesco has national commission in the 193 member states. And the Unesco symbol is also and Unesco as a word is also protected in all national laws.

Because it's (unintelligible) and it's very, you know, difficult to use this word Unesco. So that means what is in your own eyes, what makes the difference to the other organizations?

And the second question is you came with the special wish to get extra protection. I think in the guidebook there are a lot of mechanisms for protection.

And, you know, if you ask for additional protection then you mistrust probably the mechanisms which are included in the guidebook. So and I would be interested to know why do you not trust the mechanisms which has not yet been tested?

And that means let's test it out. I personally trust that the mechanisms which are in the guidebook which are the result of a - years of discussion are rather safe.

And I cannot imagine that somebody for instance will risk \$200,000 U.S. to register for that IOC if it's not international (unintelligible) commission from the Unesco. But (unintelligible) Unesco has no money to pay for that.

So but anyhow, you know, that's the question, you know, why do you search for additional protection which goes beyond the mechanisms which are already in the guidebook? These are my two questions to you.

Jeff: So let me - I'm not going to ask for answers now because I think that could take a lot of time. Those are again ones that you could choose to respond to in an e-mail to the group.

Just a clarification -- the term IOC in and of itself is actually not protected. That's not in the proposal.

It's Olympic, Olympiad and the other ones. So they're going to have to use the normal protections in the guidebook to protect the IOC.

Whether they like it or not. Okay let me go to Thomas, Mary, Alan and Chuck.

Thomas Rickert: Thanks Jeff. This is Thomas Rickert.

I think that it is prudent to think about, you know, avoiding setting precedent, you know, in regards of, you know, the questions that we're discussing -- whether there should be protection or not. You know, we might set dangerous precedents for ICANN.

But on top of that I think there is a concern that two organizations are being granted rights that go beyond their statutory protections. And we heard from (unintelligible) early on that there might be some uncertainties around the list which I would not - certainly not be able to test, right?

And my question - I don't doubt that the list is accurate in many way. I think that in the resolution we might wish to include some language that we don't take the list contending whatever there might be on it but that the list should be used that doesn't go beyond the statutory protections -- some sort of wording accurately reflecting that we're not granting extra rights for protection that is not there by statute.

Because that's the only thing that we're concerned about. And I think that it would need that. Thanks.

Jeff: Thank you Thomas. And then if we set that into motion we'd actually have to provide some guidance as to how the evaluators would test that out too.

So I'm, you know, I take your point. We just need to think that through.

So I have - let's see, I have Mary, Alan, Chuck. Then I have John and Robin.

Mary Wong: Thanks Jeff. The first point I want to make is actually the same as what Joy and Thomas said.

And this is not a drafting team issues so much as it's a council issue. I think it is incumbent on the council to send a very clear message to the board, the GAC and the community that this is a one off.

And the process by which we are doing this drafting team work was unfortunate but unique. And I think that does need to be crafted either in the motion or the formal statement of the council.

The second point I wanted to make is about the second recommendation. I think in - first of all in light of the lists that have been received it might be useful to the council certainly I think if the drafting team were able to obviously have the (unintelligible) discussion we're having now.

But seems to me that that second recommendation the language probably needs to be updated in some form or other. And I think it'd be helpful if the DT could do that.

And then in that regard going back to Zahid's point looking at the list of languages I don't - I honestly don't know how we're going to get through this discussion in time today for Wednesday. But to give another example I notice that the terms in Chinese -- Red Cross, Red Crescent, Red Lion and Sun for example just to use one example -- they are descriptive whereas in Chinese I'm not sure -- and maybe - I'm not going to put Ching on the spot.

But I'm aware of the Red Cross Society in China and the use of the Chinese equivalent, the (unintelligible) word as the Red Cross Society in China. I'm not sure about the Red Crescent or the Red Lion and Sun.

So that is just one example. I can see the reasons for protection and not protecting one versus the other.

But it is an example of maybe where some of the lists may go a little bit too far. And it's something that the team should be considering.

Jeff: Thanks. And I think maybe after - if we have a little bit of break between this and the next session maybe the drafting team can huddle in a corner and see if there's a time that we can all get together and talk about certainly the rewording of recommendation two.

Because I - you're right it does reflect before we got the list. And we could talk about when we could have time to do that before Wednesday.

Do you have a response to that -- a quick response and - okay.

Man: Yeah probably just a clarification. It was at the request of a working group that we have prepared a list.

And it's absolutely on the same line as you have mentioned. The idea is to protect these words -- whatever is the language.

No for (unintelligible) we provide the translation of both names in as many languages as possible. But the crux of it is really the names themselves.

Not necessarily the translation but thus we have provided. It's just (unintelligible).

Jeff: Okay thanks. I got Alan, Chuck, John and Robin. Alan.

Alan Greenberg: Thank you. Wolfgang really asked much of what I was going to. But I'll elaborate and add one thing to it.

And the real question is at - two separate questions at both the first level and the second level are we talking about philosophy? Or are we talking about pragmatism and reality?

Are you really worried that someone's going to register these terms and either the objection process will not work or it will cost you huge amounts of money? I personally don't see it at the first level likely to happen.

And it's going to be easy to kill if it does. At the second level every time we have examples we have examples like the Red Cross has all sorts of problems with domain names such as Red Cross - Tsunami.

But that is - no one's asking us to protect those. We're asking just the words not words contained in.

And, you know, it's a long discussion we had with the GAC. The GAC admitted that it's not something that we could do.

So I really want to understand is are we trying to fix a problem or address some level of philosophy that is not really a pressing problem? I think it's really important.

And I think the answer may be different on the first and second levels.

Jeff: I think that's a good question Alan. I think that's going to be important when we do get down to the nuts and bolts of the second level.

So that's certainly something they can think about and provide us answers for. So I have Chuck, John, Robin and then Zahid.

Chuck Gomes: Thanks Jeff. Chuck Gomes again.

I appreciate the fact that there are several possible friendly amendments being considered to the motion. I think that's - that makes a lot of sense.

But with regard to the one that you - that was suggested with regard to the supplying only to the first round the question I have is is would that then

change our third recommendation from a review may be done to a review must be done.

It seems to me it might.

Jeff: This is Jeff. I think it was a little bit different point.

It was this is our recommendations if we're able to get it in the first round. If for whatever reason the board devotes it down these should not be considered recommendations for any subsequent rounds.

That make sense? If the board votes in favor of it and it's adopted then the recommendations one, two and three stand as they are.

If for whatever reason the board votes it down then what they're saying is we're going to - what we're saying is we're going to start from square one. We're not going to re-take up this discussion for round two where we are.

Chuck Gomes: Okay so maybe I misunderstood. So the language you asked Alan to draft was in case it doesn't pass?

Or is it friendly - a friendly amendment to the existing recommendations?

Jeff: The intent was in case the GNSO does not pass it in which case it dies there. Or in which case the GNSO passes it but the board chooses to ignore it.

Not focus on it or vote it down -- whichever. If it doesn't apply to the first - end up applying to the first round then we reserve the right to go back and start the whole process over again.

Chuck Gomes: Yeah. Fine. I'm okay with that. That's what I misunderstood appreciate it.

Jeff: Okay thanks Chuck. And that's helpful to clarify. All right John?

John: So two things. With regard to recommendation two I think that I could argue that we have not yet received the list.

Clearly there is some concern. Even the IOC and the Red Cross intend to get together to talk about them later this week.

Tactically, technically we can say we don't have it yet. Strategically I begin to wonder if we are kicking up so much dust that the better, you know, the better part of (unintelligible) may be to defeat this motion and just suggest that the International Olympic Committee, the Red Cross and everybody else that has legitimate claim make use of the overarching mechanisms in the guidebook.

Jeff: Okay. Thank you John. And one other option other than defeating the entire motion is a possible motion to separate the three recommendations into three different votes so as to not have - if there are issues with two or three to have them not affect number one.

So that's also an option. We've done that in the past with other motions.

I'm not sure that changes anything. But it's an option we have. Robin?

Robin Gross: Thank you. Can you hear me?

Okay. I just want to make three brief points.

And the first really kind of dovetails on the discussion we've just heard which is that since we have these two organizations that are coming forward and asking for special privileges I think it's important - I think any responsible policy development body should then turn around and ask them well what is it about the existing protections that we've created that are insufficient to support your rights? And I haven't heard anyone in the GNSO, in the GAC, in the board ask that question of these organizations.

And I think that we need to hear an answer what is it about the existing protections that we've crafted that are insufficient to protect your rights. So that's the first point I want to make.

The second point I want to make is I think we need to hear from some independent legal academics to help to clarify what are the rights of these organizations. It seems like we've got a lot of confusion, a lot of different ideas from different legal experts about what - how broad of a coverage is this.

And, you know, we hear from the representatives of these organizations explaining how broad these ranks are. But I think that again it would be responsible of us to hear from a neutral independent legal academic about clarifying what are the appropriate rights of these organizations. That's the second point I wanted to make.

And finally I'm concerned about the drafting team's claim that they've reached some kind of consensus on this issue. There are four stakeholder groups in the GNSO.

And non-commercial users have been adamantly against this proposal since we first heard about it. Yet the other stakeholder groups are still claiming there is a consensus.

And so I would just like to state for the record that if it were any of the other three stakeholder groups that said we don't agree I don't think there would be a claim that this is consensus. So I feel like this is rather discriminatory treatment against non-commercial users to say we don't have to take your views onboard.

We don't have to take your views into account because the other three stakeholder groups agree and that's good enough for consensus. So I don't believe we have consensus.

And I believe the non-commercial view is being discriminated against in this case. Thank you.

Jeff: So I think I probably need to respond to that. I'll let - since I'm the chair and it's my determination.

I will just start out by saying that there are different levels of consensus if you look at the working group guidelines. There's a full consensus and then there's rough consensus.

And then there's strong support with a minority and there's a whole bunch of other levels in there. The determination I sent to the list as the chair of the group was that there was rough consensus.

I've never said full consensus. Consensus in and of itself by the way in the GNSO process is not unanimity.

So what I did is when I measured it I measured it - I grouped everyone by groups because it would be unfair if one group stacked the deck, right. I mean you can honestly say if roles were reversed and there were six registries on it and you counted each individual separately that you could see how the weight of determining whether there's consensus or not.

The group is free and the council is free to disagree with my assessment. It's absolutely in the rules.

But again we need to consider that consensus is not unanimity. And so I'm going to take - on this note - and so there was no intent to discriminate based on...

Robin Gross: I realize that. Can I just respond to that point?

Jeff: I'm going to let...

Robin Gross: Briefly.

Jeff: Yeah quickly and then I'm going to go...

Robin Gross: Okay. I would just claim that 75% is - of the GNSO stakeholder group doesn't even qualify as rough consensus. I think if we've got a stakeholder group that is against a proposal we don't have rough consensus. That's my view.

Jeff: Okay. And I've got to go quickly just to really quickly counter that it's actually been determined that if there's one stakeholder group that does the intent of the whole PDP was to not allow one stakeholder group to veto the entire process and hold everybody else up. So I disagree with that.

We can agree to disagree. I'm going to go to Chuck and then Zahid and then we have to wrap it up.

Chuck Gomes: Thanks Jeff. Well Robin I'm first of all offended on behalf of the registries that you would think we would discriminately oppose something because your stakeholder group doesn't agree. I've just been - there's been too many times where that's been proven different.

So I'm really offended by that particular statement. Jeff said it right when we defined the thresholds for voting in the bicameral model one of the principles that we were definitely clear on was that no one stakeholder group could stop a process.

And we designed the voting criteria so that that could not happen. So Jeff's absolutely right in that regard.

Jeff: Okay. I know Zahid's in the queue. I have to cut it off for them to set up. But the good news is we do have another session.

Man: I actually asked Jeff to cut this short because it's the board next and we have to be strict on timing. I'm sorry I don't want to cut you off.

If it can be done in two seconds then please do so. But otherwise please.

Zahid Jamil: There are protocols to the convention and every different protocol had signatories to those protocol - countries who sign off. So they're not all the same.

So I'm assuming that there are languages which are linked to the member states -- that's why those languages are in there. If that is the case every protocol has different signatories.

You can't apply the same rule to everyone. And not every country has legislated it either.

So that's an issue I'd like to get into deeper. But just want to raise that point.

Jeff: Okay. Just to end it -- drafting team if we could just meet in a corner here for a couple seconds while it's setting up for the board. And then we do have a session to talk about motions.

And I'm assuming if the other motions are non-controversial we'll have a little bit more time to talk about this one as well. So let's set up everybody.

We're breaking until noon - or sorry 1:00 when the board's coming in.

Man: Just yeah thanks a lot Jeff. And just to remind you all so we're now in preparation for our meeting with the board happens at 1:00.

I would ask that councilors you go and have lunch now if you can. And no one else touch the lunch please until the board gets here.

Sorry those are - not even you Marilyn. Sorry.

And please once again at the table there are only councilors and board members. We don't have enough room for anyone else.

Please vacate the row behind us here because that will be for staff. Sorry about all this but it's a difficult configuration in this room. Thank you.

END