

AtLarge-Name Issues__Oct 27_1010197_261719

Evan Leibovich:

My name is Evan Leibovich. I've been -- I'm the chair of North America at Large, NARALO, and we've put together a couple of people with the intention of drafting an At-Large response to what's happening regarding trademark protection within the GTLB process in response to the letter that the board sent to GNSO demanding that the GNSO board, the GNSO do something about it. And this isn't working with my projector. I just need somebody to call up the WIKI page.

Okay. Sorry, now I've lost my screen on here. Anyway, we can proceed anyway. The difficulty with where we are right now is that we do not have -- oh, there we go. We do not have -- oh no, that's Olivier's. Anyway -- so what I'd like to try and do is basically go through the list of participants, find out who is not on that list who would like to be involved in this, and basically try and take a roll.

So Olivier is here, Brett is not, Alan I believe is on his way. Kathy is on the panel of the GTLB Group, that session that is going on right now. Konstantinos I believe is with her. I think I'm here. Carlton is not here. Patrick is here. Rudy is not. Hong is coming tomorrow because she is with the non-con.

So for some of you this page is being seen for the first time. Could you scroll to the top, Olivier? This is a social text page in the WIKI area that's being used within At-Large. And what's happened is we've created a page that is not linked from anywhere else on this site. Essentially what we're trying to do is put a page that is not totally private, yet not totally public either and trying to figure out what we want to do before we sort of totally go public. There is some strategy involved with what we want to do here. The people who don't like what we're doing are certainly not totally open in what they do and I think even being semi-public we're going beyond that.

So this page is publicly accessible, there's no password protection. And if you want, just let me know at the end of the session and I can e-mail you the link. As I say, it's not linked to/from anywhere on the At-Large website right now, so the easiest way to do this is to actually e-mail you the link afterwards.

So what we were hoping to do -- so the first part of that is the ST.ICANN.org/workinggroups/index.cgi? which is the same thing that begins all of the ALAC working group pages. And then besides that is simply At-Large Naming Issues Task Force with the words separated by underscores. And that's the URL.

Anyway, what -- as I said we're trying to do here is to try and take the comments that various people have put in. Olivier, could you just scroll down a bit to -- down past -- okay, issues. So what we were trying to do is try to be available in case either the GNSO response to the board letter comes out in a way that is very unfavorable to what we consider to be end users interests, or in the possibility that the GNSO for whatever reason is unable to give something to the board in the deadline that it's required. The GNSO right now is under some pressure. It's my understanding that in order to be able to approve something to get into the board's hands by the

deadline, the drafting group has to have something ready by like the middle of November which is like less than three weeks away. And so the very diverse people within the GNSO have to get together on something they have never agreed on before. And they have three weeks to do it.

So in the possibility that the GNSO does not come up with something, the board letter indicates that they will go ahead with the staff recommendations. And it's basically been considered by the people who are -- by -- okay. It's generally being considered that since the board has said to GNSO that if you do not come up with something we will go with the staff recommendation, we'd like to be in a position if things come to that, to actually be able to offer something to the board as something that it can use instead.

Alan Greenberg has just come in and -- no, the reason why I'm pointing you out is because you may be the only person here who has knowledge of what the GNSO has actually been able to do so far. Have they made a drafting group? Are they anywhere? Where are they? [inaudible cross talk]

Alan Greenberg: Okay. What came out of the discussion is there is a drafting team, a review team I believe it is technically called. At-Large is participating with one person and an alternate.

Evan Leibovich: And those people are --?

Alan Greenberg: The two people are me and Olivier, the order to be determined. This just happened. I haven't had a chance to talk to Olivier at all. There he is -- thank you, I do recognize him, I just hadn't seen him. So yes, to be determined. An alternate is defined as someone who can dial into the teleconferences, cannot speak unless the other person has died or is otherwise available.

Evan Leibovich: So as long as you're on the call Olivier can listen but not say anything?

Alan Greenberg: Or vice versa.

Evan Leibovich: Do the two of you have a preference between you of who would like to go first? Or who is the main person and who's the alternate?

Alan Greenberg: As I said, I think we need to talk to each other quietly, in camera, as it were. Not Cheryl's definition of in-camera but the non-Australian one, and decide which way we think we can be more effective. Both of us have some skills. They are different and it's not intuitively obvious to me which set of skills need to have a voice more. So I think we need to talk to each other and I prefer to given the luxury of doing that.

Evan Leibovich: Fair enough. And I can provide the coin.

Alan Greenberg: And you can provide the coin. Okay. Hopefully we won't come to that. The GAC had not been included in the process at all. There were some expressions of interest from the GAC and at the last moment the GAC observer was added which is what they were asking for. At one point during the discussion it was a silent observer, which is uncharacteristic of observers at ICANN, the final words ended up just being observer which presumes the ability to talk. So this -- when I said yesterday I don't know how it's going to turn out, that termed to be an accurate statement.

Unidentified Speaker: Question. You said that the GAC would present as an observer. What is the stages of the ALAC representative?

Alan Greenberg: The ALAC is a full member -- to whatever extent that has any impact. Whether this group will ever take a vote or not is unclear at this point. So I'm not sure there is any substantive difference between the two. There may or may not be. I mean I think from the GAC, it's more important from the GAC side that it isn't a person formally representing the GAC than anything in terms of how they act on the group.

- Evan Leibovich: Have they set out -- are there any specific frames of reference beyond answer the letter?
- Alan Greenberg: Nothing you haven't seen. I mean --
- Evan Leibovich: I mean for the benefit of everyone else here.
- Alan Greenberg: The letter is exhaustive in giving options of what they would like to hear about the staff suggestions from a number of different points, from a number of different views. And they ask specifically targeted questions and they are saying if you disagree with this solution, come up with better ones, one or ones, with the option of minority reports should that be -- if you can't come to consensus give us whatever wisdom you have and we'll go off in a corner and do something.
- Evan Leibovich: So based on what you're saying, is it wise for us here to try and start the ball rolling to what might be a necessary minority report?
- Alan Greenberg: If you really think that you're going to come up with something which would ultimately be more acceptable to all parties, because that's the criteria the board is going to ultimately have to use, than something that is put together by the group, sure. Do understand the timeframe we're talking about. At-Large, just like the other parts of this group, are expected to answer all of the board's questions and make any other proposals they see fit to be delivered by next Wednesday, Friday at the latest.
- Evan Leibovich: I thought there was a December deadline.
- Alan Greenberg: No, you haven't read all of the documents. The resolution to form this group says they have to come up with their answer by the end of November. If an answer is going to come out of the GNSO, there has to be time for it to be presented to the GNSO and the GNSO to vote. Therefore the target at this moment, it might slip by a day or two or six, is the end of November which is essentially a month away, to try to put the issues on the table so we understand what the positions are of the various groups participating in the review team. Each of the representatives, constituencies, and/or stakeholder groups as you choose to align yourself, in our case it's moot, we are what we are, has been asked to essentially answer those questions that the board addresses from their perspective to put the starting -- I won't say negotiating point, but the start of the discussion on the table.
- Staff, in conjunction with whoever chooses to want to do it, will try to summarize those and identify commonalities and differences. So the answers are supposed to be delivered initially by next Wednesday, refined by Friday if necessary, if you don't have the complete answers, but delivers something on Wednesday. And some small number of days afterwards the group will start meeting, presumably by teleconference, to try to bridge the gaps between the various positions.
- Evan Leibovich: Does anyone else have any questions or comments at this point? So if I've got this right, then the two of you, one is the main rep, one is the alternate, are going to participate in this and are going to have to come up with some basic stuff together with them within two weeks, within a week and a half?
- Alan Greenberg: No, you don't quite get it right. This group -- the Names Taskforce which is the backup group for whoever is sitting on that review team, has to come up with an At-Large position on the questions in that time, in the one week timeframe. You can delegate it to be Olivier --
- Evan Leibovich: Well at this point we're trying to --
- Alan Greenberg: It would be nicer to have more people involved.

- Evan Leibovich: Okay. So essentially what we can do then is take this to the ALAC -- sorry, to the At-Large mailing list that Nick has already created rather than just the cc list we've been using now, and essentially turn this into a specific issue of what are our answers to the questions, very specific. Right now in the WIKI so far we've been dealing with the broad issues of what we like, what we don't like, and so far. Which will be useful in a minority report if we have to come up with something later on. But the immediate issue at hand is, what did the two of you take to the drafting group?
- Alan Greenberg: I would hazard a statement that simply sending out a question to the mailing list is probably not the most effective way of doing it. You can and should do that I presume, but in parallel, you're going to need four or five people, or two or three, or one, whatever is chosen, to start drafting something. Wednesday is not very far away when most of us have to spend a day or two in the air in between now and then. So as you get things, send it out for comment.
- Unidentified Speaker: My question would be, what output is expected from ALAC? Should it be a solid position, statement, a well defined position statement? Should it be a bullet list of suggestions we make to address different points? Which format should that be?
- Alan Greenberg: My brain is a little bit fuzzy on what was decided, but I believe it is documented and there is a meeting tomorrow of the drafting review team, whatever, tomorrow night at 5:00, something like that, where I'm sure we'll come with a more definitive statement. By my recollection is certainly one of the viable outputs, or one of the viable inputs that can be put into the process, is each group's answers to the specific questions. But it was specifically done in a relatively free format way so that if you want to add something else which is an explicit question, if you have a marvelous idea you come up with which you think everyone is going to say, why didn't I think of that, we can certainly put that forward, too. Sorry if I can't be very definitive, this is a work in progress.
- Evan Leibovich: Actually, I sort of expected that if the GNSO was involved in trying to put something together, that this would be something that would evolve over time.
- Alan Greenberg: There was a one or 1.5 hour meeting at which point we came to the position we're in now and there was substantial discussion to get to that. A lot of it had to do with how many people and stuff like that.
- Evan Leibovich: So is the makeup of it significantly different say than the proportion of the GNSO in general in terms of how the constituencies are represented?
- Alan Greenberg: It's a fraction of that. Specifically, the GNSO is ignoring the Non-Con people as 6-6 and 3-3 on the Non-Con, the non-contracted parties. Here it's 4-4- and 2-2.
- Evan Leibovich: Okay. All right. I guess one of the things -- is it worth at this time starting to go over the questions? With the group that we have here? I was sort of hoping that Kathy and Konstantinos would be here at this point, too. Sorry?
- Unidentified Speaker: You just missed them
- Evan Leibovich: Okay.
- Alan Greenberg: Do remember that they are representing themselves on that group. So to the extent that everyone thinks the same, that's fine. To the extent that they may not take exactly the same position, if we are all in lock-step we don't even need to be there at all and Olivier and I can save ourselves an awful lot of time. Think of it -- I say that with a little bit of misgivings because two days ago I thought that there was a lot of cooperation. I'm getting the feeling now that there may not be the flexibility there was two days ago. I don't know that for sure.

Evan Leibovich: In what? Sorry.

Alan Greenberg: In terms of cooperating and outreach. You will remember in the breakfast meeting I advocated trying to form alliances and trying to get established common ground with other groups, not just the NCUC who was already sitting in that room. And that has started but it's not clear it's continuing. I don't want to be more specific than that.

Evan Leibovich: Understood. But that's sort of within our ability to cope with. I mean if we want to bring in and invite other people as you or anyone else recommends, we can do that.

Alan Greenberg: You certainly can. And I strongly suggest it.

Evan Leibovich: Okay, at this point, are there specific people you would like to bring in that you've spoken to that would engage with us?

Alan Greenberg: Well there -- the people who have been participating in a mini discussion were Kathy and Konstantinos. Me. I'm not sure Olivier actually participated in that little triad with six people or whatever it was. And [Jahit Jamil] from the business constituency.

Evan Leibovich: Okay. We have his letter posted on the WIKI page so it's available if anybody wants to see his letter. Are you suggesting that --

Alan Greenberg: That, for the record, was a letter that Cheryl asked him to put together to try to put some substance into his offer to try to work with us.

Evan Leibovich: Okay, and so he's amenable to that?

Alan Greenberg: The last time I talked to him.

Evan Leibovich: Okay, so when we're putting together the people that are actually, this small group, this small subgroup that's actually going to work on the answers to the questions, are you suggesting he participate in that?

Alan Greenberg: I certainly have no objection to it. I don't know if he's amenable. He may have his hands full doing, working on the business constituency's similar answer. I don't remember who is representing the business constituency. I don't think it's him, but I'm not sure. But I'm more -- I more worry about working together with other people to try to find commonality afterwards. We should put down what we believe our positions are right now.

Evan Leibovich: So far this has been a dialogue between Alan and myself with an audience. What I'd like to do is try and go around the table and find out -- you're obviously here for a reason because you're interested in this. So starting at the end, (inaudible)?

Unidentified Speaker: (Inaudible - off mike)

Evan Leibovich: I want to know why you're here, what your interest is, and what you'd like to contribute.

Unidentified Speaker: I guess I'm interested in hearing other people's views on the interest and contribution and I have a basic interest in (inaudible). And of course on (inaudible) joining the task force as well.

Evan Leibovich: Did you give your name at the beginning, just --

Unidentified Speaker: My name is (inaudible).

Hong: Oh, Evan? Hello.

Evan Leibovich:

Hi, Hong.

Hong:

Sorry to interrupt but I'm going to teach in 20 minutes. If you don't mind, I'm going to give you my will on this after listening to that [costing] of the trademark meeting. Can I do that right now? Because I have to go teach at 1:00 PM.

Evan Leibovich:

Please do. You have the floor.

Hong:

Thank you very much. I'm following three points. The first issue is that with respect to the first mechanism that's being reported by (inaudible), this is on the trademark clearinghouse, I don't have a strong opposition to that except to the common law trademarks. I fully agree with the statement made by Casey at a meeting. If it is a federal or national registered trademark and can legitimately prove that, I'm okay with this inclusion into the clearinghouse. And the clearinghouse is limited to the function of storage. There is no other function for enforcement. Of course it's subject to the different registry sunrise mechanisms.

With respect to second mechanism, that is URS, if it's still best practice measure, I have no objection to that if it's recommended. But if it is mandatory, I oppose that. I worry there will be some sort of conflicts between URS and UBRP. Think about what if the complainant filed a complaint and a URS and then a UBRP. This is kind of waste of resources and duplicative proceedings and complicates the whole scenario. And I guess this is a kind of torture for the responders, they have to respond in two proceedings.

The second issue that's been very widely read by Evan in his weekly post, that is, what is relationship between this new GTLB program and preexisting registrants? Does this mean it's only applying prospectively, it is not applying to the existing registrations? That would be widely unfair to the new registrations. And what is the point for that to keep a more strict policy against a new registration? These were the second measure URS, which in fact the last one, post delegate URP, I strongly oppose that and I fear there's no room for us to wiggle with respect to this post delegate DRP. It's introducing a very dangerous precedence in the domain name system. There is a DRS registry, a top level registry, could be responsible for the action of registrants. And I know they've introduced, or they've borrowed, the wide principal from American common law there's precarious liability that is as far as the registry benefiting from the systematic and [searing] infringement, they should be liable for that. But think about the difficulty for judgment of this complicated scenario. If this is the case, it is not so easy to be decided within this ICANN system. Even though ICANN is going to absolve this resolution to kind of confessional provider, we're still concerned the justice of the process. And we worry that due process cannot be maintained.

And another point is that if this policy is going to maintain it's core post delegate DRP, is it going to apply to the new GPL registries only or is going to apply to all the top level domain registries? It would look in the present scenario the most risk case is dot com. If you look at the wide point, UDRP cases, up to 90% is against dot come. This means a very fine delegation or presentation should be removed by ICANN if it's going to apply to all the registries. So I can seriously think about the impact of this policy. And I strongly suggest we oppose the second measure very clearly and vocally. Okay, that is my three points and I'm so sorry for taking your time and wish you a very successful meeting.

Evan Leibovich:

Hong, can I ask you one thing before I give the floor to Alan? What we're trying to deal with specifically in a very, very short timeframe are answers to the specific question that the board asked of the GNSO in its letter. Could you possibly in an e-mail to us, to this group, please just state your answers to those questions? The broader issues we're dealing with, they've been posted on the WIKI and we may need to deal with them as incompleteness. But for right now we are under the gun to, in our participation in the GNSO working group, we need to supply them with our position on answers to the specific questions that the board has asked of the GNSO.

Hong: Thank you very much, Evan. I suggest if it's convenient to you, post these questions on our WIKI so we each blog our answers to our WIKI. Then we can summarize our answer and make the document easy.

Evan Leibovich: In the WIKI page under resources there is actually the pdf of the letter is actually there I believe.

Hong: Okay.

Evan Leibovich: And if not, it will go up there very quickly. Okay. Hong, are you -- do you have anything more to say at this point?

Hong: No.

Evan Leibovich: Alan has other comment or question to you.

Alan Greenberg: Hong, two things. Number one, on the post delegation dispute mechanism, I don't think anyone is disagreeing with you, but it's not one of the issues the GNSO has been asked to comment on. So although it's something that we need to look at and address, it's not something that we need to do in the cycle of this week.

The second thing is, your comment about will any or all of these new processes apply to the old GTLBs, and I'm certainly not a lawyer but my understanding of the contracts, which I've read a lot, is that the contracts can only be modified by mutual agreement and negotiation, or by consensus policy which is a very strictly defined both -- it's strictly defined based on how it is achieved through a formal policy development process, and is restricted to what kinds of things it could cover. So the issues we're talking about here on intellectual property protection, I believe there is no way that they could be made to apply retroactively and immediately to the old GTLBs. Whether it's fair or not is a different issue.

Hong: Okay. Alan is very right. For the first point, yes, sadly the post delegate DRPs aren't included in the letter, so it's not our task immediately. The second point I fully agree and I'm also a lawyer, I'm aware of that. ICANN's enforcement is really based on RAA and it's not included in the contract. And ICANN cannot enforce that. But as far as I know, RAA can be revised from time to time. And sometimes can be revised out of cycle. Well I can't remember the specific provision, but I remember there is in ICANN enforcement department they have a mechanism to do that. But of course, Alan, you're right and for the new GPO, the mechanism, it cannot be directly imposed on the present registries. Back to you, Evan.

Alan Greenberg: The RAA applies to the registrars, but I think here we're looking at more the individual contracts with each registry. And those are just regular contracts which, although they can be modified by consensus policy, which is a long involved process, other than when they expire or when both parties choose to negotiate, there's no way we could include the kinds of things we're talking about such as the clearinghouse in the short term. So you're right that it sets up an uneven playing field, but I don't think we have much choice.

Evan Leibovich: Okay, Hong, do you have any last comments? I know you have to run to your class.

Hong: No. Well the last issue I want to know, what is the timeframe for answering the board's question? To forward to GNSO? Is it end of this month?

Evan Leibovich: Actually in our particular case it's next week. Because this is the timeframe that our people -- that is Olivier and Alan, that are participating in the GNSO group, that's when they have to deliver their comments into the GNSO process.

Hong: I see.

Alan Greenberg: These answers are the start of the one month process by this review team has to come up with an answer to give to the GNSO. So the target is, as much as we can by next Wednesday, and everything that we want to do by next Friday. So we're talking about a rather short timeframe because this isn't the whole process. This is just our view to start off the discussion.

Hong: Okay. Evan, my very last point is that apart from this response to the letter from the board, there is something that is not being asked by the board, what shall we do with respect to that? Shall we read that as public forum tomorrow for the post delegate DRPs? Is it possible to do that? I very respectfully request you and the other colleagues to think about that. I cannot be there, unfortunately I'll be flying tomorrow morning. But I think that it's not fair to file this because it's not included in the letter from the board. Okay, back to you, Evan

Alan Greenberg: I'll still be here Friday after you get here and perhaps we should try to talk for a little bit. But the bottom line is, we are not being silenced. Olivier will also be here At-Large is not being silenced. I've just suggested that our first priority is to provide the input into this GNSO committee which has a deadline of next week. In parallel with that, we should be actively working on other things including the questions that were not asked to the GNSO. Okay?

Hong: Okay.

Evan Leibovich: Okay, thanks a lot, Hong. And thanks for taking the effort to come into the call.

Alan Greenberg: Hong, send me some e-mail so I know when you're arriving, okay?

Hong: Yes, okay. I can stay online for five minutes, then I have to go back to the classroom.

Evan Leibovich: Okay. Since Kathy and Konstantinos have just come in, I'd like to sort of get your comments on the GNSO procedure. Sorry, Olivier?

Olivier: I first wanted to ask you how you want to structure this meeting, whether you wanted to have a look at what we had on the WIKI or whether you wanted to have a quick browse of what the original letter, which currently is on the screen, original letter to GNSO council, was so that we know what the questions are to start with. Or launch with Kathy. It's your turn.

Evan Leibovich: Well what I wanted to do initially was deal with the immediate matters in front of us that have to do with the letter. The WIKI has been in the process of being built, but it doesn't directly address the comments in the letters. And now that we know what has been charged of the GNSO and what kind of time we have to work with, that has now become sort of the top of the list.

Olivier: Okay, so we're got the letter on screen. Do you want to scroll down, or?

Alan Greenberg: I would suggest that regardless of the questions asked in the letter, if you want to put a -- I won't say a preamble because it's probably going to be done in a spreadsheet, but a section on general comments or the things that are most egregious about it that you really abhor or that you like. That could be done in free form text, too.

Evan Leibovich: Okay. So what I'm going to ask everybody here to do is to go to the WIKI page -- as of right now I've uploaded this letter to the page, so everyone that gets to the WIKI it's in the list of attachments that are on the side of the page right now. If it's not on your page, just reload it and you'll see it because it's just been done within the last few seconds. And I'll give the -- like I said, if you need the URL, you can e-mail me, I'll e-mail it to you and that's probably the easiest thing as opposed to spelling it out again over the call.

Alan Greenberg: I assume it's the one in the formal ICANN agenda which is easy to find. Is that correct? Something ending in participation-en?

Evan Leibovich: No.

Alan Greenberg: No? Okay.

Evan Leibovich: No, that's a general link to the meeting, that does not include -- no, this URL --

Alan Greenberg: You're right, I didn't actually look at it before speaking, sorry.

Evan Leibovich: No, this URL ends with the word passport.

Nick Ashton-Hart: If it's easier, Alan, if you look at the front page of the working group's workspace, under recent changes, this page is listed.

Alan Greenberg: You're assuming I know how to get to the working group --

Nick Ashton-Hart: ST.ICANN.org/working-groups.

Evan Leibovich: Anyway, like I said, please let me now after the meeting if you're not on the list of participants there and you would like to be there, I will add you and I will also make sure that you get another e-mail that has this URL. Easier to just click on the link that I mail you rather than typing it in. Anyway, so as I mentioned, it's on there, and in fact if you scroll down a little bit, Olivier, and to the right where it shows attachments -- at the bottom of the list of attachments is a file section, GNSO council, so that is a pdf copy of the letter exactly. So anybody who walks away from this meeting and wants to see a copy of the letter so they can give their comments, what we're going to ask you to do, read the letter, download it, make your comments as a comment to this WIKI page. Be as specific as you want about addressing individual questions or be general. What we're trying to do is just get the feedback from everybody here on your reaction to the letter and to the specific questions. And like Hong said, there's issues that we can go beyond that if necessary. We may need to, if we are in fact producing a minority report afterwards, if GNSO doesn't come up with something, or if they don't come up with something we like.

Okay, would you like to call up that letter right now and go through it and get some analysis from the two of you who are actually involved with it right now? [inaudible cross talk] All right. So what I'd like to do is from Alan, from Olivier, from Konstantinos, and from Kathy, just one after the other -- I know we didn't -- we sort of interrupted going around the table, but given that we sort of are short on time, I'd like to get this out of the way in terms of the analysis of the letter and what we should each be taking away from this meeting. Alan, do you want to go last or first?

Alan Greenberg: I definitely don't want to go first I'm here at this point more to listen. I'm not claiming myself to be an expert on the subject matter. I'll point out the questions are generally on the clearinghouse. But from them you can get a gist of the kinds of issues that we're looking -- that you need to address on the URS also.

Evan Leibovich: Okay. All right, Kathy is going first.

Kathy: No, I don't --

Unidentified Speaker: I think Kathy you've got a pretty good idea of the actual letter point by point. Just good answers -- I don't have specific answers to each one of the questions.

Kathy: First, apologies for being later. Most of you probably know I'm coming off a two hour panel on this. I just wanted to comment that as far as my comments on behalf of the noncommercial users constituency who were involved in the panel today, when you look at these questions, we didn't stick to these questions. We had broader issues like the common law marks, which there seems to be growing consensus we shouldn't have in this database, in the IP, in the trademark

clearinghouse. So we looked at the documents anew and said, what really concerns us? And then we'll go back and we're going to come at this source and then go back.

Alan Greenberg: That's pretty much in line with what we've been saying.

Kathy: Okay and then the (inaudible) issue is -- the number for the first question, first issue is one we've had a lot of discussion about in NCs. And thank you for having us here, for NCUC and for this taskforce.

Olivier: Well I haven't got that much to add onto what Kathy said. We definitely in our previous discussions that we had, ever since a few weeks ago actually, we were concerned about the common law marks specifically. I think the trademark clearinghouse is a case where we have a big chance of coming to a consensus because it's -- it seems to be a clear cut case of common law marks going way too far. We're talking about 90% or 80% of the English dictionary being trademarked somehow. It's not even an actual trademark as such because it's not recognized in some countries. So it's just a recipe for failure basically.

Evan Leibovich: And yet when I brought up the issue at the GTLB trademark session just a few minutes ago, the response was quick and the justification was quick to come. And I didn't really see too many people in, on the panel sort of saying this was a bad idea.

Olivier: The response that was given to you, in my opinion, was very weak. The example that was given was a local, localized trademarks which I failed to understand then why would they then be enforced worldwide. And then the next thing, the example they took was the name of a book. Well you've got virtually every word in the dictionary is used by any name in any book written around the world. At that rate you might as well just not even have any GTLB, new GTLB process. Because you're not going to be able to have any meaningful word apart from random characters being registered.

Kathy: And further, Bruce, the moderator of the panel, had told us ahead of time that we couldn't all respond to something. So even though I agreed completely with what you had said, I thought it was on the record already because it had been a big, big part of my comment that I agreed completely. But we were being shut off to make sure that the people with microphones would get their say. And you made a strong statement and it resonated.

Unidentified Speaker: Just one more thing -- on the URS side, that's a different thing. It will require some work and we might have to spend the time on it to get a consensus.

Unidentified Speaker: Yes, concerning the clearinghouse, so excuse my voice, since I have arrived here I have lost my voice. My name is (inaudible). Concerning the clearinghouse, will it be used at the launch of the DRP or during the sunrise period? Or will it be used after as well? This is my first question. The second question, whether the clearinghouse will be like the bible that it (inaudible) contain any information about the trademark. Or will it not be considered as a trademark in the process? Thank you.

Olivier: My understanding, and this is the other thing, there's many different understandings of what the clearinghouse really is, my own understanding is that it's one that is set up and not only applies to the sunrise period. It applies to sort of perpetual use. As soon as the mark is in the clearinghouse, any other -- anything, well any domain that will infringe on that mark will be affected by it. That's my own understanding on it. The second one, will it make a case for it suddenly becoming a trademark? We're hoping that it doesn't because otherwise ICANN is effectively rewriting trademark laws and that doesn't seem to be the sort of thing they should do.

Evan Leibovich: Konstantinos, we haven't heard from you in a while. At all.

Konstantinos Komaitis: Yes, hello. And apologies that I was late. First of all I think that the experience that we got from this meeting that took place before is we should not really state to the questions asked in the letter, we can go beyond that. And this is the feelings that we've been getting that these questions might be a little bit restrictive. For example, they don't raise the issue of common law marks which seems to be the most contentious according to the proposal. So I would suggest that we open up the discussion with trademark clearinghouse and we take into consideration these question, but we also raise all the other issues that are of concerns to all of us.

In respect of the common law marks, and Evan's question during the panel meeting was an excellent question I think, what we need to understand is that there's going to be a validation service and whereas you can validate the marks based on the registration of the documents submitted, when it comes to common law marks, the only authority that can validate those marks are courts. So even if we go and we say that, even if I go and I say I have a common law mark, unless I have a court decision to prove it, that doesn't mean anything. So that's the comment I'd like to make at this point.

Evan Leibovich: Alan?

Alan Greenberg: As I mentioned, the questions are mainly on the clearinghouse so they don't apply to the URS and in general we are looking at free form. The questions are largely things to consider in one's responses and you could do it an answers to the questions or do it in a more free form way. We're not restricting anyone to just answer those questions. And in terms of the common law marks, I think everyone in this room agrees if we all agree we don't have to continue making the case to ourselves.

Evan Leibovich: But it's a matter of the two of you then going to the GNSO and trying to possibly insert that into an agenda they may not have had?

Alan Greenberg: The agenda is telling the board how it should handle the issues surrounding the clearinghouse and the URS.

Evan Leibovich: I'm just suggesting if the common law issue wasn't on their plate going forward --

Alan Greenberg: By definition, everything that's published about the clearinghouse is on the plate.

Evan Leibovich: Okay, but the URS is off limits in this? You said that the board questions were not about the URS. So --

Alan Greenberg: Maybe they didn't draft the letter very well, but if you look at it, the numbered things that are numbered one to eight I believe are all about the clearinghouse. There is not a corresponding list of things on the URS if I remember correctly from the letter. That doesn't change the fact that we have been asked to comment and make suggestions on the URS or something comparable to it.

Evan Leibovich: Okay. What I'd like to do just for a moment is go back to sort of going around the table and hearing from everybody who hasn't spoken yet. Just give your name first, where you're from and like what ALS you're from and please give us your comments on this.

Sylvia Lachey: Okay, I'm Sylvia Lachey. I came from Brazil, east and north of Brazil. I'm here in my first time, I became an ALAC member and I'm here to know what is about all these things, these issues, and why and how can I -- how can I participate on that and how is my region can participate on this. So I'm here to try to know what is all about.

Evan Leibovich: Patrick, you haven't said much.

Patrick: Well I haven't said much because other people have said a lot. I'll post my comments to the eight questions that are in the GNSO letter to the WIKI page later today, I'm writing them right now.

But indeed there are additional issues which I think on which we I think we should have position to as mentioned, common law trademarks, etc. I don't know how far we can incorporate that in GNSO work being done. But I've heard that there are other things that were discussed at the names, trademark and names protection meeting earlier today that needs to be addressed. But that should be a separate ALAC statement. So I think that right now we should focus on answering the eight questions that were asked by the board to the GNSO so that we can provide guidance to all people who participate in the GNSO discussions.

Evan Leibovich: Darlene?

Darlene Thompson: Darlene Thompson, Secretary for the North American RALO. I'm here mainly to learn and to fact find because I haven't been taking part in this discussion. So as I said, I'm just here to listen. Thank you.

Evan Leibovich: Do you have anything? Go ahead.

Wolff Rudrick: My name is Wolff Rudrick. I am representing one of the EURALO folks here. The main issues are quite important. I think also it's an upcoming issue on the European agenda and if we look at several European large projects, let me just mention the example of (inaudible) which is the major European Union funded project on digitalization of public libraries and cultural heritages. And the creation of this, creation of this project of this digital library and the implementation of the project is strongly hampered by IP issues. And it's one of the reasons why the European Union is now discussing a kind of unified model for IP rights or copyrights resolutions. And I think we should be very careful that this whole issue is not hampering public interest. And for me it's more or less an issue between the both things. On the one had I agree on protection of justified copyrights and author's rights, etc. But at the same time, I am more and more realizing that others are not necessarily copyright holders any longer, it's the upcoming trademark industry which is getting stronger and stronger and which has nothing to do with the creators of works. Whether it's literature, it's film, whether it's whatsoever. And therefore I am quite concerned in this context about public interest and that's the reason why I think this debate is rather important.

I just realize how Nick is looking at me. I expanded the scope of the discussion a little bit, I am sorry about that. But I don't only see this as a narrow technical or political sense, I see this as broader. Thank you very much.

Evan Leibovich: Okay, Nick is still looking at Wolff.

Nick Ashton-Hart: Yes, I just want to put on my long history with copyright and related rights and note that there's actually no connection between authors of artistic works and trademarks. These are entirely separate areas of law and always have been. And so I would just caution you not to open the copyright box because I can assure that as complex as trademark law is, copyright is much worse. And really, I shudder to imagine what you would delve into there.

Evan Leibovich: We're happy enough to have gotten them to rename it from IP clearinghouse to trademark clearinghouse And I guess for exactly that reason.

Alan Greenberg: Nick, maybe there are some people who feel our job isn't complex enough and we need a little bit more.

Nick Ashton-Hart: I would like to personally associate myself entirely with the points about the fact that authors get separated from their rights and don't derive benefit from them because I have experienced this at close personal -- however, I'm not sure you wish to drag ICANN into a debate with the recording industry or the film producers. I think you would not enjoy that debate. I can tell you, it's deeply unpleasant.

Evan Leibovich: Does this mean, Nick, you've cut a record?

Nick Ashton-Hart: Those days are past for me now.

Evan Leibovich: Okay. We have some other people who aren't right at the table. Would you like to say anything to the group, or --

Unidentified Speaker: (Inaudible - off mike)

Evan Leibovich: Could you tell us who you are?

Tom: Yes, my name is Tom, I'm representing the OSIA, that is newly involved in the ALS group.

Evan Leibovich: Fantastic. Welcome.

Unidentified Speaker: (Inaudible - off mike).

Evan Leibovich: We have a row of people in the back. We have very shy people here.

Unidentified Speaker: My name is (inaudible), I'm from Haiti. I'm a second time fellowship from ICANN so I'm just coming to see (inaudible) to see what is going on about this taskforce group. That's it.

Evan Leibovich: Do you have any comments or thoughts about the kind of work that we've been doing or the kind of work that needs to be done about new domains and trademarks?

Unidentified Speaker: I'm reading every day to elicit more about it, but I don't have any comment now. I can't give my idea about that now. Sorry.

Richard: Hello, my name is Richard and we are (inaudible) ambassadors, so we are coming from (inaudible).Asia which is a youth ambassador program being hosted by dot Asia. So we are a group of university students trying to solve their digital divide in our local country in Hong Kong. But as we are applying to be at the ALS, so we are trying to sit here to learn how the ALAC works. So we are still learning so we don't have much opinions and/or comments but we do have the interest.

Evan Leibovich: Thank you.

Unidentified Speaker: This has nothing to do with trademarks, but I just really appreciate Olivier that you are going around at least soliciting input. The reason why I'm saying that is yesterday I met a gentleman from (inaudible) and he mentioned to me that years ago when he participated in ICANN meetings, he saw a lot of participants from the South Pacific Islands. And yet recently they decided not to come because they just felt that a lot of things discussed here are beyond them or they don't feel they are included. And I really think your efforts going around is such a good gesture to try to include people Thank you very much.

Evan Leibovich: Please don't assume that everybody at the table has a full grasp of this either.

Unidentified Speaker: (Inaudible - off mike).

Evan Leibovich: Okay. I guess basically the last thing to do is to try and get some comments from I guess the people that are the most expert on this, being Alan and Olivier, Kathy and Konstantinos. If there is anything else that you'd like this group to take away as we now go and download the letter, peruse it, consider the things that have already been put on the WIKI and that are yet to be put on the WIKI, as you go back and then make your own contributions to it. Could I just go to each of you to make a couple of last comments and then we'll close this off? Olivier?

Olivier: I'll start off. I think what one needs to think about is of course answering the questions. But at the same time, you have to answer the questions in a way which will make the answer palatable to whoever is going to read the answer of these questions. And the first hurdle of course is to get the answers to be palatable to all the members of the GNSO as well. So the answers as we should provide them should not be extreme in their content. I mean we could just say no, no, no, no we don't want any of this, go away. In which case I'm not quite sure that our negative answers will be so well received. But that's the nature of the way things have to be done. Bearing that in mind, I think that we've got a lot of support here and enough knowledge from various people that we'll be able to hopefully find some consensus on this.

Evan Leibovich: Okay. Kathy?

Kathy: Just a question -- have you guys discussed -- has this taskforce addressed the issue of the details of the URS? I came in in the midst of the clearinghouse discussion. The URS is immensely more complicated, difficult, and open for discussion. I'd like to know if you guys -- what's been discussed in this meeting on that? And that would be helpful in my response.

Evan Leibovich: I think the answer to that is not a whole lot. First of all because the main questions that were asked by the board were about the clearinghouse. But as has been dealt with at this meeting, that does not mean that the URS is off the plate. I don't know if we're going to finish the discussion of this here at this meeting, but the whole point of this is, as everybody goes back, puts their comments on the WIKI, and then the small drafting team that we're going to select is the last thing at this meeting we'll do, is try and gel that into a position that we can then take back to the GNSO meeting.

Kathy: In that case -- if it's okay to have a few minutes, what I'd like to do is share some thoughts on the URS that have come out of NCUC. Would that be helpful?

Unidentified Speaker: If I could say, the URS is, as Kathy said, immensely complex. And if she could perhaps, having a good grasp of it, give us clear, quick points as to what it actually is, what it does, what's really offensive about it.

Kathy: First is, I don't know who's in charge of the left side, could we scroll down to the URS? I've been part of some of the GNSO discussions of what this means. But basically as we understand -- as NCUC understands this, the GNSO council by consensus can either approve the staff version of the URS or propose something better that can be implemented. This is a big, big challenge. But the staff version of the URS has some pretty big problems and believe it or not, after -- as of the last session, there's a real sense that the problems of the URS can be solved. Not to everyone's satisfaction by any means, but that something more akin to what the intent of this rapid takedown system, that something might actually be achieved. So I'll give you a little overview. How many people were at the session, the last session? Has anyone heard this before?

Evan Leibovich: The last session as in the trademark --

Kathy: The big trademark --

Evan Leibovich: The one that kept some of this from coming up.

Kathy: Okay, the URS is a rapid takedown -- will this be useful to go through? Because I've got a few pages on what the URS is and what's wrong with it.

Evan Leibovich: The best thing in the longer term is to put this stuff on the WIKI in as complete form as you can because then everyone who is thinking on this, pondering it and giving their own comments back, can do that. I mean you're welcome to say what you want to now, but I think it's going to be most effective to put stuff up on the WIKI. If you could summarize Sorry to put you under pressure for that, but --

Kathy: Hopefully, in pretty summary form, but yes, this is about three minutes. Is that -- okay. The URS is a rapid takedown process and it's so fast that we believe that most -- that there's a danger you won't know it's even going on. How do I start this? Let me start a different way. Ten years ago when ICANN was being founded, there was -- the trademark community came to ICANN and said, courts are too slow and too expensive for handling domain naming disputes. Come to us with something else. Come up with something. And ICANN created kind of an extrajudicial process, a brand new process, called the UDRP, the Uniform Dispute Resolution Policy. And said, and offered it for domain name disputes between trademark owners and domain name registrants and said, this is cheaper and this is faster. And it was. It was much cheaper and much faster. And now ten years later at the rollout of the new top level domains, the trademark owners have come back and said, give us something even faster. And give us something even cheaper.

And they said it's for egregious cases, cases of clear cut infringement, blatant cases. But as a domain name attorney for 13 years, I have heard the allegation, it's egregious, it's blatant, any number of times. Many, dozens of times. And very rarely is it. Often there's a real question. So here with a process, NCUC came up with some principles. And I'll just share them with you. We said if you're going to have a process for egregious complaints, make -- provide a definition, set out standards in the complaint that show that you have an egregious claim.

Provide good notice. If you're going to go really fast, provide the best notice possible. Maintain an assumption of innocence and good faith on the registrant's part. The person being accused, the registrant, needs an assumption of good faith, of innocence. Provide a real evaluation and a high burden of proof. And that creates some -- you need fairness and due process on both sides. I'm afraid our shorthand for the URS right now is, accuse you lose, because there's very little due process and there's very little fairness. And then I'll post some possible alternatives, possible answers on the website. But overall, the standard for the URS is supposed to be higher than the DRP. It's lower. The standard for notice is supposed to be higher, it's lower. There's a lot of problems that I think we can fix.

Evan Leibovich: Okay, Konstantinos, would you like to go next?

Konstantinos Komaitis: I don't have much to add at this stage. I mean as you all have said and as you all can realize, the URS is highly problematic. We have problems with the justification, we have problems with the process, there is a lot of things to work on. We really need to tackle these things out. I mean, there are egregious cases. For me, one of the most difficult issues will be actually to provide this definition of what egregious means. The only thing that I would add is a comment also that I made during the panel discussion downstairs, was that right now under the current proposal, the URS justifies exactly the same way the UDRP was justified ten year ago. So we need to move beyond that and find actually what it is that we want to protect. Thank you.

Evan Leibovich: Alan, you get the last word on this.

Alan Greenberg: First of all I deeply regret that I mentioned the word questions because the questions are only part of it. I have just sent the verbatim motion to everyone on the distribution list if you don't have it already. And it is asking -- I will read the specific paragraph out. Each of the stakeholder groups will solicit from their members their initial position statements on the questions and issues raised by the ICANN board letter and the ICANN staff proposed models for the implementation of the trademark clearinghouse and uniform rapid suspension model and will deliver their initial position statements on November 4th and the final position statement to be delivered by November 6th.

So essentially they want a summary of the positions that the relevant group, and this relevant group is At-Large, are taking. Olivier made a statement saying make sure we want our position to be palatable. I know what he was trying to say but I don't agree with the words. We should not be taking a negotiating position. We're going into it as union negotiators where we take an extreme position, we expect management to take the opposite position, knowing full well we're going to

come somewhere in the middle and nowhere in our best dreams do we ever expect to get what we're asking for.

I don't believe that is what we should do. I believe we should go in asking for something that we believe is reasonable, meets our needs. We may negotiate away from that to some extent, but don't try to ask for the world. We don't have the time for that kind of stance, of positioning. Let me finish. On the other hand -- so we shouldn't be posturing I guess is what I'm saying. But the fact that we know some other constituency is not going to like what we say, sorry, we have to say it because that's our starting point. But let's try to avoid the posturing and asking for the world, knowing we'll have to negotiate away from it.

Evan Leibovich: I don't think there's any disagreement that we have no time to posture.

Alan Greenberg: I was hoping there would be no disagreement. In English anyway, the palatable says they will like what we're saying. They may not like what we're saying. But we should be saying it because we believe it's really, really important as opposed to thinking that's the negotiating ploy to get where we want to go ultimately. I'm not a pessimist, I'm not looking for confrontation, but here I don't think we have the time for confrontation.

Olivier: Thank you, Evan, I think we might have reached the limits of our understanding of the English language. I can try and pretend, but I guess being French just puts you back into Europe. I thought palatable was just it's okay, it tastes all right, it's not fantastic. So yes, we're in agreement.

Alan Greenberg: But in this case some of the things we say are not going to be palatable, but they're important. But if they're important to us, we must say it, oaky.

Evan Leibovich: But if they're not posturing -- if we're going to say something that people don't like it's because it means something to us, not that we're trying to make a stand.

Alan Greenberg: Got it. So I think the challenge is to try to come up with what the people around this table feel are important. And let's face it, most of us are not experts on this subject. Some of us have a moderate feeling and understanding. Some don't. The answer isn't to try -- the challenge is not to try to pull everyone and then consolidate it. It's get the opinions of people who have some real knowledge of this subject and let's try to come to some solid common ground quickly.

Evan Leibovich: I think to use a term that I heard else before today, earlier today, I think you got violent agreement on that at the table.

Alan Greenberg: I've used that term several times in the last day.

Evan Leibovich: Okay, on that note, we'll adjourn the meeting. I'm going to ask those of you who want to participate and just be informed on the mailing list to give me your e-mail addresses and also let us know if you want to actually be involved in the drafting group that right now has Alan, Olivier, I guess myself, and anybody else who puts themselves forward.

Alan Greenberg: Is it possible to get a mailing list set up so we don't all have to be using this carbon copy list and we all get a copy of all the messages as opposed to being in our outbox instead of our inbox?

Evan Leibovich: Okay. Nick has already set one up so there already is one in place. So I'll tell you what -- could you all give your e-mail addresses to Nick so he can make sure that your names are all on the mailing list? We're now going to move from just a cc list. Whereas you would send something with a bunch of carbon copies, we're now going to make a transition to the ICANN mailing list. So please let Nick know to make sure that you're on the mailing list before you leave the room. And talk to one of us if you want to be in the drafting group. And on that note, -- oh --

Unidentified Speaker: I believe I have been subscribed the GNSO's equivalent as well and I gather, Alan --

Alan Greenberg: I'm on it.

Unidentified Speaker: Okay, so we've both been subscribed to the GNSO's -- there's another name to it-- STI list. Thank you, Konstantinos. And so we'll be moving things back and forth between -- if there are ideas that need to be transferred from one side to the other. Thank you.

Evan Leibovich: Again, please come to the WIKI, come there often. Have a look at what other people have done, and please add your own.

Nick Ashton-Hart: I'll just add the URL where anyone can join the mailing list to the WIKI if you'd like. Because you can just click on it and self add.

Evan Leibovich: And on that note, thank you all for coming. It's been a long meeting, it's been a long day, and it's far from over for a lot of people. So again, thanks for coming. This has been a tough issue, it continues to be a tough issue, and your help in this is appreciated. Thanks.