

**Transcription ICANN Buenos Aires Meeting
Update on IGO/ INGO PDP Working Group
Saturday 16 November 2013**

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Jonathan Robinson: Thanks. So we'll start the recording for the next session now. And this is a report and I think an attempt at a substantial discussion on the work of the PDP for the Protection of IGO and IGO - INGO identifiers in all gTLDs. And the report and discussion will be led by Thomas Rickert, Chair of the working group. Over to you, Thomas.

Thomas Rickert: Thanks very much, Jonathan. And hello everybody. We have an hour now to discuss the outcome of the work that has been done so far by the IGO INGO PDP Working Group. And can we go to the next slide please?

And as you know from the various reasons that I gave to the GNSO Council we have now a final report in hand which has been submitted to the GNSO Council. And on the slide you see an overview of the final report which is a little bit different than the final report that you usually get to read because we thought that we should find ways to make it easier for the reader to digest what we've done, which has been a very challenging task.

So basically what you find there is discussing the working group recommendations to start with. So we don't have the usual executive summary and that were the recommendations for the four categories of

organization. You find the level of support in there and also - and I'll get back to that in a moment, the difference between top and second level protections as well as general recommendations that would apply for all organizations.

We are talking about exception procedures. We also thought about how to implement the recommendations that were made into existing TLD spaces. And I'd like to highlight this fact because there has been some confusion and some questions with respect to the scope of our work.

So there were those in the ICANN universe, so to speak, that were questioning the legitimacy of the work that we're doing to - because they claim that there are protections in place for the various organizations that are enshrined in laws or international treaties. And the question was asked what the working group would do or how a working group dare revisit that. And I would like to point out that the things we had when we started were not as clear as can be. And I'll get back to that in a moment.

And one of the aspects why this working group needed to do the work that we're doing is that the protections that we considered would only apply to new gTLDs but we were also thinking of how to apply these protections to the existing name spaces. And that sort of goes beyond what had been on the table when we started our work.

So that's - I think very important to bear in mind. I think we need to be able to answer the question why we're doing what we're doing to the outside world. And one of that is existing namespaces, the other thing is that the recommendations or the ideas on how to protect certain designations was quite superficial. And it was not necessarily rooted in law. So we sort of needed to operationalize the protections that were asked for.

Then you find a huge section on the working group deliberations. I'm not going to dive into huge detail unless you specifically ask me for doing that. But the working group has actually considered this challenging question from

all angles and we've even split to sub groups to deal with individual questions that were on our table. And you find further detail on the history of our deliberations in that section of the report.

Then - and that's also very important - (saying) background and community input. So I will show to you on the next slides how we dealt with community input but actually was very important for us to get input from the community to actually make - to give everybody the opportunity to comment on the questions and the interim results, the final results, that we produced in order to make sure that we really take a holistic approach at the questions that we've been tasked with.

And then you find an annex with charter, attendance, input (IR) template and the research - the legal research that was conducted by ICANN General Counsel.

And also - and this is something that we also explicitly made reference to in the draft resolution is minority positions which you find in appendices to the final report because that was quite also a huge number of positions that have been included in minority positions. Then you find the consensus call tool - and I'll get back to that in a moment - the public comment review tool, and the RCRC Scope 2 identifier list which is a list of designations for which protection has been asked.

I've asked Berry to actually visualize for us so that you can see that public comment does make sense. You see two examples on this very slide where we can evidence that a public comment that has been submitted by a group and then in this instance it was the public comment filed by the Business Constituency actually made its way into the consensus call tool and then actually was the reason for an amendment of the draft final report.

Also - and that's in the below section of this slide - you find the public comment made by an individual, it was Brian Beckham in this instance, and

you see how this comment made its way into an annotation to the final report redline version and then actually made its way into the language of the final report.

This is to illustrate that we took public comment very serious, very seriously. You will remember that in Beijing we even had a face to face meeting soliciting public comment from the community. There was another session held in Durban to solicit feedback from the community and then we got quite a huge number of external comments during the public comment period for the draft final report.

And we went as a group through each and every of these reports. It has been a couple of hours work for our working group. And we actually looked at all the public comments with the public comment review tool and analyze whether and if so what impact those comments would have on the wording of the final report.

So I guess this is also to applaud the working group for their diligence as well as ICANN staff in doing this. So as chair I can say, and this is an observation that I would like to share with you, that we really tried to take a 360-degree view at what we're doing and I think that, therefore, the work result that is before Council now is quite a comprehensive view of the challenging task that we've been commissioned with.

Now the protections that we are recommending and which you also find in the draft resolution deal with various aspects of protection, that is the organization types. So you find the Red Cross Red Crescent movement, the International Olympic Committee, the international governmental organizations as well as the international nongovernmental organizations and the working group actually did not discuss those all together because it was not appropriate for us to deal with them in one go because the legal basis for the protection of designations was separate for those organizations.

So the working group actually took all the four groups individually, looked at the scope of protections and then only when we did the recommendation - and I'm sure that Mary will speak to that if you have any questions to that - only at the very end we would go back and group them to make it easier for Council as well as the community to digest what we did.

But our exercise actually was to split it down and look at each and every aspect of potential protections that have been asked for individually. Then we were dealing with top level protections as well as second level protections.

So I think that some in the community got the impression that we would per se grant universal protections for strings, which is not the case. We also looked at the scope of identifiers and so we looked at full names, we looked at acronyms, we looked at the exact matches. We even had a discussion surrounding strings where the protected designation was a prefix, infix or suffix or combined with key words so those were all facets of our lengthy and thorough discussions.

We looked at the languages in which the strings should be protected so there's the UN plus 6 languages or specific organizations that the organizations in question felt important to be protected so that Internet users would not be misguided when looking up certain domain names.

We also looked at various options for protections. We looked at reservation as it now stands in the Applicant Guidebook at the top level, which is the ineligible for delegation section as well as at the second level where we now find in this version of the Applicant Guidebook that the reservations are actually in Specification 5 to the Registry Agreement.

We were looking at existing mechanisms that we could piggy back on as well as potential new mechanisms and tools to facilitate the implementation of protections that we're discussing. So we looked at clearinghouse models. It finally turned out that we could piggy back on what is now the trademark

clearinghouse but that wasn't clear when we started so we really had a blank page to work from.

We looked at sunrise or the deployment of sunrise services as well as the claims notice that is based on the trademark clearinghouse database. We looked at the 90 days period for the permanent claims services. We also looked at curative mechanisms so we were brave enough to talk about UDRP which, as you know, is a success story in ICANN's history.

And we thought about how to tweak the UDRP in order to make this tool accessible to those that currently cannot use it. And we were thinking of the implications of that also the deployment of URS as a curative measure.

You will remember that a couple of meetings back I stood in front of you and explained that there was a huge debate whether we should consider proactive and preventative mechanisms or whether there should be curative mechanisms that would help the organizations to react to breaches after the fact so we were looking at that very thoroughly as well.

And we were discussing things that might appear as minute to some of you but which are actually very challenging questions to find an answer to and that is whether existing mechanisms such as a legal rights objections for new gTLDs or the rights protection mechanisms that are now in place should be used by certain beneficiaries of these recommendations for free. You know, whether there should be reductions or waivers for fees.

So that is, to put in a nutshell, not to frighten you, what we've been looking at over the last couple of months. And you will now see on the next slide how challenging this was in terms of resources.

So basically we took up the work on the 31st of October 2012. And that is the - until the 10th of November, 2013 which might look like a lot of time or a long period of time but actually if you compare this to the theoretical minimum time

a PDP needs you have to bear in mind that we have a couple of public comment periods with 21 plus 21 days comment and reply periods which is also included in that.

I think if you link that to the multifaceted challenge that we've been tasked with I think the time that we've spent coming up with well thought out recommendations is quite decent if not great. Right. I mean, those of you who've taken the time to read this monster of draft motion that Mary produced primarily will understand that this has been much more challenging than other PDPs that the GNSO has been working on.

We have actually met on a weekly basis for two hours per week for all this time. And I think I or we as a working group should take pride in a very good attendance of these meetings. So we had like 42 members of the working group and more than 50% attended on average which I think is great because, you know, not all of these meetings were as much fun as going to the swimming pool or doing something else in your spare time.

But those people actually participated day and night in whatever time zone they're in. And I think that this should be very much applauded. On top of that we had a couple of face to face meetings which you find spelled out on this slide.

So I guess that I would very much like - and this is sort of the chair's message - we've been asked to deal with this as a GNSO - as a PDP in an expedited manner. You will remember that this IGO INGO discussion has caused some heated debate in the wider ICANN community.

And this PDP has been tagged a case study both by the GAC as well as the Board. And I guess that we in this room, you know, we're spending our time traveling to Buenos Aires to make the GNSO work. All of us should transport and convey to the rest of the community that even though this took almost,

you know, roughly a year's time that this has been as quickly as we could possibly deal with this.

You know, we had a few weeks - I think it was even two or three months where we waited for general counsel to come back with a very wordy and long expert opinion on the legal side of things. And all that has been done in a relatively short period of time. And I think that we should carry this further. And I think that this is something that the working group as well as ICANN staff should take pride in.

And, you know, before Council starts to discuss this motion, and at this point I can't predict what you're going to do with our working results, but I want to go on record and I'm going to do that again publicly when we have our meeting. I want to emphasize that the quality of the work, the spirit of collaborative - of this being a collaborative effort both by ICANN staff who supported it greatly as well as the working group participants has been nothing short of excellent and very much applaudable.

Now we should look at the next slide now with the recommendations. And actually we had some 30 recommendations, 29 recommendations, that we now came up with. And I would like to summarize them to you which is really a challenge. But I guess that it might be easier for you to grasp the idea of the recommended protections if I sort of take it a little bit to the bird's eye perspective.

Now the idea for all four categories of organizations is to grant protections at the top level for exact match full names so that - our recommendation is to grant that for IOC, RCRC, IGOs and INGOs.

So the exact match name - if that were applied for in the next round of - or during the next application window for new gTLD applications that would not be possible. However, there is an exception procedure for those who can

legitimately use the designation. Right, so that's number one at the top level. These things that are being protected are ineligible for delegation.

Then at the second level we also discussed full name exact matches and that was the question of how to protect them. And, again, we would grant - or the working group recommends to grant those protections for the full names - exact match full names. I'm not talking about acronyms now, that's going to be a separate discussion.

Full name exact matches, and those would be put onto a reserve names list which you would now find in Specification 5 to the Registry Agreement. It might not be Specification 5 for future Registry Agreements but, you know, that's where you would currently locate those protections.

And then we have an exception procedure for that as well because there was the request that legitimate use of those designations should still be possible because the general mechanism is that if a name is on a reserve names list, according to the Specification 5, nobody can register or use it. And that would be, you know, a little bit overreaching since legitimate use should still be possible.

I should say though that we've been working on some principles for exception mechanisms but we do not have specified exactly what this exception mechanism should look like. So you should take a look at that section of the report to find out what our ideas for that were.

And then we have a third category of identifiers where we - where the working group did not reach consensus on reserving the names which is sort of quite a firm version of protections but they said these can be added - bulk added, I should say - to the trademark clearinghouse database.

So for those strings - those that are the rights holders to that string they don't need to go to the TMCH individually and have it entered. But ICANN would

bulk add them to the trademark clearinghouse so that they sit in the database so that you could actually get an SMD file for that theoretically, you know, that's just the basis. It's entered into the trademark clearinghouse.

But then the question we answered individually is after it's gone into the trademark clearinghouse database what can those - what can those that sort of own the names or have rights in the names do with it? And as you know there are two services, which based on the trademark (unintelligible) one of which is the sunrise service and the second of which is trademark claims notice.

And there is actually the trademark claims service granted for RCRC names - additional names, for IGO acronyms, for RCRC additional strings like the names of the national chapters and INGO full names. So we're not talking about INGO acronyms but their full names so they would go into the trademark clearinghouse and they could benefit from a 90 days claims period service.

With respect to sunrise the working group did not reach consensus that the strings in the trademark clearinghouse should actually be able to go into sunrise periods. On that, you know, the acronym SSBSO stands for Strong Support But Significant Opposition so there has been no consensus on actually giving that or granting that - access to that second service of the trademark clearinghouse.

Another recommendation that we made was to recommend to request an issue report for possible PDP to determine how IGO and INGOs can use UDRP and URS as curative mechanisms. Now you might wonder why we don't just do it. But actually in order to have those changed we would need a consensus policy. And for that to happen we would need a policy development process.

And that needs to be kicked off with the request of an issues report. So we recommend that the Council supports us in our view that we should have an issue report taking a look at that question because not all of those that are seeking protections under this PDP can currently use the curative mechanisms of UDRP and URS.

And we thought that if, for certain instances, we're not able to reach consensus on preventive protection mechanisms then at least the organizations in question should be able to use the curative mechanisms of URS and UDRP.

And then we added another recommendation that we should ask the SCI to review the working group consensus levels. Now what does that mean? If you look at the Working Group Guidelines what you find in there is that in a PDP there's the burden on the working group chair to assess the level of consensus inside the working group.

And basically there are - there are different levels of consensus or the lack thereof that are spelled out in the Working Group Guidelines one of which is full consensus, then we have rough consensus, then we have strong support but significant opposition. And the lowest that you can get, according to this terminology, would be divergence.

And there was actually one recommendation in particular that caused quite a heated debate inside the working group where if you count working group members I would say the majority of working group members disagreed with the notion that this is divergence because for that instance only the organizations that would benefit from the protections that we discussed were in favor of getting them.

So the working group looked at the definition of divergence and said, well there are not different views inside the working group but the reality is that everybody but the organization itself that would benefit from the protections

did say no to it. So there was the question on how to grasp this level or the lack of support for that recommendation.

And for me as chair, to be quite honest, this was quite the challenging issue to deal with because this question popped up after I had kicked off the consensus call. And now you - one might say you can easily fix that by asking the question the other way around.

So we asked the questions for all recommendations, "Do you support this? Do you support that? Do you support the other?" And then the community or the working group members would say yes or no to the individual items.

And so when the answer was no to this very recommendation, which was with respect to IGO acronym protections, they would say no so I would come to the conclusion that there is divergence.

The atmosphere inside the working group would have been clearer had I asked the question, "Do you not support it?" And then everybody would have said no and then you would have a consensus position on that against that recommendation. But I felt that since we had started the consensus call it would not be appropriate to make this change for two reasons.

One is that I shouldn't change the rules to the consensus call after a couple of participants had already responded. And the second reason is that if I ask all recommendations, "Do you support? Do you support? Do you support?" And then only to get the correct result, quote unquote, I would rephrase one recommendation, "Do you not support?" So that people can say yes to it would be a discrimination for that very recommendation.

So what you find now in the final report is actually the request that we take this to the SCI to take a look at so that actually in the spectrum of definitions we would have explicit mentioning of the consensus against ideas but for the final report we also double check with general counsel that I as chair could do

the assessment of consensus level to adequately reflect the community feedback so that we could actually say this was consensus against for that recommendation although we explained in the rationale the history to that. So that's the story behind the recommendation dealing with the SCI.

Then we had a couple of proposals that did not find support and that was the acronym reservation both at the top as well as at the second level; fee waivers for the various curative mechanisms, did not get support; and also a permanent claims notice beyond the 90 days that we know are currently in place did not find support.

Now I should point out that in those two areas, i.e. the reservation of acronyms as well as the 90 days claims notification we have difference from GAC advice for the INGOs. There is no GAC advice specifically to that so in that regard for the INGOs other than RCRC we also have a deviation because we looked at more than we were asked to by the GAC.

I guess that we will potentially get back to the question of acronym protections as we move on with our discussion but that's actually the scope of - or the result of our deliberations.

We looked at the legal basis for protection so there were huge concerns that the protections that we would recommend do not overreach because it was felt that it was not ICANN's mission to grant to certain rights holders than they would have by laws or by international treaties. And this is basically why we had the predicament with the reservation of acronyms. And we had a long discussion surrounding that.

Now if you want to we can take a look at more background information but I think that since I heard my voice for far too long I would rather like to open up the floor for your questions. I mean, these have been long introductory words to what we did and why we did things. And I think this was necessary in order

to also share the spirit of the work that we've done with you. But nonetheless I would like to start the phase of discussion now.

Jonathan Robinson: Yeah, thanks Thomas. It's been very clearly set out that the amount of work done - and thanks for your clarity of message. Just to comment on that chair's message that you put out earlier, I think it's great to hear that. I think it's great to communicate that to the Council and the GNSO as a whole and as much as that message can come out it would be great.

It may be something we want to - we can come to the (unintelligible) session on talking with the Board. It might be something we just capture with those set of bullet points around your chair's message on the work of this working group.

But right now we're headed towards really preparing for this as a motion at the Council meeting on Wednesday. And so I think it'd be very useful to try and focus in on how we're going to deal with that complex motion and how we're going to manage that and questions and thoughts around that. That seems to me to be where we need to take this. Now is that what you'd like to do?

Thomas Rickert: Very much so. I would very much like to get questions from councilors or, you know, those who are present in the room. We've offered the opportunity to ask questions during the last couple of meetings from the GNSO Council. But I want us all to go into the public meeting on Wednesday well prepared.

Just to remind everybody this topic is very controversial. Sometimes it's very emotional. The role of the Council now is to ask questions with respect to what we did. I think that we shouldn't have the discussion about the worthiness or the background for certain protections. I'm sure that the working group has done a very thorough job on that and I'm more than happy to answer each and every question that you might have.

So in order to focus our discussion I would very much like to learn whether you have questions with respect to the work approach that we took, with respect to the procedure that we applied, with respect to the drafting of the motion because as you know the GNSO Council is the steward of the policy development process and I would like to hear from you whether you have any questions with respect to how we did things.

Jonathan Robinson: Thanks, Thomas. I've got Zahid and then Jeff.

Zahid Jamil: Thank you. Thomas, first of all thank you and much appreciation for the work that you've done in putting such a difficult task together and, you know, having the level of consensus we have at least with the report and brought it out so thank you for that.

I had a question about next steps basically the exception process is something that has to be developed, it's not developed yet, it's not in the report per se. My question was what thoughts did you have as to how that would be developed? Would it be a staff process? Would it be the review team working with the staff? Some other process? Because there are aspects there which are definitely implementation but there might be some policy aspects as well.

Thomas Rickert: Thanks, Zahid. That's a very good question. And actually I think that this is an aspect that has been, at times, forgotten because sometimes there is the notion that working groups can complete their work once they hit the Send button and submit the final report to council.

But actually if you look at the lifecycle of the PDP, that encompasses the implementation oversight. So we do recommend that we will have an implementation review team to ensure that whatever implementation is proposed by staff is actually done in the spirit of the outcome of the working group deliberations.

Jonathan Robinson: Jeff.

Jeff Neuman: Yeah, so this motion - I made this motion. I'm not sure if it's been seconded yet. It may have been, I haven't checked. We're going to have to divide this motion up when we vote on it because there's implications for existing registries and one for new registries that are entered into after the date of - I guess after implementation. I'm not sure how that works.

Right now we have 100-something existing registries with all the agreements that have been signed. And so we have to vote on those at a different threshold because they have to amount to consensus policies whereas the recommendations for future registries may not have to be consensus policies to the extent they recommend changes to the agreement.

So I guess we kind of have to think the next couple days how we divide that up and vote on them because you're going not have to record the threshold. Of course if everybody in the Council approves everything and you don't - that's great, right. Then it's unanimity and obviously that's consensus of - in terms of consensus policies.

So I think that what's going to be a long process on Wednesday going through all these but we're going to have to probably do each one separately if we do it up on a vote for all of that.

I agree with Thomas in the sense that our role is not really necessarily to question each and every recommendation and just kind of trust the working group with what they did and to raise questions now. If there's anyone that had an issue with the process or what they went through.

But I do want to commend the group - sorry - I do want to commend the working group for the work that they've done and the number of hours that they've put into it. It's really been kind of incredible to watch and to follow along with.

Jonathan Robinson: Thanks, Jeff. Good points and good question. Thomas, did you want to respond? I have a brief response to that as well but did you want to say something?

Thomas Rickert: If I may. We have deliberately grouped the motions into one bulk motion to make it easier for Council to deal with. That sort of gave us a lot of headache over the last couple months because we did not - did not know how we should possibly present that to Council so that it can actually work on it.

I guess that the draft motion that we have on the table is something that would work but as you rightfully say, we have different voting thresholds so I guess that if you say over the next couple of days we should make up our minds as to how we split them I think it should be rather sooner than later.

And also I would very much like to get an invitation from the representatives of the various groups whether there is a need to split. And if there weren't the need then I guess it would be a moot exercise to actually redraft the motion.

And if there was the desire to split the motion it would be great if you could give us an indication as to which of the recommendations you would carve out because my strong suggestion would be that at least the protections for the four organizations we would keep as they are because they (genetically) belong to each other.

I think it would be relatively easy to take out additional parts like the recommendation for the - bringing this to the attention of the SCI or the request for the issue report. So it very much depends on the nature of the recommendations that you want to separate.

((Crosstalk))

Jonathan Robinson: Jeff, you respond. I think, Mary, you want to respond specifically to that point about what - okay, Jeff, go ahead and then Mary and then Alan...

((Crosstalk))

Jeff Neuman: Yeah, I don't think there's a redrafting in the motion. I just think we vote in parts. So number four, for example, deals with existing registries. And we can vote on the different numbers and just affirm our approval of those without redrafting any part of the motion.

You know, I think unfortunately if we're kind of asked to vote on every recommendation with one vote you may be - we may be faced in the situation - I don't know this for a fact because I haven't talked to the other groups - but if there's one group that strongly opposes or enough where it's - it would ruin the consensus policy if there's one strong group that opposes one motion you don't want the whole thing to go down. So I think the best thing is to split them up but not redraft the motion at all.

Jonathan Robinson: So, Jeff, can you just be clear where you're proposing to split them - is it by number as in Number 4, Number 5, these are voted on a per portion basis? Yeah, got you, Alan...

Jeff Neuman: Well, I mean, you know, naturally, yes. At this point right now I would say that the ones that apply to existing, which is Number 4, and - well 5 is interesting because 5 is one - 5 are ones that have - I forgot the acronym you used but basically strong support but significant opposition, there you go, that one may need to be taken separately as well.

I don't want those to distract from the other - from the first three - from Numbers 1, 2 and 3.

((Crosstalk))

Jonathan Robinson: So can we respond specifically to that point? Mary, I think you and, Alan, I think you want to discuss this particular issue also.

Mary Wong: Yes, thank you Jonathan. So speaking as one of the perpetrators of this monster motion. Thanks, Jeff, for that clarification. The group, I think tried really hard, as Thomas said, to group these recommendations but to do it in such a way that - and I want to thank Jeff for the clarification - that if desired that each resolve clause could be voted on separately. Jonathan, I think that was your question.

And certainly with Resolve Clause Number 5 - Jeff, I think you're right and that may be something that maybe this afternoon the Council and the community might want to talk further about as to Resolve Clause Number 5.

Jonathan Robinson: Alan.

Alan Greenberg: Yeah, I think in the past we've routinely divided clauses based on the thresholds required. And we've also asked does any councilor want any of these sections to be removed and voted separately. And I think the combination of those two will make it pretty simple. I don't think it's an issue of redrafting either.

Two of the things I'll note when we drafted this - the recommendation - and that was only a couple of days ago - I don't think any of us really thought about the fact that by the time the motion would be voted on there are existing TLDs which were new TLDs three weeks ago. That if they may not have been delegated but they're there as official TLDs.

And that may require a minor rewording because the contracts of the new TLDs, even if they already officially delegated, do cover this issue whereas the old ones don't. So there may be some subtle words that we need to cover that issue.

Jonathan Robinson: Yeah, Jeff, I know you want to speak. But, Alan, to be clear what you're saying there is that these protections are baked into the new gTLD agreements. Is that what...

((Crosstalk))

Alan Greenberg: Well I think the words in the new gTLD agreement say that there are going to be some words that - some things that are going to be filled in in terms of the, you know...

Jonathan Robinson: Yeah.

Alan Greenberg: ...that the IGO ones, Red Cross, Red Crescent IGO, are - there's some placeholder words there which...

Jonathan Robinson: Yeah.

Alan Greenberg: ...have to be replace whereas...

Jonathan Robinson: Okay.

Alan Greenberg: ...the terms in the old-old gTLDs that the contracts are different. So...

Jonathan Robinson: Yeah.

Alan Greenberg: ...there may be some subtle differences. I haven't looked at it.

((Crosstalk))

Jonathan Robinson: Jeff, do you want - sorry, Alan. You've got to make your second point.

Alan Greenberg: Yeah. The last point is on the implementation review team typically they are charged with making sure that the implementation honors not only the words but the intent of the PDP recommendations.

In this because as noted some of our recommendations are different from GAC recommendations and therefore the Board may, in their wisdom, not just take our recommendation and implement it but implement some melded combination of them, the implementation review team - I'm not sure how they're charged to implement something that we didn't recommend to begin with. So that may be a complexity when we get to that.

Jonathan Robinson: Thanks. Jeff.

Jeff Neuman: Yeah, I mean, I was just going to say there's some language built into the newer agreements that have been executed but it's not nearly as broad to cover all these types of recommendations including expand the scope of claims and expanding other types of - it may apply to reserve names but not necessarily to all the recommendations.

And so from my perspective, you know, the last three, four weeks or five weeks, the Registry Stakeholder Group has changed considerably. So I need to go back - as much as we can have this discussion here I need to go back to the stakeholder group which is very different today than it was three weeks ago, four weeks ago, now it's got a lot more agreements and a lot more parties involved.

So no matter what we come up with this weekend I need to go to the stakeholder group especially with the existing registries now. So I would strongly advise us to vote on each one separately. I have no idea how we're going to come out on that simply because of how much we've changed.

Even though Chuck's done a great job. And I know he's here...

((Crosstalk))

Jeff Neuman: There he is. He's done a great job keeping the group informed and getting the opinions of the group it's a very different group today than it was. And so we need to separate it out.

A lot more existing - by the time this actually gets implemented - so even though we vote on it today or Wednesday, even if we approve it all, by the time it gets implemented the number of existing registries will not just be the 100 that it is today, it's going to be the 500 or 600 or 1000 or 1400. So in fact by the time it's implemented in theory, you could have all of the - there could be no new ones, right, they could all be existing. So we kind of have to think about that going in.

Jonathan Robinson: Chuck, I see your hand up. Go ahead.

Chuck Gomes: Chuck Gomes from VeriSign. I want to reiterate something that Thomas said. It's not the Council's job to vote whether they like the recommendation or not or whether they approve it. They're supposed to evaluate the process and see if there are any flaws in that, see if it needs to be sent back to the working group. But it's not a matter of the Council now doing the work that the working group has already done.

And it's really important when we all go back to our stakeholder groups and our constituencies that we keep that in mind. If there's anything that was done improperly - and the points that are being talked about right now are important to make sure the motion is handled correctly.

But we have a history of the Council making decisions that voting based on whether they agree with the results or not; that is not the Council's task. It's to manage the consensus development process. And if there are flaws in the process something went wrong, we should identify those. But it's not to second guess the recommendations since they came out.

Now with regard to the strong support versus the consensus obviously there's a line there because when we send it to the Board we have to, you know, let - we can - the Council - the GNSO can recommend that a strong support be consensus policy. But obviously there wasn't quite a strong a support for that as there were for all the others. And so it's appropriate to look at that separately. Thanks.

Jonathan Robinson: Thanks, Chuck. Wolf-Ulrich.

Wolf-Ulrich Knoben: Thank you. Chuck, yes, that's the way we are dealing with and we looking for - to find out, you know, what the process has been and whether it fits to what we are expecting.

So in this regard I have a question with regard to the level of consensus you have grouped here and allocated the recommendations to the different kind of consensus. You have, to some extent, one full consensus. It is the only one that's allocating that to the SCI, the one question.

The other ones are some kind of different level of consensus. And when I went through the report so I was sometimes seeing that there were different groups in opposition to - or different members of groups in opposition to some recommendations but it was - then it turned out that it was told as consensus but with significant opposition.

So the question is, for me, in this regard how did you define that? Is that because, to my knowledge, these kind of consensus are just very defined in a general way in the rules. So did you find a way, well, to strictly allocate how you grouped these different consensus levels? Thank you.

Thomas Rickert: Thanks, Wolf-Ulrich. That's a very good question. Did I find a way to do it? Yes. Was it always easy? No. The Working Group Guidelines do give guidance in terms of what is full consensus versus consensus, i.e. rough

consensus versus strong support but significant opposition and divergence. But there are no clear rules.

And I guess we have to bear in mind that what the working group chair does when determining the consensus level is not voting. So I'm not counting noses. And I have sort of discussed with the working group extensively whether they would support or at least accept the consensus level that I determined.

And in the Working Group Guidelines there's even the process for objecting to the chair's assessment of the consensus level. And we are at a stage ultimately where working group members either support it in full what my assessment of the consensus level was or they said well this is a borderline case, you could see it as this or as that but we trust you as chair that your assessment was correct.

And just to give you a little bit more background is that we have discussed this - these items for more than a year. And I have pretty much not memorized word by word but I have tried to absorb the atmosphere inside the working group, the inputs that we got from the various groups as well as from various individuals as good as I could.

And all of that flew into - or went into the determination of the consensus level. So you can't just take a look at it and say okay, three organizations or individuals has (unintelligible) out to be against it so why is this consensus? Well, in the other case well there are three - it is strong support but significant objection. It's not as easy as that.

It's not counting noses; it's not voting scheme but it's grasping the atmosphere of the level of support inside the working group. And that is much more - much more difficult but that also incorporates is the comment that has been made - is it a position taken by an individual? Is it a position taken by a group of organizations or is it the position of an SO or an AC and all that sort

of went into the amalgamation that you now find in the overview in the final report.

But, again, and I would like to stress this, although it is the unfortunate burden on the working group chair to do the assessment of the consensus level it's not something that I did in isolation. I repeatedly asked the group for their assistance and help and there were actually two or three occasions where after discussion we changed the consensus level in a cooperative way.

So I think I can now say - and I would like to invite the - those that have been working with me in the working group to speak up now if they feel that at one point in time I've actually neglected or even decided against the group's view.

So I feel quite confident that I have now put into the final report what the view of the working group is. Not that everybody agreed with the outcome but it's more about adequately reflecting the view of the group and the wider audience that provided input to the recommendations in the final report.

Jonathan Robinson: Thanks, Thomas. That's insightful. I'm conscious of both the time, the fact that we've had some thorough input and that we're going to still discuss this as a motion before the Council in the session discussing the motions themselves. We've really got some more time potentially scheduled to go into this. Can I get a sense - I mean, I've clearly got I guess a couple of takeaways so far.

One that we need to segment the motion and we'll need to be voting on portions of the motion in order to make sure we deal with it thoroughly and properly. The second is that - is the sort of qualitative point which is that this is an exposure for all of us in terms of the work that's been done over the time, the sort of high profile of this activity and it's an opportunity for us to succeed in successfully processing this work or not as the case may be.

So I'd really encourage people in this discussion if we're to carry on at all and in the discussion of the motions to get out on the table any concerns or issues that you are currently aware of in your groups, notwithstanding Jeff's point that it may well be that there's further discussion takes place on Tuesday.

But my goal as chair of the Council is to navigate this motion successfully on Wednesday and properly. And, you know, I'm going to need all of your help to do that. It's both technically complicated as a motion and as a process but also laden with all sorts of history that we really need to try and - well not delve into completely.

We need to make sure we have the opportunity to comment where there are concerns, in particular recognizing the points that have been made about the role and function of the Council in commissioning this work, in reviewing whether it's been done properly and then ultimately in voting on the recommendations that have come out of it. Thomas.

Thomas Rickert: I'd like to make a final remark and that is that to some of you in this room or those that are remotely participating the question that we're dealing with in this PDP might appear to like a minute detail of the overall new gTLD program and the protections that have to be discussed in that framework.

I said earlier that this PDP has been tagged a case study both by the Board as well as the GAC. So I think for that matter it's important for the GNSO to be seen to be functional. There is also the, as you know, an ongoing exchange of communication between the Board and the GAC on this very issue. So should we fail to deliver on time we will make ourselves redundant for that purpose.

So I guess that it's vital that we, as a GNSO and as the Council in this case in particular, can show our ability to deliver good quality working results on time. And last but not least, the individuals in this working group did what they

could and I was pressing very hard both working group members as well as staff to make the motions and documents deadline.

So in the week before the motions and documents deadline we only - we had three meetings that week, right? And even if you say that the wider ICANN atmosphere is not of interest to you I think we owe this as a matter of appreciation to the individuals that have spent a lot of their personal time to make this happen.

Jonathan Robinson: Well I think we're going to call it a day at the moment. It gives us a perfect opportunity to take a break. It's been a relatively long session. Chuck, I'll come to you then and then thereafter we can wrap things up because we will come to talk about this. And I expect this is the motion we need to talk about in our session on motions.

So go ahead, Chuck.

Chuck Gomes: Yeah, thanks Jonathan. I'm going to in a totally different direction. You'll understand once I do it. But I think that the GNSO and the PDP process has been under a lot of criticism. And I firmly believe as one who's been around through all of them, not necessarily directly involved in all of them, but this is an example of the PDP working and the GNSO working. And I think we need to make that message clear this week when we have opportunities.

And then finally what I want to do is compliment Thomas for the job he did chairing this because it's been incredible. And hopefully if not else this morning you've seen how hard it was for him to do.

And secondly I want to compliment all the participants in the working group because we had huge disagreements but I don't recall any one or any organization not behaving professionally, certainly being very clear where they disagree but doing it in a respectful way. And that's another - that's more evidence that the process does work.

We'll improve it, we'll get better but this is a positive example. And of course as Thomas said complimenting staff, I think there were few days recently when Mary and Berry...

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