**IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT
Monday 15 September 2014 at 19:00 UTC**

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Attendees:
Imran Ahmed Shah – NCUC
Phil Corwin – BC
George Kirikos - Individual
Jay Chapman – Individual
Jim Bikoff – IPC
Nat Cohen – BC
Osvaldo Novoa – ISPCP
Paul Tattersfield – Individual
Petter Rindforth – IPC
Val Sherman – IPC
Griffin Barnett – IPC
Reg Levy – RySG
Kristine Dorrain – Individual
David Heasley – IPC

Apologies:
John Mcgrann – RrSG
David Maher – RySG
Mason Cole – RySG

ICANN staff:
Mary Wong
Steve Chan
Nathalie Peregrine

Phil Corwin: Okay, are we recording?

Coordinator: Yes, the recordings have started.

((Crosstalk))

Phil Corwin: Okay.

Nathalie Peregrine: Thank you very much...

((Crosstalk))

Phil Corwin: This is Phil Corwin. I'm co chair of this illustrious working group. We've got 10 participants in the chat room right now. Anyone who's' on the call who hasn't - is not in the chat room who wants to identify themselves?

Nathalie Peregrine: This is Nathalie. If you don't mind I can do a quick roll call for you to start off the call.

Phil Corwin: Okay.

Nathalie Peregrine: And in that case you'll know which names are on the phone bridge and not in the AC room.

Phil Corwin: Okay, go right ahead.

Nathalie Peregrine: Okay thank you very much, Phil. Good morning, good afternoon and good evening everybody and welcome to the IGO-INGO Curative Rights Protection PDP Working Group meeting on the 15th of September, 2014.

On the call today we have Petter Rindforth, Val Sherman, Jay Chapman, Paul Tattersfield, Osvaldo Novoa, Jim Bikoff, Nat Cohen, Phil Corwin, David Heasley, Griffin Barnett and George Kirikos.

We have apologies from Mason Cole, David Maher and John Mcgrann. From staff we have Mary Wong, Steve Chan and myself, Nathalie Peregrine. I'd

like to remind you all to please state your names before speaking for transcription purposes.

Thank you every so much and over to you, Phil.

Phil Corwin: Thank you for doing that. Anyone have updates to their Statement of Interest that they want to share? And if not why don't we get right into Item Number 2 on our agenda which is review of the work plan? The chat room is displaying the extract from the work plan.

And I guess we can mostly focus on everything starting on 9th September which was last week and running into October and November. We can also take a look ahead as to the subsequent phases of the plan. Did staff want to - Mary, did you or Steve want to take us through that since you prepared this document?

Steve Chan: Sure.

Mary Wong: Yeah, go ahead, Steve.

Steve Chan: Yeah, this is Steve for the transcript. This extracts part of a larger work plan which includes all the meetings and some other housekeeping elements. But this extract is designed to be - to organize our work. It basically pulls the work from the charter and organizes it in what we hope is a logical manner to help us get through to the end and outcome.

So this first phase is - it's basically setting the groundwork for understanding where we are today and what has happened in the past. The thought is that this first section of analysis will be broken up into sub groups to expedite the work.

And as most of it's exploratory in nature and understanding in doing research we are proposing that this could be done in sub groups and that these sub

groups report back up to the larger group on either a regular basis or on - and/or also on set date so that the full group is aware of what the sub groups are doing.

As you can see we're proposing some dates, some of which will have some of the work being completed prior to the LA meeting. And so a lot of this work is just organized around trying to target natural dates for milestones which are the LA meeting, the Marrakech meeting and the - I believe the as-yet undisclosed meeting.

So that's a little big of background. Mary, did you want to take over and add a little bit to that?

Mary Wong: No, Steve, I think that really sets out very clearly what staff was trying to do and that we sent to the chair's first for their review before sending it on to everyone. I guess the only thing I would add obviously is that sometime things are moving targets so some of these dates may well have to change for various reasons.

And when that happens you saw the fuller larger Gant chart that Steve has also prepared and we will update those dates accordingly probably around the milestones that Steve mentioned.   So that's it for me, Steve. Thanks.

Phil Corwin: All right and Phil again. As co chair let me ask what is our process going to be for forming these sub groups? Some of them were supposed to start last week. We haven't formed yet. Are we going to do that by email, send out an email to working group members asking them to identify which of these groups they're interested in participating in?

Mary Wong: Phil, this is Mary, if I can take a stab at that? I guess the idea is for today having gone through this plan as we are now doing and then having gone through the third agenda item for which staff has prepared a short - hopefully

short presentation that we can do two things. One is under Agenda Item 4, next steps, we can ask for volunteers right now on the call.

Staff will then follow up with an email to the full working group noting the sub groups, noting who perhaps has volunteered and asking for folks to further add their names to their list. And we will of course compile that list to share with everyone.

Phil Corwin: Okay. Okay. So did anyone on the call have questions or comments on the work view - the draft work plan either for the immediate future or further down the line or are we ready for that staff briefing on outcomes of prior research?

I see George raising his hand so let's hear from you, George.

George Kirikos: George Kirikos here. Yeah, some of these timetables - curious about - I was under the impression that we were going to do some more basic research which would involve, for example, gathering together a list of all the IGOs and INGOs and perhaps doing like a survey of them to determine the extent of the alleged cyber squatting problem for them.

And so I don't really see that on this chart in terms of any of the milestones or any of the work we're doing. That would seem to be like a threshold issue because if there's no real cyber squatting issue for these organizations then, you know, why are we recommending any policy changes whatsoever?

And so it seems to me that it would be wise to first, you know, gather together a list of all the IGOs and INGOs from that yearbook that I had sent a link to about on the mailing list.

And then either blast out a physical email or a postcard to, you know, 5000 of them, hopefully we would get like 20% response rate and have a statistically valid sample of say 1000 survey responses and be able to analyze those results and then from those results be able to proceed to next steps.

That seemed to be a more logical and scientific method because some of these actions seem to make assumptions that are various problems where, you know, I thought this conference - sorry, this working group would be more comprehensive in terms of, you know, analyzing the basic questions.

((Crosstalk))

Phil Corwin: I see Mary's hand up I assume in response to what you just said, George, so go ahead, Mary and then we'll hear from Petter after that.

Mary Wong: Thanks, Phil. And thanks for the question, George. Just two things I guess, and hopefully that's helpful as a response. One is that because staff did try - we tried as hard as we could to really not prejudge anything. But all of these tasks, headings and sub tasks are all derived from and uses language from the charter that we were given by the Council.

Of course subsequently we've had some meetings and your suggestions came as a result of those meetings and discussions. So our thought was that some of the actions might be appropriate for one or more of the sub groups so contacting the IGOs or getting some sense of the data out there could be, for example, you know, Sub Group B, just to pick on Sub Group B for a minute.

And how each sub group would want to deal with its task would be up to each sub group rather than for us as a full - or certainly not for staff to determine. The only thing I would say is that, you know, there may well be a constraint in terms of resources, for example, including on the staff side, to be absolutely frank, given the timeline.

So it may well be that some of the things can be started or some of the things may take longer but the point I guess is that this doesn't preclude what you're suggesting but it's simply a much more simple framework based on the

charter. And we're hoping that each sub group will take on board suggestions such as yours and, you know, request for assistance from staff if and when they need it. Hopefully this helps.

Phil Corwin: And, Petter.

Petter Rindforth: Thanks, Petter Rindforth here. Well first to, George, comments I perfectly agree that there are some basic initial things we need to step into and make clear. And if you remember all these issues that we are proposed to deal with and come to conclusions on there are a great more numbers of those for this working group than the few issues that is not split up on the initial sub working groups.

And I think that these three basic initial issues are important also to see if there is in fact the need if there is already a system that can solve these problems. And going through all the questions we have on the issues we have to deal with I still believe that these three working groups, it's a good start. And as you can see we're supposed to come to conclusions rather quick.

So I have a suggestion for you, George, and that is to join the Sub Group B and maybe even take a lead on that because it seems that you have studied the issue and I notice at the first meeting you had also prepared a list and it was very welcome. So please join the sub group and I look forward to the work ahead.

But I was - a question on the - looking at the schedule here to the staff. What are we proposed to have ready for the LA meeting?

Mary Wong: Phil, this is Mary. Can I respond?

Phil Corwin: Yes, go ahead.

Mary Wong: Petter, I guess, you know, as Phil - sorry, as Steve mentioned earlier some of these steps aren't quite the same but if you look at, you know, where we are we foresee that with the help of people like Kristine, and thank you very much for joining this working group, Kristine, that certainly, you know, Sub Group A would have completed most if not all of its work by LA. And the other two groups hopefully will be going along and making good progress.

So it really would be for the chair, I suppose, to decide looking at what the working group as a whole is looking where each of the sub groups are whether in LA you wanted to present all of the findings or just the ones that have been completed and that would depend on whether you wanted to structure the planned face to face meeting as a session for broader community feedback or as a working group session.

So in other words, right now we probably don't know yet but we anticipate that quite a lot of this preliminary work will either be completed or be towards completion so that there will be something to share with the community come LA.

Phil Corwin: Okay. Thank you, Mary. Phil again. And let me ask as a follow up to that, for example, we've got Kristine on the call today, are we going to proceed with - I think most of us - let's look at Sub Group A, most of us pretty well know the difference between UDRP and URS. But we'd be looking at someone like Kristine to give us any feedback on whether IGOs or INGOs have ever filed a UDRP or URS claims and how they were handled.

And that's going to be something that's going to be done solely within Sub Group A or are we going to have that shared with the broader group on of these calls or is that for us to decide?

Mary Wong: This is Mary again, Phil. And thanks for the question. I think we had meant to mention that Kristine has kindly agreed to do a presentation I believe next week if the scheduling works out for the full working group.

And one of the benefits of having something like this is that ultimately of course with the three sub groups going off there's still going to be the regular reporting back and the working group as a whole in the end is going to have to feel comfortable with, you know, the progress and how to move forward.

So for some of these specific items it might be helpful to have full working group discussion but certainly starting off, as you say, most people do know the differences between the UDRP and the URS. But some of these supplemental questions might be helpful to inform the other sub groups as well so on that specific point we're glad that Kristine has agreed to do a presentation for the group.

Phil Corwin: Okay, and that'll be next week and we'll look forward to that. I see Nat Cohen has his hand raised. Nat.

Nat Cohen: Yes, hi. This is Nat Cohen. I'd like to follow up to George's question. I mean, the - this working group is convened to solve a problem and is - are the representatives from the IGOs and INGOs involved in the working group who can present - give a presentation of what the problem is that we need to solve and what obstacles they're running into and sort of help us define the scope of the problem so that we can, as a way to help us find a solution?

Because otherwise we may be moving forward without a clear sense of what the actual practical problems are that we're trying to solve. Thank you.

Mary Wong: Phil, this is Mary again.

Phil Corwin: Yeah.

Mary Wong: And, Nat, in response to one of your specific questions we do have working group members who are from the INGO community. Jim Bikoff and his

colleagues, as you may know, represent International Olympic Committee and were on the earlier working group.

We do have people from I believe the International Organization for Standards. And of course as with all working groups, you know, membership is always open so what staff has done is reached out to the GAC, the Government Advisory Committee, and also through our colleagues on the Stakeholder Engagement side, reached out to some of the IGOs that had contributed feedback to the earlier group.

So we're hoping that they would either join the working group or at least be able to provide us with the sort of feedback that we would seek so hopefully this helps.

Phil Corwin: Yeah and let me - Phil again. I would hope that we'd get some broader participation from the IGOs and INGOs. On the general question, I know, you know, Jim is very expert on the Olympic Committee and its particular legal protections. But those go beyond what's available to - in my understanding to most of the other IGOs and INGOs. And we need a good understanding.

You know, clearly they've been quite present in informing the GAC on this question because part of what we're doing is trying to solve a standoff between the GAC and the GNSO Council on the ultimate resolution of this.

But I think if there's anything that can be done by ICANN staff to encourage some greater participation by them, you know, that would be good because otherwise we're going to have to consider these questions without benefit of their input directly.

Jim Bikoff: Phil? It's Jim Bikoff.

Phil Corwin: Yes, Jim.

Jim Bikoff: We can help on A. And I think you're right, though, you know, we had
                     representatives of IGOs and INGOs on the last working group, the last PDP,
                     and it was very helpful because they explained reasons why they needed
                     protection and they were present almost every week on the calls. I don't see
                     the same representation except for one IGO in this group.

                     As to the IOC, we don't really have a dog in this fight because we have not
                     asked for acronym protection or extra names. But we have gone through the
                     process starting with a predecessor group to the last IGO INGO group. So
                     we're happy to help especially on A. And we can, with Kristine, I think, help to
                     cover that area.

Phil Corwin: Thank you for that input, Jim, and for being willing to help us. And, sure, A is
                     good but I think - and I've just volunteered to join Sub Group B. I think B is
                     the critical one at this early stage which is to understand the exact what is the
                     scope of any existing protections, general protections, for intergovernmental
                     and inter - nongovernmental organizations and how many does it apply to?

                     What kind of - are we talking about dozens? Hundreds? Thousands? We
                     need to understand both the scope for protections and the scope of groups
                     that have whatever those protections are to proceed in an intelligent and
                     informed way.

                     And, Nat, did you have another question there or comment?

Nat Cohen: Yes, thanks. Jim, thanks for your comment. Does the - one question I have is
                     - it'd be helpful to understand better is whether the IOC - my understanding,
                     not being a lawyer, is that the IOC has special protections that have been
                     written into the law that do not - that are not applicable to just general other
                     INGOs and IGOs in general.

                     Do you see yourself - you said you don't have maybe the same - I don't know
                     - not to use your words or maybe I'm misquoting you but a dog in this fight -

are you seeing the IGOs and INGOs as being similarly situated as the IOC in this respect or are you seeing it - there's a difference there in positions between the IOC and these other ones that don't have that same legal protections that have been, you know, written into the law historically? Thank you.

Jim Bikoff: I think - to answer the question I think that the IOC and the Red Cross both of whom were involved in a predecessor working group on their own protections, which preceded the more general IGO INGO group, have different types of protections than most of the others, the IGOs and the other INGOs.

So that, yeah, when I said we're not really in this fight it's because this fight is - well this issue is access to curative remedies. And we have access to curative remedies and so does the Red Cross so that we're not seeking that access.

I think the IGOs are seeking the access because they have problems which hopefully will be identified. The other INGOs I think have access also to the UDRP and the URS but I think that from what we've heard in the prior PDP they have - there's a monetary issue because they don't have the funding to engage in these processes.

So that's my understanding and, you know, while we're willing to certainly help on this as members of the IPC, I think, as Phil has suggested, unless we get IGOs and other INGOs active, I don't think we can completely understand what the problems are. I think we need those people to be on these calls and, you know, go over their positions as to why they're seeking access, why they need special access and why - what the issues are and what the problems are. Thanks.

Phil Corwin: Okay. Mary, Phil here. Let me ask at this point how long is the staff presentation on prior research? I want to make sure we have enough time for it. We're about - almost 30 minutes into the call right now.

Mary Wong: Phil, I guess it could take a fairly long time if we go through it all. But I intended the slides that will be coming up shortly to be more of a record and informational. So I can keep it fairly short and then leave room for discussions and questions which would seem to be I think much more helpful and constructive at this stage.

Phil Corwin: All right, well let me suggest then, unless someone else has - feels the need to voice any other views right now on the general work plan, that we - that you start that presentation that we look to conclude it no later than about 10 minute before the hour to leave time for some questions and comments. Does that seem reasonable?

Mary Wong: Phil, and everyone, this is Mary from staff. That works. And hopefully what we can also do is pick up some of the questions and suggestions that were raised just a few minute ago as we go along in this. And as with all presentations I hate death by PowerPoint as much as anyone else so please interrupt me or raise your hand if you have questions.

                 And what I'm also going to do is unsync the document so that you can scroll through it yourself as well. We've already posted this presentation onto the working group wiki so you can download it from there for later reference if you like.

                 One thing that I did want to say is that, you know, we're basing this presentation on the research and data that we as ICANN staff have at hand to date. As George noted in the chat earlier, some of these are fairly outdated certainly by Internet time standards.

So part of what this working group might want to do in those various sub groups is update the sort of information to get the full picture that Phil and George and others were talking about.

I guess the other thing I should say before starting, and this is a build onto Jim's point, is that - as Jim noted cost is a concern. You know, certainly for a lot of INGOs and IGOs as well. And that's been stated on several occasions in the past in various efforts.

The one thing that is different in terms of using curative rights, of course there's loads of differences that we can look at and that's part of Sub Group A. But the basic difference that was noted in the issue report that led to the creation of our working group was that for IGOs - and this is a issue that goes back to the WIPO 2 process that I'll talk about - there is a question of immunity in the sense of immunity by not having to submit to the jurisdiction of a national court.

As Jim had indicated for the IOC and for others that's not the same hurdle but here's where the other sort of hurdle comes in whether one is an IGO or an INGOs which is that, you know, the current processes are predicated on trademark rights on one having trademark rights in the names or the acronym that you're seeking protection for.

So again, this goes back to the reasons or some of the reasons why we were constituted as a working group. And I just wanted to remind folks of that and have that in our minds as we go forward.

So this is what the presentation consists of. And like I said, I'm not going to read every slide to everybody. But it seemed important to go back to a fairly significant process that took place over 10 years in part because this was a subject of discussion amongst international organizations as well as governments and countries who are member states of the World Intellectual Property Organization.

What I've done on these slides is to, you know, highlight some of the information that you can get if you go back and look at the documents that were referred to in this presentation. And all the documents are now listed in the background documents tab of our wiki.

And so I won't read them to you but this is just laying out the case, if you like, as well as the type of scope of the problem that the WIPO 2 process and everything following on from there was trying to address; abusive second level domains that really aren't so much identical matches of an organization's acronym, for example, but a misleading variation.

And there is, and there has been a recognition even early on as you see in Bullet Point number 3 that third party interests, particularly legitimate interests in using even the acronym of an international organization needs to be protected. So that was some of the background information. And we still hear that obviously in today's discussions.

In the WIPO Secretariat's view, it would be preferable to use existing legal frameworks rather than creating new special forms of protection. And as you see later on this is partly due to a perception that we already have a number of fairly complex mechanisms, we're dealing with a fairly difficult legal issue so in terms of efficiency rather than pile on why don't we use what we already have.

Again, there's a recognition of due process and in this particular case here's where in the UDRP for example, there is a right of appeal or a losing party. And this is for reasons of due process, some form of reconsideration. At the same time the UN and its agencies and other IGOs have certain rights and immunities under international law that needs to be protected.

So the Secretariat goes on to note a few things that I pulled out because I thought this might be of interest to the working group and for each of the sub

groups including the advantages and disadvantages of using something like that UDRP, and note that - and this goes back to 2002 so there already were UDRP complaints at the time.

And I know Kristine and others will help us at least find a sample representative number of what's happened since then. They're going to look at rather than using day UDRP what about this idea of a separate dispute resolution process.

And another reason why I pulled it out here is because you see that even going back to that time in WIPO 2 there was already consideration and acknowledgment first of the nature of the issue as well as the potential solutions were folks minded to go down that path.

The Secretariat ends with a recommendation for an administrative challenge procedure. And what I've done here is summarize the essential elements of such a procedure. I think for everyone following this issue these will not be unfamiliar.

One of the things that I wanted to highlight though is that last bullet point that it would be based very much on the UDRP but there was this topic that was raised about the link between their potential user, someone who might go to that domain and what they might think.

And this is the question of the association between the domain name holder and the international organization in question. And so this is something I wanted to put in here because I'm not sure that it has been highlighted in some of the discussions to date.

That was the Secretariat's work. In the final report that was submitted to the general assembly of WIPO, again, there is some background information and here I've just put in the actual wording of Article 6ter of the Paris Convention

because I think as everyone now knows this is the legal basis for which IGOs are seeking protections in the DNS.

One thing to note is that even with Article 6ter and international treaty standard when you look at the actual national protections, that means the scope of protection for Article 6ter IGOs In various different states and territories they are not uniform for a number of reasons.

And of course one of the reasons is that there are exceptions that are permitted and there's also processes that each country puts in place for trademark or trademark type protection.

What was noted however in the WIPO 2 process is that there was - and here's a quote, "abundant evidence." And again this is something that this working group has already indicated it wants to take up to look at something other than anecdotal evidence, as George indicated earlier today.

There some further notes. And again it goes back to the same question, do we amend the UDRP if there's a problem? Or do we create a new special dispute resolution process?

But they also do is look at what this new special DRP might look like. And here there is some note that may be issued be independently developed and managed within the current framework of international tribunals which might end up being a little different from what an ICANN process might look like.

So these are just more slides going into the background for the recommendation that ultimately went to the general assembly. And I wanted to just pause a second here to let you look at these two bullet points.

And this is really I think the heart of some of the discussion that is working group has started to have, and certainly some of the public comments that

some of you submitted highlighted as well. And again this goes back more than 10 years as already noted in the report.

So the last note on the WIPO 2 process I wanted to add here was that the general assembly received the report. Ultimately they looked at the two alternatives and then the UDRP all creating a new special DRP. And when they came to a decision most of the WIPO member states actually preferred amending the UDRP as an alternative to creating a brand-new procedure which was interesting actually.

And, Paul, I see that you have a question in the chat. "Is it also possible to (complete) nothing is required?" I think - I can't speak obviously for what happened at WIPO in the past but speaking as an ICANN staff member right now for this particular PDP, and this particular working group, the charter was drafted.

And the discussions at the GNSO Council were certainly neutral in the sense that this working group could certainly conclude that nothing is required, that the current status quo is adequate. That maybe it's not comprehensive but it certainly adequate. So in other words nothing is presupposed or prejudged whatever it was that may have been recommended in the past by a different body.

Obviously given that international discussions amongst governments have occurred, that's one consideration that this working group might want to take into account as well as you go forward.

So that's what happened outside of ICANN around 2001, 2002. And that was really just a quick tour through it hopefully to save you having to read the documents until the time comes.

In ICANN some work was also done first as a follow-up on the WIPO 2 process. And this was an establishment of a joint working group by the

ICANN president. Fortunately or unfortunately they did not reach a consensus, they did not have a specific recommendation for what to do with WIPO 2.

And as I mentioned, the member states of WIPO had preferred not unanimously but mostly to amend the UDRP. When it came to ICANN work, this was not something that reached consensus. And here are some of the highlights of some of the discussions and disagreements that took place. And I'll leave you to look at this through at your leisure and as a guide for I guess this must be Sub Group C that looks at the prior ICANN work.

Following that, as everybody knows, in 2005, ICANN started a policy development process in the GNSO that really was the groundwork for what became the new gTLD program. As part of that work the issue came up again protections for IGOs.

And there was an issue report that the GNSO published in 2007. And there was some recommendations in that issue report. As you may recall issue reports are prepared by staff based on information, research and public comment.

The first three bullet points on this slide shows the recommendations in the issue report. The outcome is in the final bullet point which shows that while this issue was canvassed as part of the new gTLD program there was no actual PDP and so this particular issue for international organization protection remained work done but no actual policy, no actual contractual provision or consensus policy that came out of it.

What may be interesting to working group members, whether you're going to volunteer for Sub Group A, B or C, is that as part of the work for the GNSO's 2007 report, a draft text was developed for a possible separate DRP that would be based on the UDRP but not the identical.

And here I've reproduced some of the language of the draft text. I've uploaded the draft text to the working group wiki as well. And a couple of things, couple of observations, if you look at Bullet Point 2 here is where the draft text picks up on the earlier suggestion as part of the WIPO 2 process that in addition to the substantive grounds of the UDRP there's got to be some sort of implication of an association or a connection with the organization or some sort of misleading of the public of such an association.

And like I said I thought this was helpful or interesting. I noticed that somebody did ask a question earlier about what is an IGO. And certainly an attempt was made to limit or define an IGO here. And you see this is part of the draft rules that were developed.

As well as to note that to solve the sovereign immunity problem there would still be a right of appeal because that was required for due process and registrant protections. But it would be through an arbiter tribunal defined as you see here on this slide.

So conscious of time I would just like to note that the next few slides covers information that I think everyone already knows which is that there was no PDP in '07 as I've mentioned. So the draft text remained a draft text.

The new gTLD program was rolled out and this issue was the subject of an issue report in 2012 which then led to the creation of I guess what we're calling, and in Jim's terms, our predecessor PDP working group.

And here I have a note about the number of international organizations. This was mentioned in that issue report. But for our present purposes anyway that our predecessor working group ultimately agreed that it would be limited to the GAC approved list for IGOs and the ECOSOC list for INGOs.

I don't think I need to go through the general counsel's research report. What I've done is actually summarized it here. Except to note that if you've not had

a chance to look at it this might be a helpful reminder that the general counsel was not asked to do research on, you know, the total number of IGOs or the general scope of treaty protections.

What I've done is reproduced the question that our predecessor working group did ask the general counsel so as you look at the work and the report hopefully this will be helpful as you bear it in mind.

And I think Phil, perhaps I can just stop here and have folks discuss or raise questions. I know there's been a very active Adobe Connect chat and I apologize, I haven't been able to follow all of it. So it might be helpful with something like 15 minutes to go for me to stop at this point.

Phil Corwin: Well thank you, Mary. Phil here. I'm going to start out with the first question and open it up to the group. And I haven't read - oops, I have to go back to the slide I wanted to ask about which is Slide 18.

This says the GNSO final issue report in 2012 determined that there were 5000 IGOs and over 35,000 active nongovernmental organizations all of which - now it's just the IGOs which would add a protection to that Paris agreement, correct?

Mary Wong: Phil, thanks for the question. And, you know, I could - I should have been more specific I think in that by using the term IGOs in that reference I don't believe they referred to the Article 6ter IGOs.

My sense is that there's far fewer but, you know, that's the difference between who might be considered an IGO, who might be an IGO eligible for Article 6ter and which of those IGOs might actually bother to notify under 6ter in descending order, as you like. And I think this 5000 number refers to the broadest category.

Phil Corwin: Okay, well, yeah, well I think Sub Group B will be drilling down on this. But I'm just trying to get some idea of the scope here. So those 5000 IGOs are not necessarily all entitled to legal protection under the Paris agreement? Correct?

What is the scope of the GAC approved list of IGOs and the ECOSOC list of INGOs? What - I'm just trying to get a sense of the numbers that might have existing legal protections.

Mary Wong: Phil, I think that's a great question. I don't have the exact numbers but I will. I would say of course that the GAC approved list is a finite list and that was something that was sent in 2013 to ICANN and was proceeded on that basis ever since. I want to say that it might be something like 100 or so.

The ECOSOC list is divided into two types, there's an ECOSOC general status list and a consultative list. And the difference is the type of INGOs that gets recognized as such of the application by the ECOSOC. And the general list is much shorter than the consultative list. I want to say there's a few hundred versus a thousand or so. But I'll find those numbers for you.

Phil Corwin: Okay. Okay and the last thing I'll say on that is the numbers are very important in two respects. One, if it's a small number that would argue against creating a whole new process for a relatively small number of entities.

If it's a large number, in the thousands, then blocking acronyms that might be acronyms of all kinds of private businesses and other organizations from being registered and particularly at new TLDs that may have nothing to do with the mission of the IGO or INGO would tend to be overreach in my own personal opinion obviously right there.

So I'll stop there and see if others have questions or comments on the presentation you just gave. So let's open it up for comments and questions.

I'm not seeing any activity.

Mary Wong: Phil, this is Mary. Maybe I can make a comment on my own presentation...

Phil Corwin: Sure.

Mary Wong: ...if the will help. And this is a follow up to Paul's question in the chat. I can scroll up and see if there were any others that I can try and address. The Paris Convention does not contain a definition for NGO or for IGO for that matter because if you look at the objective of the Paris Convention and the very specific wording of Article 6ter, that's really not its primary coverage.

Jim and his colleagues may remember that in the predecessor working group to this one, we had quite a lot of discussions as to, you know, what kind of qualifying criteria - I think that was the phrase - would an organization have to fulfill not necessarily to be considered an IGO or INGO but to be eligible for protection as one or the other.
And the ultimate outcome of that was that the working group considered that it was not possible to come up with a list of criteria. And it took some time, you know, certainly for INGOs before the idea that the ECOSOC list would be at least a good proxy, would be acceptable.

Because one of the things we wanted to bear in mind going into this was that as you said, Phil, there could be a huge number. I mean, that does go to magnitude and to scale. But at the same time it might be more certain and better for clarity if there was a sense of what type of organizations here we're talking about.

So as I have in the note on this slide, that's where the original PDP working group got to. And hopefully Paul and others, this is helpful.

Phil Corwin: Okay.

Jim Bikoff: Mary, it's Jim Bikoff. Hello?

Phil Corwin: Go ahead, Jim.

Jim Bikoff: Oh okay. I was just going to say I remember that those conversations. I think we have one person who - I don't think she's on the call now but she was with the ISO, International Standards Organization. And she could probably provide some, you know, reasons why the INGOs, you know, need some assistance on access.

                 And I think she was also the one who helped to narrow down the large INGO list to the smaller ECOSOC list. So I think her participation would be very helpful on those types of issues.

Phil Corwin: All right. I see some discussion going on in the chat room but does anyone want to elevate that to the verbal level? We've got eight minutes left on this call. All right well I don't know if we should wrap up here if no one has anything further to say because there's nothing left on the - well I guess we need to discuss next steps which would include the formation of the sub groups.

                 And we've got volunteers so far for A and B; nothing for - no one for C so far.

Mary Wong: Phil, this is Mary. I note in the chat that Paul has asked for his questions to be read out because I don't think he's on the phone.

Phil Corwin: Oh okay. Okay. Let me see. Well let me go through the chat. And why don't I just read them out in the group and then we can - I doubt I'll have the answers. But he wanted to know whether the Paris Convention defines an NGO? I'm not sure it's would (unintelligible) from your presentation it seemed to address international organizations that governments belonged to, not nongovernmental organizations.

And then what does it take to be a - well it's not an NGO; it's an IGO or an INGO, governmental or nongovernmental. And as - Mary, as I understand your presentation the Paris - what is the right word for - the Paris what - extends those protections.

Mary Wong: Well I'm being recorded. I think the full treaty name, and there's probably tons of people on this call who can correct me...

Phil Corwin: Yeah, I don't want to use the wrong word.

Mary Wong: ...is the Paris Convention - I think it's the Paris Convention for...

Phil Corwin: Paris Convention...

Mary Wong: ...the protection of industrial properties.

Phil Corwin: Yeah and from what - it's not up on the chart now - from what I seem to say the intergovernmental organizations that one or more governments belong to could have those presentations and then later on it seemed to say but it could - there could be exceptions for groups with similar acronyms to use them without violating their rights if there was no confusion created for the public. So it seems to be of two minds on that.

                 And but if it - that exception would argue against a broad prohibition and more of a process for determining when there's something abusive going on.

Mary Wong: Phil, this is Mary again. And what I've done is put the presentation back up on this screen.

Phil Corwin: Right.

Mary Wong: And, you know, you see on one of the slides that Article 6ter is there. I suppose one identifying characteristic or the single identifying characteristic

you actually see in the reference here in 6ter which is that, you know, essentially that intergovernmental organizations. And so for purposes of 6ter, you know, at least one government that is a member - a member state of WIPO, you know, has to be a member of that particular IGO in question.

And it was also indicated in the presentation in '07 when ICANN staff came up with the draft text for a DRP they had a suggested definition that presumably picks up from there as well.

So as far as I know there isn't a full definition in the convention and as far as I know there is no universal definition and that's what my colleagues found in writing the 2012 issue report.

Phil Corwin: Yeah. Well I see that and Paul - I think, you know, he's - if we're going to create either some variation of the UDRP or some new process if that's where we wind up, we've got to decide who has standing and who's qualified to use it, otherwise it's just going to be chaos if there's thousands of potential users.

And also I don't know if there's any disagreement but a starting principle for me is that ICANN is not a legislature, it's not an international treaty organization. It has a responsibility to make sure that existing rights are protected but it has no authority to create rights that don't exist elsewhere in national law or treaty. I don't know if there's anyone that disagrees with that.

But so we've got to determine what the rights are and who has them. And from what I see here on Slide Number 8 Article 6ter extends these rights equally to abbreviations and names of international intergovernmental organizations of which one or more countries are members.

But then on the next slide it says it permits an exception where third party use or registration of a trademark, and a trademark could include an abbreviation or an acronym, doesn't confuse the public.

So we need - obviously Sub Group B has a lot of work to do to try to see if we can get anymore certainty than the previous looks at this issue because I'm not sure how we proceed to consider UDRP amendment or creation of a new DRP if we're not sure who we're talking about being qualified to use it.

And let's see, we're one minute away from the top of the hour. Does anyone else have anything they want to share verbally? And do we - Mary, do we need anything more in regard to next steps other than try to find some volunteers for Sub Group C? And get, you know, await staff suggestions for next week's agenda.

Mary Wong: Phil, thanks. I notice George had his hand up but he put it back down again. So while he's typing I'll just say that as we mentioned staff will follow as an email about the sub groups to the mailing list.

But if I may just take a few seconds on your point about the work for Sub Group B, what was interesting to Steve and myself as we went through these documents was that it seems like everyone knows the questions, right, that need to be and that have been asked. But that, you know, the discussions have been recorded in various places.

So what it might be helpful for not just Sub Group B but the working group as a whole is to look at the President's Joint Working Group report from 2004 because the chair there that's the document where the chair actually summarizes the positions that were brought forward within the ICANN community. So hopefully that's helpful.

And the other point that I would like to make is, you know, much of these prior discussions, research and documents talk about IGO protections or, you know, the issues facing IGOs and certainly not as much for INGOs.

Where there have been INGO discussion certainly within ICANN a lot of it has also focused on the Red Cross and on the IOC. So it's been a lot more difficult to get information or prior research on anything affecting INGOs which may make some of the tasks ahead of us a little more difficult. But there does seem to be a distinct difference in the amount of information available.

Phil Corwin: Okay. Well thank you, Mary. Well my clock is showing 4:01 so this is the last chance for folks to ask a question or raise an issue before we conclude this call. And I should note next week we're starting our new call time of Wednesday 12:00 noon on the East Coast so 1600 UTC. And we look forward to proceeding with our work next week.

And I see George typing in asking is the next steps to include allocation of the sub groups by next week. And I don't have any other takeaways from today unless others do. I thought it was useful as we wade into this very complicated set of issues, today's discussion.

So as chair will exercise my prerogative to conclude the call. Thank everyone for joining and looking forward to continuing next Wednesday at 1600 UTC. Good-bye.

Jim Bikoff: Thanks, Phil. Bye.

Mary Wong: Thank you, Phil. Thanks, everybody.

Nathalie Peregrine: Thank you very much.

END