IGO-INGO Access to Curative Rights Protection Mechanisms Working Group

TRANSCRIPT

Wednesday 17 December 2014 at 17:00 UTC

Note: The following is the output of transcribing from an audio recording. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. http://audio.icann.org/gnso/gnso-igo-ingo-crp-access-20141217-en.mp3

Attendees:
George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Kristine Dorrain- Individual
Mason Cole – RySG
David Maher – RySG
Val Sherman - IPC
Osvaldo Novoa – ISPCP
Gary Campbell - GAC
Paul Tattersfiled – Individual
Jay Chapman – Individual
Jim Bikoff – IPC
Kathy Kleiman - NCUC

Apologies:
Lori Schulman - NPOC

ICANN staff:
Mary Wong
Amy Bivins
Steve Chan
Berry Cobb
Terri Agnew

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the IGO-INGO Access to Curative Rights Production PDP Working Group call on 17 of December 2014.

On the call today we have Gary Campbell, Petter Rindforth, George Kirikos, David Maher, Paul Tattersfield, Jay Chapman ,Philip Corwin, Val Sherman, Jim Bikoff, Mason Cole, and Osvaldo Novoa. We have apologies from Lori Schulman.

From staff we have Amy Bivens, Mary Wong, Steve Chan and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, Phil.

Phil Corwin: Well thank you and good morning, afternoon or evening, whatever it might be for you. And thank you for joining our final call for this working group in the calendar year of 2014, and I appreciate everyone making time to be on here.

We're going to use this time period just to review some basic background documents to get more acquainted with their content if they're relevant to our work down the road and then we can start back up in January with that knowledge base and engage further and just working toward a final report and recommendations.

So I believe the document we're going to start with is a 2005 document turned out by the World Intellectual Property Organization which was their interpretation or report on the actual effect of the article 6ter for IGOs. So let me see if that's the... Hold on I'm just checking something. Okay so let's go I guess it's to Page 5 because the first three pages are just the contents, listing the contents.

Starting on page, let's see, Page 4 of the PDF, which notes that the - in 2005 the Standing Committee on Trademarks Industrial Designs and Geographical Indications met in Geneva, invited members to submit proposals for future work, et cetera. But now getting on Page 5, legal aspects. And of course it notes that the Article 6ter goes back to 1925, it was revised in 1934 and then again in 1958. I was only alive during that final revision, and many of you may not have been.

And point number six notes that the purpose was to provide a degree of legal protection to et cetera, et cetera, et cetera, and then goes onto abbreviations and names of international intergovernmental organizations of which at least one member state is a member of the Paris Union under the '58 revision. So that's the relevant part for us is the names of international intergovernmental organizations.

And point eight notes that it's also applicable to states that are parties to the Paris Convention as well as to all members of the World Trade Organization whether or not they're a part of the Paris Convention. So those are the nations. And I don't know, maybe staff knows, how many nations are included in those two groups. I suspect it's probably the majority of nations in the world, and certainly industrial organizations. But we can check on the scope. That's where these protections operate.

And then moving onto scope of protection and emblems...okay. So at Page 7 of the PDF, if you'll scroll down, we get to five of international intergovernmental organizations. We're not really concerned that much with - well I guess we should note that it applies to armorial bearings flags, other emblems, abbreviation. And it's abbreviations and names, so that’s the key one for us. Now of course if there was a website trying to mimic an intergovernmental organization which used any of its signs or other emblems, that would be covered as well.

And there's a caveat that signs are excluded from the scope of the revision if they are already subject to international agreements enforced which are intended to ensure their protections. And that would be a separate international legal protection for one of these organizations. So Article 6ter is subsidiary to other overriding protections if they exist.

Okay. And Mary let me ask you, and this - in Clause 18, the reference to International Bureau, what is the International Bureau? Is that part of WIPO, do you know?

Mary Wong: Phil, I think it refers to WIPO and, you know, we don't want to go into the whole history of WIPO. But in this particular instance I think it refers to WIPO, at least the organ within it, that deals with these notifications.

Phil Corwin: Okay, okay. So, all right. I guess the - for our purposes here the - does the entity - the intergovernmental organization, the IGO, do they have to communicate with WIPO to take advantage of this Article 6ter protection or is it self-executed? I'm trying to figure that out from the language.

Mary Wong: Phil, was that a question for me?

Phil Corwin: Anyway if anyone else that has knowledge on this wants to chime in and go ahead, Mary?

Mary Wong: Thanks, Phil. And I noticed that George has already noted in the chat yes it's not automatic protection that, in our case, the IGOs have to notify WIPO or International Bureau, and the bureau will then communicate that to all the member states, following which the member states have 12 months to launch an objection should they have one to that particular IGO. So in other words, it's not automatic or self-executing. The IGO has to in effect let WIPO and therefore the member states know that it wishes to be protected under 6ter.

Phil Corwin: Okay. So let's get - so to understand the 6ter protection relevant to our work, it's something that needs to be - it's not self-executing, it needs to be affirmatively taken advantage of by the IGO through a communication to the International Bureau of WIPO. WIPO in turn informs member states of the Paris Convention and also I assume members of the World Trade Organization of that IGO's protection, and those member nations have a 12-month period in which to object.

I would imagine those objections are few and far between. But it gives individual states some control over whether or not they want to recognize the protection regardless of whether it's provided under 6ter.

And then in point number 19, this is for permanent entities, in other words there's no expiration date on the IGO; it's permanent in the sense that the charter is indefinite in term.

And okay now number 20, limitation on protections, is also very critical, which is the protections of signs of international intergovernmental organizations is limited to cases in which their user registration as trademarks would suggest a connection with the organization. So in other words let's say we've got an IGO, it hasn't registered its name or abbreviations as trademarks and has communicated its claim for protection under Article 6ter to the International Bureau and that in turn has been conveyed out to individual member nations.

Those nations are supposed to protect it against trademarks which would suggest a connection with the organization. So there's some subjectivity in the interpretation of that. And then it notes that the second sentence of Article 6ter provides that countries are not obliged to apply Article 6ter when the use of names, abbreviations or names of international intergovernmental organizations would not suggest a connection. So again, it's a subjective judgment.

So if someone registers who something dot-com, if it doesn't suggest a connection with the World Health Organization, there's no requirement for a member nation to block the registration of that trademark. So I imagine there's some - it seems to me, and again -- I'm going to let George jump in here in a minute because I know he's knowledge about it -- that if say someone was to want to register, you know, whoami.whatever with the U.S. as a trademark, with the U.S. trademark office, they would not be obliged to block that registration because it would not on its face suggest a connection with the World Health Organization. So in effect, it seems like the trademark authority of an individual nation are performing some kind of subjective screening function in the trademark area.

So to sum up, and then I'm going to let George jump in and perhaps correct me or add to this, it seems that Article 6ter protection is related to trademarks. It's not the same as a trademark. It does give rise to some obligation of member states to protect against abbreviation by trademark registrations, but the way in which they do that is somewhat subjective.

And I'll stop there and let's hear from George.

George Kirikos: Yes, George Kirikos speaking. I think strictly speaking, the Article 6ter protection is supposed to, you know, block the registration of a trademark on, you know, a country's national database if it would conflict in the manner you suggested. You know, obviously you can have trademark registrations that don't conflict in terms of suggesting similarity to the IGO or to the international emblems or whatever, but obviously we're limiting our discussion here to IGOs.

One thing I did want to point out in the language of paragraph 20, and it's also evident in the actual text of the Article 6ter, is that it says that, "The second sentence of Article 6ter provides that countries" -- let me emphasize the word countries -- "are not obliged to apply Article 6ter when the use of or

registration armorial bearings, blah, blah, blah are not going to suggest a connection between the mark and the organization."

But the key point I think there is that it's the countries that are the ones that are the actors that are supposed to enforce this within their nations, and that goes to, you know, the applicability of, you know, national jurisdiction in terms of how these so-called protections are actually applied. And that goes back to that U.S. State Department memo and also, you know, the national jurisdiction of the registrant in terms of a domain name.

I noticed that, if you go back a step further, strictly speaking the Article 6ter is about trademark registrations, it's not about all possible uses of an acronym or of a mark. You might have a license plate, for example, that matches the acronym of an IGO, you know, a license plate is not a trademark. You might have a stock symbol that might be similar to an IGO's mark, that's not a trademark.

Whether they're a domain name is a trademark or can be used as a trademark is, you know, somewhat of an open question. But strictly speaking, the Article 6ter doesn't apply to domain names. So to some extent, we'd be making new law if we applied this to domain names, but, you know, it's not too big of a stretch but, you know, we just keep that in mind.

Phil Corwin: Yes. And let me comment. In my view, there's a personal view, I believe that domain names are either a type or very similar to a type of intellectual property or very similar in that they're a valuable and tangible asset and we're dealing with an ICANN system in which domain names are not I don't think viewed as trademarks but in which trademark holders are given some ability to access two different arbitration systems that they believe that a particular domain name has infringed their trademark. So that's kind of the context in which we're considering this.

Part two of this memo goes onto legal frameworks of communications where the International Bureau was the intermediary between states and the IGOs and they communicate, they pass on communications. And then number 22 here on Page 8 of the PDF, it's quite relevant in the case of signs of international intergovernmental organizations -- and again, remember the signs includes names and abbreviations -- communication to the countries party to the Paris Convention is a prerequisite for obtaining protection under Article 6ter.

So again, that shows that the IGO, the Article 6ter protection is not automatically instigated. The IGO has to take steps to communicate - have that communicated to members nations. And although - let's go onto 23. Emblems and signs of state and international IGOs are first communicated to the International Bureau by the competent authority of the country or organization in turn.

So the communication is from a country that's established it or the IGO itself. And then the International Bureau then transmits that information to the state's party to the Paris Convention and to members of the World Trade Organization. And then as we know, at least in the case of the U.S. and then (Suzanne Riddell) is checking to make sure it's still the position, that the U.S. at least says okay we get - our patent trademark office gets notice of your claim to Article 6ter protection as an IGO.

And then I guess, I'm making this assumption here, if the IGO believes that the patent and trademark office made a mistake and allowed a trademark to be registered that infringes upon its Article 6ter protection, it's remedy, according to that 2002 State Department memo, is to file a civil trademark infringement litigation in the courts of the United States. So the remedy is if the trademark authority of a nation does something that the IGO believes has allowed an infringing mark to be trademarked, it's remedy is to access the civil courts of the United States, which bears on the sovereign immunity question but also on the procedures for protection.

The next page goes onto transmittal of objections. I'm going to get to you in a second, George. I see your hand up. And again I don't know how many objections have ever been received but the key point is number 30. If the state objects, it's not obliged to give any protection to the IGO, which is interesting. And George's hand has gone down. That was up for the previous comment.

Okay. Item 31, toward the bottom of Page 9, Article 6ter of the Paris Convention is only applicable in respect of trademarks. And I think that was the point George was making. It doesn't cover license plates, it doesn't automatically - I guess for our purposes, it would - we can, you know, I welcome opinions on this.

If it's only applicable in respect of trademarks, does that mean that it doesn't affect domain names or does it - to the extent that national laws protect trademark rights that may be infringed by domains, such as the U.S. Anti-Cyber Squad and Protection Act or that an arbitration system has been established to protect trademark vis a vis domain names. I don't know how to read that. When it says only applicable in respect to trademarks, should we read that as not extending the domain names or as relevant to domain names insofar as the trademarks are protected by various protection regimes? So if someone just wanted it as an arbitration.

Anybody have a view on that one what the meaning of that first sentence in item 31 is? And I'm reading - while that question hangs out there I'm just going to review the chat room to see what's come in.

Mary Wong: Phil, this is Mary. I have a comment.

Phil Corwin: Yes?

Mary Wong: And on your point about the domain name and trademark interface that George also mentioned, I wanted to draw the group's attention back to the summary and work done by subgroup C somewhat earlier in our deliberations in reviewing some of the background material, including the 2001-2002 WIPO due process documents.

And one of the notes from that document that was reported by this subgroup is that in cases not involving the use of domain names as trademarks, it could possibly mean the creation of new international law. So if, you know, and obviously the recommendation there is somewhat different in terms of the actual process to be established, but it does draw a link between the views of the domain name and the fact that it has to be used as a trademark, which goes back to the wording of 6ter itself. I don't know if that helps, but I thought it would be useful to mention.

Phil Corwin: Yes. Yes thanks for pointing that it. I'm not sure if it helps me or not. I'm going to have to consider this question. But I think it's an essential question for the task of this working group is to the extent in which Article 6ter applies to domain names is obviously a critical factor and, so. And I'm going to think about it but not voice an opinion on this.

Going on, there's a principles non-retroactivity starting on Page 9, which is basically - it doesn't go back in time. It's not retroactive. And then there are additional protection measures, excuse me.

(Kathy): Phil, this is (Kathy). I just came online.

Phil Corwin: Yes. Hi, (Kathy).

(Kathy): I apologize for jumping in a few seconds late but I did have something to raise on 31.

Phil Corwin: Sure.

(Kathy): Okay. Which is - and this is a really interesting discussion . So I read 31 a little differently. I mean it's really narrow what this applies to because it seems like 31 is telling us that the 6ter, Article 6ter of the Paris Convention, applies to trademarks but not necessarily service marks. So forget about the rest of the world, forget about domain names, forget about license plates, forget about flags, it may not apply to service marks. It probably does, but it's a very - 31 is very, very narrow.

Phil Corwin: The second sentence there says the provision may be applied analogously to service marks but that Paris Convention does not establish an international obligation to do so. In other words, a member state to the Paris Convention or the WTO may have the option to choose to apply it to service marks but is not required to do so by the Paris Convention. That's how I read that. (Unintelligible)

(Kathy): At least not in this paragraph, right.

Phil Corwin: Yes.

(Kathy): So that seems to imply that the rest of the universe, at least as viewed from this paragraph, is excluded. You know, if we're not even including service marks, forget everything else. Thanks.

Phil Corwin: Right. Right.

George Kirikos: Can I jump in?

Phil Corwin: Yes, George?

George Kirikos: If you look at paragraph 32 though it actually says it does apply to service marks as well. It does arise from Article 6ter of the trademark treaty, law treaty. So just look down from paragraph 30.

Phil Corwin: Right. So contracting parties, who are the contracting parties?

Mary Wong: Phil, this is Mary. I've just typed in the chat. My understanding is that there was a trademark law treaty in '94 I think it was, so as I typed in the chat if a country is a member of Paris or the WTO and so they're obligated to 6ter, if they're also a member of the trademark law treaty or contracted to the trademark law treaty, then they would extend the 6ter protection, if any, to service marks.

So it's possible that for countries that are not members of the trademark law treaty that they're national obligations would not extend to service marks, but that would not be the case if a country's also a member of the trademark law treaty.

Phil Corwin: Right. Right. Well at some point in our work we should - I suspect that the - when you put together the nations that are either signatories to the Paris Convention or members of the World Trade Organization, I think it's probably the majority of nations in the world but it would it would be good at some point to have access to those lists just to check that assumption against the facts. But let's presume for right now that it's - again, my supposition is that most, certainly most developed and industrialized nations are in one or both of those camps.

Okay. I'm just skimming through the non-retroactivity. In item 35 in respect to signs of international IGOs, the date in which an act of the Paris Convention for their protection of 1958 Lisbon act or the 1967 Stockholm act entered into force in the country concern is to be taken into account.

So then when you read further it seems to say that if someone acquired, you know, the trademark in WHO, you know, to stand for, you know, wholesale health organization in a nation before it signed either one of those acts that the World Health Organization protection would not exist in that nation

because the mark was registered before Article 6ter came into effect. But that's again an option for the country. They're free not to grant protection, but I guess also they would be free to do it.

And George has provided us with a list of known countries. George is that a list - which treaty is - George, could you just speak up? You list a whole nation - yes, which is treaty do those nations are you referring to that those nations signed?

George Kirikos: That was the 1994 treaty that Mary had mentioned earlier that applied to service marks. So if you click on the link it says that there's 51 signatories, so 50 states and one IGO have signed it. The United States signed it, United Kingdom, so most of the big countries. I don't see Canada on the list though.

Phil Corwin: Okay. So, yes. Okay. So for most nations this goes back about 20 years, the range of protection. And then additional protection measures - well let me just - okay. On item 36, I note the second sentence. The communication of signs of IGOs pursuant to Article 6ter, (unintelligible) day of entry into force of the relevant act of the Paris Convention irrespective whether the mark in question was registered more than two months after receipt of the communication, et cetera.

So this is all very technical but I'm not sure we need to - I don't know how that would apply and if this is relevant to UDRP or URS if there'd be any look at the nation of the registrant and whether Article 6ter protection exists. That's an interesting question. Anyone have any thoughts on that one?

George Kirikos: George Kirikos here. I just wanted to point out the language in paragraph 36 it also refers to that an obligation for countries to grant protection. So it's always, you know, the countries that are doing the informed mechanism the countries that have the obligation to protect. And so when we talk about jurisdiction and (unintelligible) and stuff and even standing to bring an action, one of the suggestions I made in the emails is that conceivably you could

give standing to the nation like the federal government of Canada or the federal government of the United States to act in place of the IGO to bring the UDRP. So that's, you know, that would be consistent I believe with the language of the treaty.

Phil Corwin: Okay. All right. Well again, all of this is talking about protection against the unauthorized registration of the names and abbreviations as trademarks in a particular nation. So it only applies if the nation is a signatory to the convention or a member of the WTO and the trademark in question was not registered prior to its entry into one of these relevant conventions.

So we're going to have to think about how, if at all, that applies to domains where there's no intervening authority, you know, screening domains before they're registered as there would be something like the PTO in the U.S. and blocking registration with marks that would suggest an association with the IGO.

Okay, there's also top of Page 9, marks contrary to morality of public order can be denied registration or invalidated on a national level in particular when such a nature is to deceive the public. Well that's, you know, morality and public order are not general trademark considerations, but deceiving the public is directly related to the purpose of trademark, which is to provide the public with an easy way to identify a goods or service with its origins.

All right. Next is administrative aspects. I'm going to skip over that one, communications procedures. This is all about - let's go down middle of Page 12, item 46. This procedure should be followed by all international intergovernmental organizations. It requests that through the intermediary the International Bureau of WIPO and informally it transmits documentation concerning its legal status and enlists its member states including its statute of charter other than for UN agencies. The International Bureau examines all that. But that’s a prima facie determination since the ultimate authority

remains with the state's party to the Paris Convention or members of the WTO.

Okay there's a pre-clearance request in 48 regarding its technical aspects in 49, 600 copies. I've never seen a 600-copy requirement prior. It discusses the objection procedure, and then at the top of Page 12 of the document, Page 13 of the PDF, there's the agreement between WIPO and the WTO. Then there's statistical information, but that dates back to 2005 so it's somewhat old. It's not current but we could easy check with WIPO for the current statistical information in this regard.

Then middle of Page 13 of the document refers to the Article 6ter database whish is maintained by WIPO International Bureau. And then we get a whole lot of footnotes after that and annex with the text of Article 6ter.

So I hope haven't been boring everybody, but I thought it would be - even though this document's in our database at the website for this working group, I thought it'd be useful at the holiday break to just go over in some detail to understand precisely both the scope and the limitations on Article 6ter protection since we're being asked to consider whether those protections should be specially noted in the UDRP or URS or whether we should create a new curative rights process to protect them in the domain name context.

I think what we've found in this review is that they are related to trademark rights but not the same, that they apply in nations that have signed the Paris Conventions or are members of the World Trade Organization, that the IGO has to take affirmative steps to get the protection in those nations through communication to the International Bureau of WIPO, that individual nations are free to object and to not protect any particular IGO within its nations.

And there's some - I guess the debatable point is the - whether the provision says that this only applies to trademarks and service marks, whether that would mean that these protections should be observed in the domain name

system because it gives protection to trademarks or whether it shouldn't be taken into account because domain names are not the same as trademarks. And this is mostly a scheme for preventing the registration of trademarks which are identical to IGO full names or abbreviations or would suggest a connection that would mislead the public.

So I'm going to stop there and, you know, I think this is all good stuff for us to think about, but does anyone else have thoughts on what the implications are of this WIPO memo to the work that remains before us?

I'm not hearing anything or seeing any hands, in which case I'll assume that the summary I just gave is where we're at right not but we're going - when we come back in the new year I think we're going to grapple with the central question. Certainly the - I think the GAC and the GNSO council by implication think there's some obligation here to give credence to these Article 6ter rights in the domain name system, but that's not determinate for our purposes. We're going to have to engage on that central question when we come back in the new year.

I'm going to move onto the other document unless folks have comments here.

Jim Bikoff: I've got one comment.

George Kirikos: George here. Can I get into the queue as well?

Phil Corwin: Jim, I recognize your voice. You're never in the chat room but I recognize your voice.

Jim Bikoff: Thank you. I just want to say that I listened to a lot of the comments that were made. I think there - it's good historical points. But I think what will be interesting is to see the reaction of GAC and also the IGOs, if any, because, you know, these are points that they should be well aware of, especially the

IGOs since in the last PDP they mentioned a number of these points in their presentations about why they needed the relief.

And, you know, you would think that international governmental organizations would be able to come up with, you know, some rejoinder on these points if they care enough about this. So I think, you know, before anybody does a huge amount of work on this, we ought to see what kind of responses we get, because we're giving them the rest of the month of December. And come January I would think if we don't have any responses, that's going to be a very large by itself.

Phil Corwin: Yes. And Mary remind me, I think we gave them in the end we gave them till pretty late in January to respond to that letter we just sent. Isn't that correct?

Mary Wong: Yes, Phil. We - for the SOs, ACs and the stakeholder groups we set 23 of January. I think everyone will recall also that we did send specific questions not just to the GAC but to the IGOs. And my understanding is that they are looking at the questions.

I have no indication as of yet whether and when they will come back, but from what I can tell -- and Mason may be able to jump in here -- that the GAC and the IGOs have received our questions quite graciously. And hopefully they will come back in January or at least by Singapore so that we can move forward with our work.

Phil Corwin: Okay. Yes thank you, Mary. Yes so we won't have - we won't know the full range of responses till the third week of January, which is either two or three weeks before our face-to-face in Singapore. And we'll also probably be reporting on where we're at to the GNSO council when we're in Singapore, and we may have other interactions there as well. We're checking on that.

But yes it's going to be very telling now if they, you know, they have an opportunity to respond and if we don't get any feedback, that says something

in itself. But let's not, you know, try to predetermine the outcome. We'll also see how they'll react to our initial decision to say we don't need to do anything special for INGOs. They have no special rights and are free to get trademarks and do it the same way as any other complainant. I saw...

Jim Bikoff: It was not my - Phil, it was no my intention to say we should just disregard. Rather what I'm suggesting is that before we undertake huge amounts of further research and reports on behalf of trying to find a way to protect IGOs, it seems to me that we want to try to get some response back saying that they indeed want us to do that and give us some of the answers to the questions that have been raised. Because, you know, I can just see us spending huge amounts of time and then not getting satisfactory answers or not getting any answers, and I think it would be, you know, a total waste of everybody's time.

Phil Corwin: Yes I agree, Jim. You know, we need to see what they come back with and, you know, the basis for any amendment, in my view, you know, I don't want to speak for the group, but my personal view, the basis for any amendment to UDRP or URS much less the creation of a new ERP would have to be standing based upon the protection conferred by Article 6ter.

And as we've seen, it's fairly narrow protection and it's not obligatory on states. They can refuse to do it, and it requires - it's not self-executing. It requires IGOs to take affirmative steps to get that protection from the nation states that are willing to provide it and not object to it. So that's the nature of the rights conferred by Article 6ter on IGOs that would have to be the basis for any special amendment or new CRP in terms of standing.

I think George you wanted to say something further?

George Kirikos: Yes. I just wanted to conclude that yes I think the two big takeaways are that Article 6ter is strictly intended to apply as a blocking mechanisms for

registration of trademarks and wasn't really intended to apply to, you know, any other kinds of marks per se.

And then the other big takeaway - but in some sense, you know, the IGOs can argue that they're quasi-trademarks in the sense that, you know, if they had actually a trademark it would act in the same manner because if they had a registered trademark it would in effect block the - kind of affecting trademark for that same usage.

So - the thing nothing stops - nothing prevents the IGOs from going through hoops of actually registering trademark. And as I've pointed out in some of the cases, you know, we have examples where they actually have done - they've filed trademarks and enforced them through the UDRP.

The second point that I wanted to make is you actually look at annex one, which is the full text of the Article 6ter, repeatedly it says, you know, that it's the countries that, you know, that agree to do this. You know, just for example in 1A the countries of the union agree to refuse or to invalidate the registration by appropriate measures.

And then 1C it says, "No country of the union shall be required." So it's always left to the countries, so I think that argues for the jurisdiction of the national courts and not some international tribunal because it's always subject to the national laws of each of the member states.

Phil Corwin: Right, right. To me that, you know, again the question that raises in my mind is let's say just hypothetically it was a decision of this working group to say that an IGO's communication to the International Bureau of its rights under Article 6ter should be regarded as a basis for standing to be a complainant in a UDRP or URS, that it was not necessary to register a trademark in a particular nation.

That's just a hypothetical. I'm not suggesting we're going to come out that way, but just as a thought experiment. Let's say a domain name was registered by someone residing in a nation that had objected - an individual or a company had registered a domain name in - and it was domiciled in a nation that had objected to protection of that particular IGO name. How would we - would that IGO be protected against that domain registrant since they would not be protected against the registration of that domain name as a trademark in that nation?

So I hope that doesn't complicate things too much but I think it illustrates some of the technicalities we my have to deal with here. All right so we're at 12:52. We have eight minutes left. I don't know that - and thank you George and (Kathy) for chiming in that that's a useful hypothetical.

We're not going to have time to go through this staff document in the remaining eight minutes, but I wanted to bring it to everybody's attention. It's in the - it's at the workspace. You also now have it as a separate attachment to the staff e-mail sent out this morning. I'd urge everyone to look at this. I haven't fully reviewed it yet. It's something that was developed by ICANN staff almost ten years ago. Well no, it's from 2007. I don't know - yes the other document.

So this is a seven-year-old document. It wasn't a working group, it's a staff document that suggested what a separate DRP might look like for IGOs. Obviously I don't know the full history, Mary, of whatever happened to this report after it was submitted by staff, but clearly it was never implemented. But I'd suggest everybody, you know, use the holidays if you have a few minutes to read this over and we can perhaps start in the new year with some discussions of this document and to the extent in which it has any bearing on our consideration of these issues whether we accept any of it or don't accept what's in there.

So at 12:54 with six minutes left, I'm going to open it up if anyone has anything they want to say at this point to chime in, and if not I think I hope everyone found this a useful - different from our usual procedure, just an in depth review of a critical document so that we could better collectively consider and understand the exact nature of the scope and the limitations in Article 6ter protections.

I see folks leaving the chat room, so I'm going to exercise my prerogative at 12:55, five minutes early, to call it - adjourn the meeting with a reminder that we have a call on the first Wednesday in January 2015. And I wish everyone very happy holidays and very healthy and prosperous New Year, and think about the questions raised today and talk to you all in 2015.

Man: Thank you. Happy New Year. Happy holidays to everybody.

END