

IGO-INGO Access to Curative Rights Protection Mechanisms Working Group  
TRANSCRIPT

Wednesday 29 April 2015 at 16:00 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-29apr15-en.mp3>

Attendees:

George Kirikos - Individual  
Petter Rindforth – IPC  
Phil Corwin – BC  
Val Sherman - IPC  
Jay Chapman – Individual  
Jim Bikoff – IPC  
Kathy Kleiman - NCUC  
Paul Keating - NCUC  
Kristine Dorrain- Individual  
David Maher - RySG  
Mason Cole – RySG  
Paul Tattersfield - Individual  
Lori Schulman - IPC  
Gary Campbell - GAC  
David Heasley - IPC

Apologies:

Oswaldo Novoa - NCUC

ICANN staff:

Mary Wong  
Steve Chan  
Berry Cobb  
Nathalie Peregrine

Coordinator: Recording has started.

Nathalie Peregrine: Thank you (Nealy). Good morning, good afternoon, good evening everybody. And welcome to the IGO-INGO Curative Rights Protection PDP Working Group Call on the 29th of April 2015.

On the call today we have Petter Rindforth, George Kirikos, David Maher, Jay Chapman, Mason Cole, Paul Tattersfield, Paul Keating, Phil Corwin, Kristin Dorrain, Lori Schulman, Gary Campbell and Kathy Kleiman. We have received an apology from Osvaldo Novoa. And from staff we have Mary Wong, Steve Chan and myself, Nathalie Peregrine.

I'd like to remind you all to please state your name before speaking for transcription purposes. Thank you very much and over to you Phil.

Phil Corwin: Thank you. This is Phil Corwin. I'm co-Chair of this esteemed group and I'll be leading the discussion today. We've had the roll call. Are there any updates to statements of interest? Hearing none, let's proceed.

Lori Schulman: Yes Phil.

Phil Corwin: Yes.

Lori Schulman: Phil, it's Lori.

Phil Corwin: Oh. Yes Lori.

Lori Schulman: Yes. I updated my statement of interest. As you know, I've changed my affiliation. I'm no longer with ASCD. I am now Senior Director of Internet Policy for the International Trademark Association.

Phil Corwin: Well, congratulations. And we welcome your continued participation.

Lori Schulman: Thank you.

Phil Corwin: (With a good) title.

Lori Schulman: Good change.

Phil Corwin: Yes. So I'll be seeing you in San Diego in a few days in your new guise.

Lori Schulman: Yes. Thank you.

Phil Corwin: Okay. All right. We're going to review past GAC advice regarding IGA names and acronyms, which is - just background. We are told that we - the receipt of a GAC response to the questions we sent to both them and the IGO group that from the GAC it's receipted (unintelligible) so we don't have it to discuss on today's call but we expect it to be available for the next one.

And the purpose of this and we're going to get into - to get some background here where the GAC has been because besides substantive legal analysis where we have to deal to some extent with ICANN internal politics and framing whatever our final recommendations are.

When we get to the final part of this meeting, which is about next steps the next meeting, we can discuss what to do about the fact that we've been somewhat after making really very good progress at a good pace for most of this working group's existence we've kind of bogged down primarily because we haven't had these responses from the GAC and IGO.

And we haven't had an advice - legal advice on the current status of IGO sovereign immunity that we felt was reliable. So we can discuss how to deal with that at the end of the call and what we should be doing between now and the Buenos Aires meeting.

But having stated that, we're going to proceed through this compilation prepared by staff of prior GAC advice on protection of IGO names and acronyms and then we're going to get an update from the staff on what's

going on in the discussions between the GAC and the GNSO and I guess some part of the Board regarding some IGO issues that are not the direct focus of our work but are related to new TLDs.

Jim Bikoff: Phil, did - oh, sorry.

Phil Corwin: Yes. Who's that?

Jim Bikoff: Phil, can I - I thought you were finished. Just a - it's Jim...

Phil Corwin: Who's speaking? Who is speaking?

Jim Bikoff: Jim Bikoff for the record.

Phil Corwin: Okay. Thank you Jim.

Jim Bikoff: Procedural note. While we don't have any responses yet, I think next week, as you probably know, many people will be at the INTA meeting in San Diego, which means that I know myself, (David Husely) will not be available next Wednesday.

I'm hoping that we can skip a week since we don't have any responses yet. And I think a lot of people - probably quite a few on the call will be at the INTA meeting.

Phil Corwin: Yes. And Jim, I'm going to be there and Mary's going to be there and I believe Petter will be there. So we did not plan to have a call next week. We can assure you that we definitely will not be having a working group call on what - that May 6, next Wednesday.

Jim Bikoff: Yes.

Phil Corwin: Because I know Tuesday is Cinco de Mayo in San Diego and...

Jim Bikoff: Right. And we'll be out celebrating.

Phil Corwin: ...other places that celebrate that holiday. So rest assured, no call next week.

Jim Bikoff: Okay. Thank you.

Phil Corwin: Okay. So let's go through this to glean whatever we can. Going back to April 2012, the GAC considered the Board's request for policy advice on protections to include IGOs and said that advisors that in the event additional IGOs are found to meet the above criteria and we don't have the criteria in this compilation.

This will be a consideration of (formulating) GAC advice for IGO protection in future rounds of new TLD programs as well as consideration of more general protections.

Therefore the GAC advised that no additional protection should be afforded to IGOs beyond the current protections in the applicant guidebook. So at least in April 2012 the GAC was satisfied with the protections contained for IGOs in the whatever version of the applicant guidebook was current at that time.

As I go through these if anyone wants to comment on any one of them, you know, just raise your hand in the chat room or I'll stop briefly for the - I think for example Jim is not in the chat room so I'll just stop at the end of each in case someone wants to comment.

October 2012 in Toronto. The GAC continued its deliberations on the protections of names and acronyms of IGOs. I know it's interesting all of this - all these communication (linked) to IGOs, not INGOs, which to some extent confirms that earlier decision to drop them from the scope of our work.

And then the GAC advised the ICANN Board that implementation of such protections at the second level must be accomplished prior to the delegation of any new TLDs and in the future rounds at the second and top level. So second level first round, second and top all subsequent rounds.

They believe that the current criteria for registration under the (unintelligible) top level domain as a basis for an IGO to file a legal rights objection provide a starting basis for protecting IGO names and acronyms and all TLDs.

Well there's a place we differ. We concluded that eligibility for (unintelligible) registration was not sufficient - not going to be sufficient for standing in the UDRP or URS or any new CRP. And in fact we asked the Council and received from Council a change in our charter to reflect that decision. And that's been approved. So that's a difference with the GAC for sure.

And finally, building on these criteria GAC and IGOs will collaborate to develop a list of the names and acronyms that should be protected. And I guess that's the one - the broader list we've been working off or at least referencing.

Pending further work with ICANN, GAC believes this list of IGOs should be approved for interim protections through a moratorium against third party registration prior to the delegation of new TLDs. Mary, a point of information, that moratorium they requested, was that ever granted or that - is that what they're still discussing now even though half the new TLDs have been delegated?

Mary Wong: Phil, this is Mary from staff. I believe this refers to the interim protections that the Board did grant for at least a second level in the new gTLDs. And a short note in the chat that's the reserve list at the second level, which I believe is now in Spec 5 of the new gTLD registry agreement.

Phil Corwin: Okay. Okay. Thank you. Any other comments? If not, I'll move on to Beijing, which was a big meeting for GAC advice on the new TLD program. So the GAC stressed that IGOs perform an important global public mission and that their names and acronyms warrant special protection in an expanded DNS.

They said IGOs are in an objectively different category to other rights holders wanting special protection by ICANN and the DNS. They're mindful of outstanding implementation issues. And the GAC reiterates its advice to the ICANN Board that appropriate preventative initial protection for IGO names and (acronymsims) be in place. So they were reiterating there.

And then in July - let me stop there. Any comments? All right. Continuing in our time travel here back to July 2013, the Durbin communique. The GAC reaffirmed its previous advice from Toronto and Beijing that IGOs are in an objectively different category.

They understand that the ICANN Board is prepared to fully implement GAC advice but an outstanding matter be finalized as the practical and effective implementation of the permanent preventive protections of IGO acronyms.

And the GAC further advised the ICANN Board that the GAC is interested to work with IGOs and NGPC on a complimentary cost neutral mechanism that would provide notification to an IGO potential registrant seeks to register a domain name matching an acronym at the second level and allows for an independent third party review.

Any such registration requests and initial protections confirmed by the NGPC at its July 2, 2013 meeting should remain in place. The notification procedure that the GAC requested here regarding acronyms - let me turn again to Mary. Was that every implemented?

Mary Wong: I'm sorry Phil. Which...

Phil Corwin: In C1A the GAC...

Mary Wong: Yes.

Phil Corwin: ...asked for a complementary cost neutral mechanism provide notification to IGOs if someone tried to register their acronyms at the second level.

Mary Wong: I believe that is still under discussion.

Phil Corwin: Yes.

Mary Wong: And we can talk more to this on Agenda Item 2. But that is part of the discussion for the preventative protection.

Phil Corwin: Okay. That's what I thought. So that was requested in July 2013 as we move toward the Buenos Aires meeting in June 2015. Almost two years later that's still on the table. That request. So...

Mary Wong: And that's right.

Phil Corwin: Okay. Proceeding to Buenos Aires. The last one Buenos Aires meeting and we didn't expect to be back so soon but we are. The GAC...

Mary Wong: Phil, I think Lori has her hand up.

Phil Corwin: Oh.

Mary Wong: I'm not sure that was for the July communique or something emanating from there.

Phil Corwin: Whatever it's for we're delighted to hear from Lori. Go ahead. We're not hearing you Lori. Are you on mute? I'm not hearing from Lori. She's going to type her question. Apparently she's having difficulty with the audio.



Emulating Paul Keating as noted in chat room. Why don't I proceed through the Buenos Aires while Lori is typing and then we'll get back to it with whatever question she has or comment.

At the last Buenos Aires meeting the GAC advised the Board that it together with the IGOs remain committed to continuing the dialog with the new gTLD program committee on finalizing modalities for permanent protection of IGO acronyms at the second level.

To put in place a mechanism would provide for permanent system and notifications about acronym reservations; allow for time to respond; allow for final and binding determination by an independent third party; and be at no cost or nominal cost only to the IGO.

I do want to note here it's not the same as what we're talking about, which is - although it's related. They are looking for some kind of binding determination, which could be an arbitration procedure. You know, I don't know any other model for that to - when someone registers an acronym at the second level.

And that relates to whatever our final recommendation's going to be on what has to be shown to recover or suspend a domain that accords to an acronym. And, you know, for example, if you're the World Health Organization, somebody add who in their domain name, do you always win or does it depend on how the domain name is being used? We're going to be getting back to that question.

So okay. Lori just pasted a link to a letter. Now let's see what that - should we take a look at that - maybe we'll take a look at that...

Jim Bikoff: Phil.

Phil Corwin: Yes.

Jim Bikoff: Jim Bikoff. How does - the acronym issue is not - I don't think is within the scope of our group is it? Some other group's working on that. I think that's the group that's considering - that's been considering for some years now whether acronyms of IGOs should be protected at the second level.

Phil Corwin: You know, Mary, does that - our charter for this group, does it include just exact matches of names or does it include acronyms as well? I thought it - acronyms were within our scope.

Mary Wong: Hi Phil. Hi Jim. This is Mary. It does include acronyms. I think the distinction is between the sort of preventative protection that the earlier group and the current GAC and Board dialog is about and what we're doing on curative rights. But in terms of the scope of names and acronyms, it is similar.

Phil Corwin: Right. So there's some overlap there. I'm going to suggest we finish going through the GAC advice here. The - move onto the last page and then take a look at that letter that Lori brought to our attention and see how it relates to our work.

So moving to the March 2014 Singapore meeting. This is a short one where the GAC recalled what it had previously said in Toronto, Beijing, Durbin and Buenos Aires and awaits the Board's response. So this was just kind of a poking the Board in the ribs and wincing - asking when they're going to get a response.

Moving forward to June 2014, GAC again affirming all of its prior advice on IGOs and acronyms at the top and second level. Notes that the NGPC's letter of 16 June 2014 concerning further steps.

Well, they noted it but expressed concern that the process of implementing their advice has been so protracted and they welcome the NGPC's

assurance that interim protections remain in place pending the final outcome of the process. And they confirmed their willingness to work with the GNSO.

So moving on to Los Angeles, October - and Lori, I don't know if you had a comment here, your hand is still up or if not, just lower your hand. I don't know if your audio is working now. But I see your hand's still up. Now it's down.

Okay. Moving on to the October 2014. This is a long communique from LA. And I think we took note of this at the time it happened where we were up and running at the time this was given.

Okay. And they reminded the Board that notice of a match and IGO name or an acronym to protect prospective registrants. Enter the IGO should apply in perpetuity at no cost to IGOs. I assume that's under the trademark claims notice procedure.

And concerning curative protections at the second level and noting the ongoing (GNSE) PDP on access to curative rights protection mechanisms. That's us.

The GAC reminded the ICANN Board that any such mechanism should be at no or nominal cost. And that in further - in implementing such mechanism the UDRP should not be amended and they welcome the continued protections that were in place. And they wanted the Board and the NGPC and the GNSO to develop concrete solutions.

This was a communique that sparked the questions that we sent to the GAC to a very large extent. And as I said, we expect a response fairly eminent. And this brings us to the end and the most recent ICANN meeting where the GAC said they continue to work with interested parties to reach agreement on a appropriate permanent protections for names an acronyms for IGOs and including working with our working group.

So a consistent pattern of the GAC wanting permanent protections for the names and (acronyms) of IGOs at the top and second level. Happy to some extent with what was done for the first round of new TLDs but not satisfied with the - that a more sweeping - decisions had not been made and implemented.

And I see a question from Paul. Can we please review the interim protections that are in place? I'm going to turn to Mary for - or Steve for that if they have that information available because I'm not sure I know it all by heart.

Mary Wong: Phil, this is Mary. And Berry and myself worked on some of that implementation. So the first thing we want to emphasize is, as Paul noted, these are interim protections. And going through the background with the GAC communiques, you can trace that to the references to the Board actions through their resolutions to give these interim protections.

As George previously noted and pasted in the Adobe chat, you can see the actual IGO names and acronyms that are part of these interim protections in an XML list. And essentially they include the names and the acronyms of the IGOs from the GAC list that was given to ICANN in I believe April 2013.

Obviously the emphasis here is that they are interim. That also means however that they are in place until a permanent solution is found. And we can talk about this more under Agenda Item Number 2. And so there may ultimately be a difference between what's on the interim list now and what's on the permanent list. I hope this helps.

Phil Corwin: Right. And as to what those protections are, what are they? Are they - are all these names barred from that - we're not talking about top level protections. Are we talking about...

Mary Wong: No.

Phil Corwin: ...they are (unintelligible)...

Mary Wong: They are second level reservations.

Phil Corwin: ...or do they generate a trademark claims notice when registered at the second level?

Mary Wong: They are withheld from registration at the second level by the registries in the new gTLD program.

Phil Corwin: Okay. So it's - they don't need a curative rights protection for any of these because they're not going to be registered in the first place.

Mary Wong: That's correct.

Phil Corwin: Okay. Hopefully that answered Paul's question. Let me turn briefly - I don't kind of any of you clicked on the link that Lori provided. But this is a very recent letter to Dr. Crocker, Chair of the ICANN Board, dated 23rd of April. So just six days ago.

And from Thomas Schneider, Chair of the GAC. It's a short letter. Says GAC members have noted with concern requests of new TLD registry operator for the release of country and territory names following the use of the RSEP process.

And letter goes on. There's a sensitive member for GAC - sensitive matter for GAC members. This highlighted that in the Singapore communique. And I think it says the GAC has started to work on a proposal for such a database of I guess of country and territory names and was - it'll soon be shared with ICANN.

And in the meantime it's the expectation of the GAC that a realistic timetable be followed and that existing RSEP requests will not be approved before an adequate process involving the GAC and individual governments on release of country and territory names.

I believe those requests from registries a lot of them involve brand registries. I think there may be some others involved. But it's about allowing registry to have geographic identifiers in second level.

Domain names. I don't know of any similar requests from any registry to allow for the release for registration of any of the names on that ICO Red Cross - IGO reserve names for new TLD.

So I'm not sure this letter is really relevant to our work in that it let's us know that another area of GAC concern but there's nothing similar going on for IGOs. And I believe that's - I am correct on that, right Mary, that there's no similar requests have been made for an IGO names?

Mary Wong: I don't know that firsthand. I believe that's correct. But I think what the working group might be interested to know as well is that the issue of country and territory names is something that a separate GNSO working group or actually it's a cross community working group -- I correct myself -- is looking at. And there is some further background to this issue because the GAC has a subgroup that's working the issue as well.

So there are certain sensitivities that may be somewhat similar to the general level - some of the sensitivities we're dealing with here. But at first glance I think the staff note would be that this is something that we can note but it probably would not be pertinent to our working group at this point.

Phil Corwin: Yes. Thank you. Thank you. That's what I was thinking. So we've now concluded our review of all the GAC advice going back to - where did this - going back to spring of 2012, three years ago. So does anyone want to

discuss any of that further before we move on to our next agenda topic?

Okay. And Mary, is your hand up to say something about this or...

Mary Wong: It is actually. And just to note that I hope this exercise has been as useful for the group as it has been for the staff just trying to get a placeholder on where we are.

We would note that the tenor of a lot of the communiques have been on overall protections for the IGOs and most of the specifics have focused on what we have come to call preventative type protections. And we're going to come to that in a sec so I know.

On the curative side we would note that there is an issue Phil as you also commented on in terms of the - what we're calling the standing requirement. But it essentially - what the GAC has called the starting point as well. I think that was in the 2013 communiques.

And this group has talked somewhat about the use of the (unintelligible) criteria. What I did want to let the working group know is that in our coordination with colleagues that support the GAC and in our communications on behalf of you all and the co-Chairs to the IGOs we've been very careful to say that, you know, we're talking very specifically about standing as in, you know, what would allow an IGO to essentially file a claim.

That is not the be all and end all of everything. And that doesn't preclude, you know, any of the other substantive considerations that have to go into any sort of process. So since the GAC did mention that in an early communique, I thought it would be useful to have the clarification on the record.

And secondly, and I'll end after this. That if you look at the recent Los Angeles communique, that is probably one of the few places where the GAC has been very specific on curative rights protections under A Part 2 where

they note our ongoing PDP and in terms of the cost issue and other advice that the UDRP should not be amended for example.

This is exactly the point of engagement that our working group is trying to have with the GAC to which they are expected to respond. So Phil...

Phil Corwin: Right.

Mary Wong: ...that's my summary. Thanks.

Phil Corwin: Okay. And just to further clarify, correct me if I'm wrong but if looking again at this - I guess it's July 3, 2013. I never understand how they - that they did this way of dating things that other people use whether it's the month or the year first.

I mean the day or the month first. Correct. But anyway, there's a list that Lori alerted us to, not Lori, but that George alerted us to. That there are names on there that are there simply because they're (unintelligible) registered names; were eligible for (unintelligible), nothing we're doing would take them off that list.

We're only - our work relates only to what we believe are the substantive legal rights required to have standing in the UDRP URS or some new arbitration process.

So nothing we do would knock anybody off that reserved list. What we're talking about is after the fact access to arbitration procedures when something's been registered that IGO believes should not have been registered.

Mary Wong: Phil, if that's for me, I think that's right that we're focused on a specific issue with regard to a specific purpose on the curative rights process. And so in



terms of what's on the interim list and what those interim protections are, that's correct.

Phil Corwin: Okay. Let's move on to Agenda Item 3, which is to review the status of GNSO work concerning preventative and CRP for IGO names and acronyms. Says staff will update. So staff, please update us.

Mary Wong: And hello. It's Mary again. I note that Berry is on the call. And I said he's worked on the earlier PDP as well as the ongoing implementation of some of the adopted recommendations from that.

And in essence this agenda items follows from the first and I think that we've already covered some of the intended updates in the chat and in some of the questions that were raised.

We just wanted to remind the working group that very generally there's the preventative piece and the curative piece and we're working on the latter piece. The connection of course is that the preventative piece at this point if you look at the GAC advice for example talking about notices to IGOs about a potential registration, that uses the Trademark Clearinghouse.

So in terms of the duration and nature of that kind of preventative protection, the question that an IGO might raise would be the efficacy of having that kind of protection and receiving that kind of notice but it's not reflected by a corresponding effectiveness on the curative rights side.

So to that extent our work does have an effect on and relate to the ongoing preventative discussions, which is another reason why we thought it might be helpful to do a bit of a status update.

There's not that much to update. I don't know if that's good news or not to everybody. A few weeks ago we talked about where those discussions seem to be. And as a reminder, those discussions between the Board's new gTLD

program committee who are acting in this matter on behalf of the Board, the GAC and of course that also includes the IGOs.

And my understanding is that the IGOs are represented by the same small group to a large extent as have been interacting with us and of course the GNSO because the prior PDP that we're all aware of did contain certain recommendations, some of which are inconsistent with GAC advice on this topic.

So there was a letter, and I know we've brought this to the working group's attention from the NGPC to the GAC in January asking for further GAC clarification.

Phil, you and others then know that the GNSO does not believe it's in a position to change any of its recommendations with regard to preventative protection for IGOs unless and until there's some clarity from the GAC and the NGPC.

And so in that sense that's where we are. The discussions continue. Therefore, and this goes back to Paul's question on Agenda Item Number 1, those interim protections that are based on the GAC list from 2013, which Phil, as you noted, are in turn based on the (unintelligible) criteria, those interim protections for the IGOs whose names and acronyms on that list will continue until that is sorted out.

Our understanding is that there is a desire on all parts and parties to sort this out within the next few months. Phil, as you noted, this has been going on for a while.

So we are hopeful that the Buenos Aires meeting will see some further progress on this. We thought it'd be helpful for the working group to know where things are and to know or be reminded at least of where our work sort of feeds into the bigger picture.

Phil Corwin: Yes.

Mary Wong: I can go into more specifics Phil...

Phil Corwin: Actually...

Mary Wong: ...but (that's where) I should stop.

Phil Corwin: ...I wanted to ask you a question about how the existing protections in new TLDs work. I'm looking at the list here. And for example, the Economic Cooperation Organization their full name is listed on that list but also their acronym, which is ECO, which is eco which has a strong meaning on the, you know, ecology recycling Earth Day community.

If someone goes to register eco. any new TLD, are they blocked from registering that or they just get a trademark claims notice that is a registered term and they're proceeding at their risk? How does that - I'm trying to ask how does a current protection actually work? Is this a blocking list or just a generation of trademark claims notice list? And if it's the latter, does that just operate during the first 90 days of general availability as a requirement?

Mary Wong: Phil, this is Mary. And I will defer to others who are more involved with or knowledgeable about the implementation of this interim list. My understanding is that by requiring that these names and acronyms be withheld from registration at the registry level that it operates as a block at the moment. So no trademark claims or anything like that.

Phil Corwin: So it's a block list. You wouldn't get a claims notice. You would get an advisory from the registry or the registrar that that name is just not available.

Mary Wong: Yes. I don't know what the actual notice form or timing would look like but yes, it would not be available for registration.

Phil Corwin: Okay. Okay. All right. This brings us to - I think we're done with Item 3 unless anyone has any further comments or questions on it. And so - which is discuss possible options with regard to our curative purposes based on our prior discussions.

And that's it. So - and that ties into next steps, next meeting. I think I share the frustration of many members of the working group that after making very rapid progress we've gotten somewhat bogged down.

And I think we're waiting on three things; response from the GAC, which we're told is imminent; response from the IGO so at least we can take their - even if we don't agree with the viewpoint of either of those groups, we always know where they're coming from at this point in time; and getting a sounder legal foundation in the current accepted views on what the scope of sovereign immunity for IGOs is in the second decade of the 21st Century.

Because I think everything left for us to do depends on whether that sovereign immunity is absolute, which is doubtful but we don't have a firm basis for drawing that conclusion or whether it's limited. If it's limited we need to understand in what ways it's limited and how they relate to what we're discussing.

So I'm going to open this up now to any comments on how we can - while we're waiting for the GAC and IGOs to respond what we can do to get that last component or anything that anyone else thinks needs to be done so that this group can move toward a final report and recommendations in as timely a fashion as possible.

I don't think any of us want to be here in April 2016 discussing these same issues.

Jim Bikoff: Phil.

Phil Corwin: Is that Jim?

Jim Bikoff: Yes. I was just going to say going into the details on these issues really seems to me that we should have at least some response from one of the two groups before we discuss possible solutions because depending on the responses, I mean we may be just wasting a lot of time.

Phil Corwin: Oh I agree. I agree Jim but the problem is we just don't know. Again, we believe the GAC response is imminent. That's what we're told. We don't know when we're going to get anything from the IGOs.

And sometimes the responses we get from those groups are not exactly crystal clear where they kind of answer - sometimes they answer the question they thought we should have asked rather than the question we did ask. So we may wait for those and still not - still have some significant gray areas.

Jim Bikoff: But to talk about whether we should amend the UDRP or whether we should have a new process, aren't those issues really going to be dependent on what specifically the other two groups say to us? (Unintelligible).

Phil Corwin: Yes. Certainly that's going to be an important component in my opinion but I'm - while I'm co-Chairing this group, it's the consensus within the working group that's going to decide our final work product.

Jim Bikoff: Okay. Thanks.

Phil Corwin: But I think what I'm asking is while we're waiting for those responses, what else can we be doing or should we be doing to bring in information we need to form a solid basis for our final recommendations? And that's open to the floor.

Mary Wong: Phil, Paul (speaking).

Phil Corwin: I think Phil's hand - saw Paul's hand up but now it's gone.

Mary Wong: I think he typed his question...

Phil Corwin: Yes.

Mary Wong: ...in the chat.

Phil Corwin: Right. And the question is what can we do to move forward on the legal advice. And I think that's - I think we need to find a reliable source to advise us on what the consensus prevailing view is within the international legal community on - to the extent there is one on the scope of sovereign immunity for IGOs because that I think is the critical issue.

Let me back up a minute. We've decided we're not - there's no need for any special process for INGOs. They're out of our consideration. We decided that the IGOs we believe they already have standing for UDRP and URS purposes if they asserted their rights under Article 6ter and that we can either convey that opinion or suggest a minor amendment of the - of those existing rights processes to make it clear that they have standing.

And it might - there also might need to be some additional guidance as to when - for want of a better word infringement of their purposes. It's going on at the domain and looking toward the Article 6ter language on that.

Beyond that I think the last issue relates to appeal where a IGO would prevail in a UDRP or URS and the losing registrant would want to appeal to a court on national jurisdiction. And that's where we need to understand the sovereign immunity.

And I see Lori has a hand up and then Petter. So let's hear from them. Lori.

Lori Schulman: Hi. It's Lori. Can you hear - yes. Can you hear me?

Phil Corwin: I can hear you fine.

Lori Schulman: Can you hear me. Good. Okay. I have a new headset. I apologize. I had typed my question into the chat but I'll ask it live so we can talk about it a little bit.

My idea is if we don't have money for an attorney, (what does rate) subject for a team of law students - is that law students; maybe some of the international law clinics here in - not the clinics but the teams here in D.C. or maybe somewhere else. It's just a thought.

((Crosstalk))

Lori Schulman: To get that legal survey done.

Mary Wong: Phil, this is Mary.

Phil Corwin: Yes.

Mary Wong: Can I jump in?

Phil Corwin: Please.

Mary Wong: And this is to respond in some way to Lori and also to Paul in the chat. Typically my understanding as to what we do within staff is that we would refer this matter first to our legal department because they do coordinate legal advice and responses.

There may be a question as to who or what might be the most appropriate type of expertise to use. In this particular group I think one thing we had

talked about was an international law academic with expertise and experience working with IGOs.

So there's quite a lot of esteemed jurors and international law professors who could fill that role. Obviously at this point I don't know how much that would cost but we would not necessarily George go to Jones Day.

But this is something that Steven and I would propose we go to our colleagues in legal with first because that seems to me to be the customary practice. And then we can probably figure out the timing and the cost from our discussions with them.

Phil Corwin: Yes. I think that would be very helpful. Because again, that's the biggest impediment right now to completing our work because we can't make any decision regarding appeals until we know what the consensus view is on the scope of sovereign immunity.

If there's expertise in ICANN's legal department, you know, I'd be surprised if there was to give a high degree of confidence. But let's find out. And if there isn't, let's find out what's available avenues. And I agree with Paul's comment that the question should be framed by us, that is the members of the working group. Petter, your hand's been up and let's hear from you.

Petter Rindforth: Thanks. Petter here. I just echo that I think it's a good idea to have a sovereign immunity expert and obviously we'll then choose a new one from what we used another expert report we had.

And if it's possible I also think it's more (unintelligible) to have a pure legal expert on this topic even if it's - of course it's wonderful with a group of students that can do this kind of work. But I feel that for two reasons we need a rather quick reply to not lose more time on this topic.



And we also need something that we can safely refer to. And that's why I think that it's better to have traditional legal expert on this. So that's one step forward if we can do quite - start with quite directly if we can agree on that.

The other thing is that I truly think that we will have something - some response especially if we skip the meeting next week and take our next meeting within two weeks that we'll have some response from GAC. And whatever that response will be even if it's very not so deep in details but still we will have something that we can refer to as their point of views.

So yes. I agree that we have found ourselves being - standing on the same place for a while now. But I think that within the next upcoming weeks with this combination we can find a way to move forward. Thanks.

Phil Corwin: Yes. I agree. And further on that, I think if we can identify a - someone who has good expertise in the field of sovereign immunity and international law that it's - we're not talking about a lot of hours to generate the kind of response we need.

They're going to know - they're going to know it. They're going to know if there's a - what the current views are on sovereign immunity for IGOs and be able to - they may already have it in a law review article or some other work they've done. But I don't think we're talking about that it would take an expert in this field much time to respond to the question that we have.

So I don't see this as a major expense. And it's - but it is a critical input that's needed to complete this working group's work. So Mary, you're going to make inquiry on that and whenever we have our next meeting or prior, you're going to be able to report back on what can be done in that area. Is that correct?

Mary Wong: Hi Phil and everyone. Yes, that's correct. We'll try and get that sort of answer as soon as we possibly can. And I just wanted to say that obviously we did do some initial research, which shows that there's not a single rule when it

comes to IGO privileges and immunity. So it would be helpful I suppose to have that expanded on or concerned in some way.

I wanted to get back a little bit to Jim's earlier question with regard to our discussion right now. And I think we've come some way in our discussions the last few months. And, you know, clearly we've done a lot of work on standing. We have done a lot of preliminary work on the immunity question.

So our thinking here was that, you know, not that we can really set those aside but those are questions that would arise whether we are talking about amending the existing processes or creating a new one. So in other words, you know, that's a continue question.

So one question for the group to consider is, you know, whether irrespective of those continuing questions, whether there are other considerations that the group should be taking onboard, when it does come to thinking about the various options that we might recommend including as George reminded us on the list that it may be no recommendation or no change at all.

Phil Corwin: Sure. Sure. Yes. We're not prejudicing our final conclusions in any way with these explorations. And noting in the chat, George did note and I take note of that that we've seen instances in which IGOs have used the URDP and thereby implicitly submitted to its rules including the possibility of appeal.

And Lori said she knows someone who might have some expertise on this. And yes, we get - you know, we get more than one opinion, that's fine too. I don't think we can look to retain an expert but if there's other experts out there who can contribute something, it would be foolish not to take advantage of that. So I'd have no objection of Lori looking into that possibility.

So we're coming up two minutes to the hour. So I'm going to open the floor if anyone has any final remarks. Otherwise I think we've made some progress here. We know we're waiting on the GAC and the IGOs. We've - appear to

have a consensus that we need some outside legal input from an expert in international law and sovereign immunity.

From IGOs we are not going to have a call next week on May 6 because many of us in this working group will be at the International Trademark Association annual meeting in San Diego. And but we will have at least one or two more calls between this call and the meeting in Buenos Aires. And depending on what the GAC says, we may be seeking to have some type of interaction with them in Buenos Aires to get further clarification.

So does anyone else have anything they want to say before we conclude this call at 12:59 pm Eastern? I don't see any hands up or hear anyone. So I'm going to conclude the call. Thank you all for your participation. And look forward to speaking again in May and hopefully on the basis of some input we receive between now and then.

Man: Thank you.

Phil Corwin: Take care.

Man: Bye.

Phil Corwin: Bye bye.

Man: Bye.

Mary Wong: Thank you everybody. Thank you Phil.

Coordinator: Thanks. Thank you. We've canceled the recordings. Have a good day.

END