

**ICANN
Transcription ICANN Hyderabad
Curative Rights Protections for IGO/INGOs PDP Update
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James Bladel: Can you let me know once the recording is started? Thank you. And we can move back to the Adobe Connect. Our next session is an update on the PDP that is addressing curative rights in - for IGO-INGOs, and I believe that is chaired by - or co-chaired by Phil Corwin and Petter. Is Petter here in Hyderabad? I haven't seen him.

Woman: No he's not.

James Bladel: Petter is not here. Petter is in the chat room. Oh he's in remote. Fantastic. Okay so with that if we can get the slides queued up we'll get going here, and I will once again remind folks to please speak into the microphone and to state your name for purposes.

A lot of times we'll turn our heads to talk to other folks at the table and we will talk away from the microphones, so please be mindful of that and otherwise take it away Phil.

Philip Corwin: Getting a little Jimi Hendrix feedback here. Phil Corwin for the record. This is a fun discussion that will be the topic of some discussion at this meeting for its broader implications.

I am a Co-Chair of the working group on IGO-INGO Access to Curative Rights Policy Development Process. By way of background IGOs are international intergovernmental organizations.

INGOs are international nongovernmental organizations and curative rights policy processes are the alternatives to litigation that ICANN provides for rights holders such as the UDRP and URS, so everyone understands what we're talking about here.

Next slide please. Okay this is our timeline and this PDP was chartered by the Council to consider if existing curative rights processes, that is the UDRP and URS, needed modifications to accommodate the needs of IGOs and INGOs and if so how, or if a new narrowly tailored dispute resolution process just for IGOs and INGOs should be created.

So our timeline here is that in June 2014 we were chartered. From early 2015 through - we sought input from the GAC and the IGO coalition. There's something called the IGO small group, which is not to imply that they're small people in the group but that it's a limited number of members representing a broader number of IGOs.

They were invited to engage with the PDP. They chose not to do so. The - we made very good progress and then we actually came to an impasse because one of the key issues for our working group was that IGOs maintain that they had a very broad scope of sovereign immunity and the members of the

working group, the co-chairs and the other members - as expert as we are we have zero to no expertise on sovereign immunity generally, much less the scope of sovereign immunity for IGOs.

So we thought it would be responsible to actually find an expert and get independent input from an expert, and so we basically put our work on hold for about a year and we secured some very modest funding for the hiring of a legal expert from ICANN, a very small amount of money; nothing like the type of fees charged from the accountability process.

And we - with the assistance of Staff, and I want to particularly thank the Staff for helping us in this effort, we found some candidates and the one who - they all had sufficient expertise and background to provide input, but the one who was available to do it within our timeframe was Professor Edward Swaine now teaching at George Washington University Law School in Washington, formerly with the State Department, a recognized expert in international law.

He provided us with a very solid 25 page legal memo outlining the scope of sovereign immunity and his answer to the question, "What is the scope of sovereign immunity for IGOs?" was, "It depends.

It depends on which jurisdiction you're raising the issue in, which IGO is concerned, how it was established. Those with treaty rights have different scopes than others."

You can - his memo is available but - so what we found out - what - there is no general, universal, globally recognized consensus rule on the scope. The only way you really find out what the scope is, is for the IGO to go before a judge and assert their immunity in a particular jurisdiction and have that judge opine on what the scope is.

Now we - the - very recently just last month in October the Council received a letter from the Board conveying the proposal from the IGO small group, which differs considerably from the recommendations we're going to be coming out with.

Those recommendations - I understand the Board was simply conveying it to the Council and had not endorsed the proposal nor I believe does the proposal have former - formal endorsement of the GAC.

And at this meeting, and I think later on in the slide set we'll note the time and day, we will be - we haven't completed drafting our entire draft report and recommendations.

We have pretty much completed the Recommendations section, which in itself is 25 pages and we'll be presenting that for discussion by everyone who is interested in this at a working group meeting later during the Hyderabad meeting.

So let's go to the next slide. And this deals - while we were - as I - and let me say this. I know that my personal objective as a Co-Chair of this working group and I know my Co-Chair Petter Rindforth who's with the IPC and a former member of this Council - our goal has always been to ensure that IGOs have very robust and effective access to curative rights processes so that they can go after anyone who is abusing their names or acronyms within the domain name system, and that's always been our objective.

As I said we invited IGOs early on in our process to engage as members of this working group. They chose not to. We also - Petter and I held a very early morning breakfast with the chair and two vice chairs with the GAC at - in

Buenos Aires making the same appeal for GAC member involvement, and again there was no such involvement.

But there was this parallel effort going on with - the IGOs formed the small group in 2014 to develop their own proposal for GAC and GNSO consideration.

The - our working group solicit input from the GAC toward the end of 2015. I will say we're somewhat frustrated. For example the GAC at one point came out with advice that IGO access to curative rights processes should either be at a very nominal cost or free.

And in response our working group - Petter and I sent a response to the GAC explaining that our working group neither within the charter or just generally had no authority to create any obligation for ICANN or anyone else to pay for an IGO's administrative fees to a dispute resolution provider no matter what the DRP was going to be.

But we did want to know whether they considered the existing charges - the base filing fees for a URS or UDRP to be to fit their definition of nominal and the - I don't remember the exact answer we got but it was very equivocal.

It was not definitive in any way so when we tried to at least understand what they were asking for we were somewhat frustrated in that. I've mentioned we engaged our legal expert and got a very solid memo in my opinion back from that legal expert and it's available for everyone to review.

And then the small group proposal was sent to the GNSO and the GAC just in - a month ago but I really - I was familiar with what the IGOs were seeking really for the last two years.

I didn't see any substantial change in that formal proposal that was received last month or really very much in the way of additional detail. Next slide please.

And let me - I don't know if it's - well I'll bring it in if it's not on the slides. Okay. The recommendations we're going to be forwarding in our initial draft report differ somewhat from what the IGOs are seeking.

We're not - if we had received an expert legal report that IGOs generally regard as having very broad sovereign immunity - and the issue here is that in the UDRP in particular either party has a right of appeal to a court of mutual jurisdiction, and the IGOs feel that that's offensive to what they believe is the scope of their immunity.

If we were told that it really was that broad we would've gone ahead and created a new CRP just for these 200 plus organizations in the world, but that's not the feedback we got from the expert.

And we're really not recommending any substantive changes to the procedures or standards in the UDRP or URS because the concept of bad faith registration and use is a very broad concept and really is - when you look at the IGO proposal the grounds they're asking to have for filing a complaint - what would have to be shown is actually narrower than the concept of bad faith use so it fits well within it.

We did - now they in their proposal say that their rights arise from a different - they're different rights than trademark rights and that's correct. But in the course of our work we became very familiar with something I was not familiar with before, which is Article 6ter of the Paris Convention for the

protection of industrial property, which sounds like what does this - any of this have to do with industrial property?

But within that Convention which is an international treaty it provides for the protection of the names and acronyms of IGOs within the trademark law systems of every nation in the world that's a signatory to the Paris Convention.

And beyond that for - now for every nation of the world which is a member of the World Trade Organization, which when you combine those two lists it's close to every nation in the world - provides these protections to IGOs within their trademark law systems.

And what IGOs have to do to get those protections is a very - it's kind of just a very low speed bump. They have to send a letter to WIPO saying, "This is our name. These are our acronyms and we want protection under the Paris Convention," and that's it.

And then WIPO posts that and now there is - all the nations that are members of the WTO and signatories to the Paris Convention have the right under the Paris Convention to say, "We all recognize that IGO," but that's the rule and that is also another factor that shows that national jurisdictions have a lot to say about what they recognize in terms of IGO rights here, but most of them do accept the protections and provide them.

And on jurisdictional immunity again we found - the answer we got from our expert was that what the scope is depends on what the IGO is and which jurisdiction the appeal is being brought in.

We felt - when the IGOs say that they want a CRP that - where the appeal - and my page is reloading here for some reason so I just lost the slide. Now it's back.

What that really means is that they don't want domain registrants to have whatever legal rights they have under the laws of the jurisdiction that are mutual for - in terms of residence or the registrar they used.

And our view is that these CRPs were set up not as substitutes for adjudication but as lower cost, faster alternatives to adjudication. And, number one, ICANN has no authority to go around saying, "Hey registrant you don't have those legal rights. We're extinguishing them."

And, two, we don't think that would be particularly effective. For example if I were to register a domain called whoishealthy dot whatever and I'm in a - U.S. registrant through a U.S. registrar and it was a domain dedicated to tips on how to stay healthy.

But the World Health Organization thought for some reason it was infringing and brought a CRP action against me, and for some reason the panelists made an incorrect decision and I lost the UDRP.

I would then - if I thought I had wanted to keep the domain and wanted to appeal decision, I would go to a U.S. court and assert my rights under the Anti-Cybersquatting Protection Act.

And the IGO would go in and say, "We have, you know," if we had created this rule they would go in and say, "Well ICANN had said, you know, they have no right to - this registrant has no right to assert its legal rights under U.S. law."

And we suspect that the judge might say, “Who is this nonprofit corporation in California to tell me that I have no jurisdiction in this case, and that this individual has lost their legal rights within the United States provided by a statute written by Congress?”

So that was the - kind of the issues we were dealing with so I want to present both sides here in what I hope is an objective way. But we did - we found examples in fact where - we found examples where IGOs had used the UDRP in the past despite the - apparently they overcame their concerns and decided it was worth using.

And we found examples where IGOs had brought the action through an agent or a licensee. So what we’ve basically recommended is that if you’re an IGO and you want to use the existing CRPs you don’t need to register any trademarks in your name or acronym.

If you have sent this letter to WIPO to assert your Paris Convention rights that’s all you need for standing. Just show us that you’ve asserted your Paris Convention rights.

You have standing without a trademark and if you want to insulate your sovereign immunity, we’re recommending that all the dispute resolution providers recognize an action brought by an agent or licensee of an IGO so the IGO has - doesn’t have to bring it directly.

Now this - the big sticking point here which is the sovereign immunity and the right of mutual jurisdiction where it would actually arise in such a - in probability in such a small number of cases.

It would be where an IGO brought a UDRP, won the UDRP and the registrant felt that they had gotten a raw deal and went to the court of mutual jurisdiction, which would not likely happen in most cases.

But that's the situation and when you see our report and recommendation you'll see we're still wrestling with the issue of what happens with - the IGO goes into the court and says, "Judge we don't - we shouldn't be in this courtroom because we have immunity in this jurisdiction."

And if - the question is if the judge doesn't agree then that is a problem, but that's what our legal expert says is that it has to be determined jurisdiction by jurisdiction.

But if the judge agrees what happens then? Now some members of our working group are of the view that if that happens, if the IGO doesn't want to go along in a court proceeding and successfully asserts its immunity, that the original decision should just be initiated as if nothing ever happened and we're back to status quo.

Ante - the other option which we're - and we're putting both options out for public comment - is that in that narrow instance we should create some type of arbitration proceeding so that the IGO can participate in an appeal, because if it's shown in the UDRP that infringement is going on or a transgression of its rights is going on, that continuing transgression shouldn't be allowed to continue.

There should be some forum where it gets a second bite at the apple, and we're specifically asking for community input on that on what should happen in that case. Next slide please.

James Bladel: Phil we want to - Phil sorry to interrupt.

Philip Corwin: Yes.

James Bladel: We just want to make sure that we have time for Q&A so...

((Crosstalk))

Philip Corwin: Okay I'll speed it up.

James Bladel: Okay.

Philip Corwin: Okay. I'll be brief here. Yes the - now this - part of a bigger issue. There was a previous PDP involving the IGOs, a PDP that ended early in 2014 before our charter was created.

That was on protections basically blocking of IGO names and acronyms in new TLDs where the GNSO - the prior PDP working group came up with recommendations.

The GAC came up with advice contrary to the recommendations and that was two years ago. And the Board hasn't - has yet to make any decision on whether to accept or reject either the GNSO recommendations or the GAC advice.

The Board for about two years began discussions that were not transparent with just the GAC and the IGO small group to discuss that disagreement. The IGOs brought into those discussions this curative rights issue, which in my opinion at that point the Board should've pointed out that the discussions were

just on the prior PDP and if they - and encouraged the IGOs to participate in our working group but the Board chose not to do that.

And that's kind of led up to the letter that we got from the Board last month conveying but not endorsing the IGO proposal. And in terms of where we are in the timeline as I said we're going to - we plan on publishing our full preliminary report and recommendations before the end of this year.

And that'll kick off a 40-day public comment period and then we'll take all the comments into account and hope to issue our - I don't know if we'll make it before Copenhagen because Copenhagen is early March but maybe by the end of the first quarter.

And certainly by Copenhagen we'll be able to tell the community what our final report is going to say even if the drafting is not completed. Are there any more slides here or is this it?

Oh yes. Well, just as I mentioned, we're having an hour and a half working group session Monday from bright and early at 9:00 am in this very hall, Hall 6, so everyone who's interested in this topic can come and participate.

We're still taking input and we're going to be taking input through the whole public comment period. Nothing's locked in stone yet. Let me stop there and see if my co-chair has any remarks he'd like to deliver and then we can open it up for comments and questions. Thank you.

James Bladel: Thanks Phil. Petter are you on the line and if so do you have anything you'd like to add? I can see he's in the Adobe.

Philip Corwin: And James I want to add one more sentence.

James Bladel: Yes.

Philip Corwin: There was a call that you and I and some others were on last week with the Board and GAC members about this topic. It got a little heated but I did have the opportunity - the other day I ran into the chair of the GAC in the hallway and we had a very congenial 20 minute discussion of this issue.

I think he heard some perspective he hadn't heard before, and hopefully this can all be worked out in a congenial and constructive way as we continue discussions with both the Board and the GAC. Thank you.

James Bladel: Thanks Phil. And I'd just note that in the chat Petter said that he appreciated your presentation. He had nothing more to add. First up in the queue is Heather.

Heather Forrest: Thanks James and thanks Phil and Petter by distance. So just two points and I'll be happy to raise these in the working group meeting as well. I'm a bit concerned that the exports - expert's report is silent on Paris Convention Article 6ter and yet this is really a fundamental basis of the group's recommendations.

I think from a substantive point of view the first limb of the UDRP is being read as a purely standing question, but standing is based on having a substantive legal right.

And I don't want to necessarily open a 6ter can of worms here but 6ter doesn't give a substantive legal right. What 6ter says is it prevents parties from gaining a substantive legal right.

So I suppose two questions come out of that. One, has Professor Swaine seen your interim report? And, two, when will - when can we expect public comment because I think that'll be an interesting process?

Second point is given that there is no single overarching rule of international law in the question of sovereign immunity for IGOs, and seeing as how this impacts on the RPM PDP and that it fundamentally alters the interpretation of limb of the UDRP and by corollary the URS, Phil you're the glue that holds it all together since you're involved in both of those initiatives. Has the working group referred any questions to the RPM PDP? Thanks.

Philip Corwin: Okay let me see if I can remember everything you just raised. The Paris Convention was outside the scope of what Professor Swaine was asked to provide input on, which was what is the generally recognized scope of immunity for international intergovernmental organization.

I would say what we've done here - and I think this illustrates the fact that our working group has - while not agreeing with the IGOs in terms of what they're requesting it illustrates the fact that we've tried to go the extra mile to give them ready access to an alternative to adjudication through curative rights process, where we've said even though everyone else has to show a trademark right to bring a UDRP or URS, for you folks since there is this connection with national trademark protections through the Paris Convention we'll deem that sufficient to be standing to bring an action.

Now it's - I'm sure we'll get some input on this on the report. I don't know if people have concerns about this but it was an effort to provide them with ready standing to bring an action without having to go to the time and expense of registering trademarks in their names and acronyms.

And on the second one the public comment will - period will open as soon as we publish our preliminary report and recommendations, which we anticipate before - being before December 31 of this year.

We've got a - pretty complete draft recommendations. The rest - we've got Professor Swaine's memo and the rest of the report will just be about the charter, the history of the working group, the background of the issues.

So - and Staff is working on that but they've done a yeoman's work on this and that'll be ready in the next few weeks I believe. We haven't formally asked the other working group for any input on this or referred in them.

But clearly any member of that working group can comment on this and people can opine on the connection between the two PDPs. I don't believe that anything we're doing is going to in any way undermine or unduly influence the outcome of the RPM review, but if people are concerned about that that's what the comment period is for.

James Bladel: And Phil maybe you addressed this other point that Heather raised and maybe I just missed it, but you are inviting your legal advisor/your legal expert to weigh in in the comment period, or you're going to send the interim report to him for his review first before putting it out for public comment? I guess I didn't pick up on that connection.

Philip Corwin: Well the legal expert's job is done. We'll be happy to send him a - I'm sure he'll be interested to see what use we've made of his memo in our draft report and recommendation.

And he like anyone in the world can provide input or if he thinks we've gotten something wrong in reliance in his report he can do that. So I think that's a

good suggestion and I'll note right here and ask Staff to note that we - we'll definitely communicate directly our report to Professor Swaine and invite him to weigh in. I think that's a good suggestion.

James Bladel: Thanks. Thanks Phil. Thanks Heather. Paul?

Philip Corwin: And I think we'll - we can even invite him to distribute it to other academic - international law so that they know that this is going on and that they have an ability to comment if they wish to.

Paul McGrady: McGrady. So I'd like to take us out of the weeds and into the fairway for a minute if we - if I can. This reminds me of one of my favorite movies. There's a scene in Austin Powers where one of the henchmen is screaming as he's about to be run over by one of the machines that flatten concrete, except for he's 50 feet away from it and the machine's going at 1 mile an hour and there's plenty of room to get out of the way.

But I'm a little concerned that we're setting ourselves up to scream in front of the bulldozer here, because it seems that this is heading towards a confrontation with the GAC over this issue unless something changes.

Certainly the tone of the draft letter - and I don't know if it's appropriate to talk about that now but the tone of the draft letter back to the Board is pretty strident, right.

And I'm not sure that we have exhausted all opportunities to try to bring the GAC to the table, and so I guess I just would like to take the pulse of the people around the table.

I don't have anything specific today to offer with my GNSO Council hat on for the IPC but I would like to get a sense of is - whether, you know, is there still an opportunity through some mechanism and we have some new mechanisms out there to try to head this confrontation off at the pass?

The reality of it is, is that in the instructions to the bylaws, right, the revised bylaws we were promised that we, you know, essentially the Board would not be forced to take GAC advice without a super majority vote down.

Those instructions didn't actually get followed and the bylaws don't actually say that. And so the Board is now in a pickle because they have to either super majority reject us or super majority or a whatever reject the GAC and the board last week that there was - the GAC actually did think that the GNSO was in the loop on those conversations and were well aware of, you know, what the status of the proposal was. So I think there's a little bit of a concern from the GAC side that perhaps they're being a little bit misled on the involvement of the GNSO.

I agree with you that this is going to be something that we need to be careful about how we respond because, you know, there's so many - we have concerns about precedent that it might have but we also need to come to - we need to get this off the table. It's been there for three years. And from a registry operator perspective, we've got reservations that were supposed to be temporary for about three months, and three years down the track, they're still reserved.

So I agree with you, we need to find a way forward with this. The curative rights, you know, we potentially have an opportunity because the recommendations haven't finalized yet but we still have some challenges with

the Red Cross and the IGO issues because that recommendation has already been sitting with the board for so long.

James Bladel: So we're over time but I see we have a queue forming and this is, as Paul indicated, this is an important topic, so let's move through. Phil, you have your hand up but we also have a queue up front. So can I go with Milton first? Okay. Milton?

Milton Mueller: There we go. Milton Mueller, Georgia Tech. I am not completely familiar with the intricacies of how this has happened, I'm just a community member that wants to make it clear to the council that this cannot be allowed to happen. And whatever response you think is appropriate, I don't think the response should be accommodating or the idea that you have to somehow make people who don't participate in the proper policy process happy that they can somehow circumvent the process and get what they want.

And this is just so damaging for this to happen right after the transition. It just - it's the old ICANN, it's the unaccountable ICANN, and it's the board that's more responsible for this than anybody. I don't know how to tell you to respond to this but I just hope that your response is as strong as possible and that you're standing up for appropriate bottom-up process and that you don't allow private deals to be negotiated between the board and any other party, not just the GAC. Thank you.

James Bladel: Thanks, Milton. I think - and to Paul's point, the key is to do that and to lay that out clearly without being confrontational -- unnecessarily confrontational. Thomas.

Thomas Rickert: Thanks, James. Thomas Rickert for the record. I happen to be the chair of the first PDP working group on IGO and INGO protections.

James Bladel: You poor, poor man. So this is your fault?

Thomas Rickert: I was about to say that. I sort of feel guilty for this mess that we're all in. No, but joking aside, the first phase of the PDP work on IGO/INGO names already was suffering from the issue that there was a disconnect between the GAC and the IGO/INGO's wishes and what we could deliver as a community. So while we did have a very collegial work with the gentleman standing right behind me, Stéphane from the Red Cross, we were trying to establish what legal rights there were for these organizations.

Because certainly if there are confirmed rights for these organizations, then there can be protections. We were struggling with the fact that there was, at least from our perspective, a perceived overreach from the IGOs. And just speaking in personal capacity, but I think that the root cause of all this is that the IGOs at the time had issues advice to the GAC, and the GAC has then issued GAC advice based on legal - a legal assessment, particularly with respect to 6ter that Heather correctly referred to, that just did not offer the protections that the IGOs claimed. And therefore our hands were tied in the first PDP.

And I think the issue was that the GAC had blindly followed the legal assessment of the IGOs. And I think it's not appropriate nor possible for the GNSO to fix an issue that is rooted in bad GAC advice. So I think that communication is key. I think it would be unfortunate if we added an additional layer of complexity with more recommendations coming out of the GNSO that the board then has to weigh against GAC advice.

So I think it would be great, at least this would be my recommendation to reach out the GAC and the board, explain the situation. And I think that Phil

has done a great job in explaining what they did, how diligent they were in order to help, right? We're not there to block anyone's wishes but we can't grant rights where there are none because otherwise trademark holders would legitimately knock at ICANN's door as well and ask for more protection that might not be founded in law.

And then maybe a solution can be found after communication if also the GAC hopefully would recognize that maybe their GAC advice needs to be rectified or new advice could be issued that helps mitigate the gap between the IGOs and the government's wishes and what the GNSO can offer.

James Bladel: Thanks, Thomas. Stéphane?

Stéphane Hankins: Yes good morning. Thank you very much. So Stéphane Hankins, International Committee of the Red Cross for the record. Well I wanted to take the floor because I noted that the issue of the Red Cross/Red Crescent protections is, as Donna has mentioned, are not on the agenda of this week's GNSO discussions, and I feel that it is important that indeed this conversation does take place within the GNSO Council.

The Red Cross/Red Crescent issues of course are of a distinct nature and that distinctiveness has been recognized both within the GAC but also other ICANN constituencies and ICANN's board itself. And of course the Red Cross/ Red Crescent protections are outside of the scope of the current discussions in regard to the protections of the IGO acronyms.

But I still think that it is important that the council have a conversation about this. It has been now two years and half since the board requested the GAC and the GNSO to work out the differences between the GAC's longstanding advice for the protection of the Red Cross/ Red Crescent names, designations,

and on the other hand the recommendations of the GNSO PDP. And it's really extremely timely now for a resolution to be found.

I would like just to refer here to the recent consultation that was held between the board and the GAC and the GNSO on the issue of the IGO acronyms and the Red Cross/Red Crescent names and just make - I take three points from that. One of them was the pronouncement by the chairman of ICANN's board who suggested that, you know, not only a solution needed to be found but among the solutions one might be just to scrap or to forget or to leave aside both the GNSO PDP recommendations and the GAC advice and to decide without these on the table.

The second point I want to take from this conversation was that several GAC members intervened to suggest that it was, you know, not only important to find a resolution of the Red Cross/ Red Crescent request soonest but also that finding a resolution would also give a clear signal that ICANN circles and the ICANN is able to resolve differences of this nature.

And the third point that I wanted to raise was the words of the GAC chair during that call who was asking indeed what needs to happen in the case there is a deadlock on an issue which governments within the GAC consider to be within the purview of global public interest. And I believe the conclusion here was that if, you know, on an issue which relates to a recognized global public interest by governments, in this case protections recognized under international law, then there might be no other options than to take this out of the hands of ICANN.

So I think, you know, this really demonstrates that it's high time I think to review this and indeed to find a solution to be able to take this off of the table, as was mentioned. So I'm hoping that, you know, here in Hyderabad those

consultations can take place and that may finally after five years of effort this can finally be resolved. Thank you.

James Bladel: Thank you. And I note that we still have a couple of speakers in the queue but I think Heather you wanted to respond.

Heather Forrest: Thanks, James. Specifically before we lose the helpful comments that were made by the representative of the Red Cross, I think it's incumbent on us as leadership of the council to make clear that we have not let matters affecting the Red Cross drop off of our radar. I sort of heard that as an undertone that perhaps that you feel you've been forgotten, and you certainly haven't.

On the specific matters faced by the Red Cross, we very much appreciated the Red Cross' attendance at our meeting immediately after Marrakesh to inform the council better of this, as you say, five-year long history of the issues that are faced, specifically the charter of the curative rights PDP that was just discussed and provoked some of this discussion wasn't set up to deal with some of these issues. So that certainly explains why that group has not tackled the specific questions you've raised.

And in terms of let's say demonstrating that this is very much on our radar, you say it's not on our agenda, we have had discussions last week -- they were reported in the online media -- with the board and the chair of the GAC about issues including the request from the Red Cross. And we've made it clear from a GNSO perspective that we have to work within GNSO procedures.

And while we appreciate the time and effort that the Red Cross has put into raising this issue here today, I'm afraid we're not in a position as the GNSO Council to take action on that this week. We've made it clear that we're awaiting some input from the board. We're working collaboratively with our

colleagues in the board and the GAC to try and understand a process, a way forward that fits within our procedurally requirements as the GNSO.

I've said this publicly in the call on last Friday that I think we have a perception that the GNSO is being pitched here as the difficult party in this discussion, or the obstructive party, and I can assure you we are not trying to be so. We're doing the best we can within our processes and will continue to do so. Thank you.

James Bladel: Thanks, Heather. And I think just worth noting that it was our letter that restarted this issue, and I shudder to think where we would be right now had we not taken that initiative to put this back on the front burner several months ago. So it is not something that has completely fallen off of our radar.

Next up is Phil and then Paul. And just a note, folks, we're 20 minutes over. We have, you know as you mentioned, as you can see a very full agenda so we are trying to get through this. So if we can be as brief as possible and make sure we're not circling back over.

Phil Corwin: Phil Corwin. Three points real quick. I should have - one, I should have mentioned in my -- excuse me -- my original narrative that in regard to INGOs we determined early on that they didn't need any special process, that they stood in the same shoes as any other private party. And we came back to council and had our charter amended in that regard.

Second, so far as the draft letter to the board, I know often when I do a letter and article, I do a first draft and I say, "Okay now you vented, now let's tone it down." But I think our letter should be firm but also not look to create problems and leave the door open for constructive solutions. And three, in regard to - again, there's two separate issues, the preventative protections has a

history, has conflicting council recommendations and GAC advice, but the CRP one is still going on.

So that in regard to the suggestion that negotiations should begin to resolve the CRP issue, while our working group is still completing its work, personally I would do everything I could to prevent that from happening, not because I'm so personally invested in our recommendations, if we get public comment that say we got something wrong and need to adjust, we'll do that, but it would just set a terrible precedent early on in this new post-transition ICANN of having just why would anyone volunteer to put a year or two or more into a working group if toward the end of the process it could all be upended and some alternative solution reached before the working group even had a chance to put its position out for public comment. It would be really a bad development and shouldn't be permitted to happen. Thanks.

James Bladel: Yes thanks, Phil. And that's something I think we've been keeping in mind. Even using the process that we have to go back and revisit PDPs, could have a chilling effect on future participation. Sorry, Paul, you're up next.

Paul McGrady: Paul McGrady. Thank you, Thomas, for your comments and the background there. I do agree that there is concern for scope creep. I don't think it's trademark owners showing up demanding more rights, it's - that's a handy boogeyman but I don't necessarily think that's really what we need to be concerned about, but definitely scope creep here.

Milton, thank you for your wise words as well. I think we have to thread the needle here because we don't want to do anything to undermine the GNSO policy development role, but at the same time, forcing the board to vote between us and the GAC, and if it doesn't go our way that's not going to be great news either. And so we have a needle-threading exercise. Donna, thank

you for joining the bandwagon of peace, and I hope that over the coming days we'll be able to find a way to move forward bringing people into dialogue and hopefully finding a way forward on both of these very important topics.

Thanks.

James Bladel: Okay thanks. And a just a note that we burned up quite a bit of the time that we had allocated for the next topic, so let's close this session and I'm waiting then for thumbs up that we're ready to being the next session, and there it is. Okay.

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