

**ICANN
Transcription
IGO-INGO Curative Rights Protection PDP WG Meeting
Thursday, 01 September 2016 at 16:00 UTC**

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Attendees:

David Maher - PIR
George Kirikos - Individual
Petter Rindforth - IPC
Phil Corwin - BC
Jay Chapman – Individual
Paul Tattersfiled – Individual
Mason Cole – RySG
Lori Schulman - IPC
Jim Bikoff - IPC
Holly Lance - IPC

Apologies:

Osvaldo Novoa
Kathy Kleiman
Steve Chan (Staff)

ICANN staff:

Mary Wong
Glen de Saint Gery
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you, (Marie). Good morning, good afternoon and good evening. Welcome to the IGO INGO Curative Rights Protection Mechanisms held on 1 September 2016.

On the call today we have George Kirikos, Petter Rindforth, Jay Chapman, Mason Cole, Jim Bikoff, Paul Tattersfield, David Maher and Holly Lance. We have listed apologies from Osvaldo Novoa, and Steve Chan.

From staff we have Mary Wong, Glen de Saint Géry 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. I'll hand it back over to you, Petter.

Petter Rindforth: Thank you. Petter here. Well first the traditional question if there is any updates on statements of interest? Seeing no hands up. Okay so let's go on to the agenda.

And before we go into the specific points there, just reach out to Mary, do we have or can we expect in the next few days the small group proposal?

Mary Wong: Hi, Petter, everyone. This is Mary from staff apologies for my voice. I actually have a terrible cold so hopefully I'm coming across clearly enough. In answer to your question, Petter, I don't know. I don't know that anyone on staff really knows. All we know is that as you saw, as everyone saw, there was a note from Chris Disspain to the GNSO Council that we forwarded to this working group which states that we should be in a position to receive that proposal very shortly.

In addition, the Board is expected to respond to the GNSO Council's letter that was sent at the end of May on which there was some discussions in June in Helsinki. But I don't have a timeline for either of those things just yet.

Petter Rindforth: Okay thank you. And also referring to that letter, Chris also stated that he noted that in the NGPC's June 2014 letter it indicates that no action would be taken with respect to GAC advice on curative rights protections for IGOs and INGOs prior to the conclusion of, and I presume he referred to are working group there.

So okay. Well again thanks, Mary and the staff for what you call the draft skeleton outline or our initial report. It's very helpful to see what we need to fill in with the work that has been done and our conclusions. So and I had planned just to ask you, Mary, to say two or three words about this skeleton outline but – and is it okay for you, just make it short so that you don't have to take too much of your voice.

Mary Wong: Thanks very much, Petter. That is very kind. I will try my best and I was saying to Terri before we started the call, try not to cough into the microphone because that would be very awful for everybody.

But I think a few points on this document that you and Phil already know as the cochairs, that first of all the template is basically the template that is used for all GNSO working group reports especially PDP working group reports. The actual formatting may look a little different to those that have been following GNSO policy development for some time. But the different sections and what they are intended to do remain the same.

So what I try to do is to put in fairly high level points and pointers in those sections that would indicate to you folks at this stage in our deliberations where certain things might go. For example, the sort of discussions we've had, how many meetings, what we thought about in coming up with our initial recommendations, and of course what those recommendations are.

And in this respect, Petter, Phil and everybody I think here is where we got our substantive agenda for today under item Number 2, because we did have

some previous discussions in some somewhat preliminary conclusions but in going through all of those staff didn't feel that we actually either had a handle on some of them as in some kind of concrete consensus solution, for example on jurisdiction community and on others such as standing because we have those discussions quite some time ago.

Given what we did then and where we are now with other discussions, it seems to us that we might need to at least review and possibly revisit that particular discussion and so hence you have agenda item Number 2 and the 3 sub points under that followed by the start of crafting what the actual recommendations might look like. Is that helpful, Petter?

Petter Rindforth: Thanks, Mary. And also I see that section number six in the version I looked at where it states what our preliminary recommendations should include. And of course we have to reply to the initial question whether to amend the UDRP or the URS to allow access to and use of this mechanism by IGOs and INGOs, etcetera, or If there is no need for any actions if we should create a new policy.

And the reasons for our working group recommendations. And of course one initial point there is also to explain why we at a rather early-stage come to the conclusion that there were no changes or new proposals relating to INGOs should be noted.

And some of the questions we have discussed and if we need to formulate in our recommendations if no change at all is recommended to the UDRP URS, which I feel that it is the majority conclusion of our working group, and I see no hands up saying no to that, it means that IGOs would have to rely on, well, trademark rights or what we may in our recommendation refer to as similar to the trademark rights. And there we have the Paris Convention.

And that's pointed in Point 2 there, if another ground is recommended, not trademark, described when, how and on what grounds and other legal basis trademark rights can be asserted.

And we also need to, before we come to a conclusion we also need to discuss one extra time I think if we think of some kind of change with an arbitral appeal or at least add that as a second step then we have the expert report that said that there are quite differences between national court decisions around the world.

From my personal point of view and conclusion on that is that we have to leave it to each national court to decide on that step meaning again that there is no need for any new dispute resolution policy or making – or make any changes in the current UDRP or URS.

Then also we need to find out if there are any open questions, whether it's not the working group consensus and list them or specific community input. But the for open up for inputs and comments, it seems that we are fairly convinced on and have a consensus on our conclusions for our working group. But I will leave the floor open for comments.

Yes, Phil.

Phil Corwin: Yes, Phil for the record. Thanks, Petter, for setting that up and thank you, Mary, for providing this skeletal outline for our draft report and recommendations. It is, as I noted, it's the skeleton common now we have to put the meat on the bones.

On the issues before us I think we, you know, it's my impression let me say or at this is my personal impression subject to feedback from the group and then we will get into the actual drafting of the report and recommendations, get into the nuances of some of these issues, but that we've, early on we rejected

needing to do anything for INGOs and we went back to the Council on that. We need to record that history somewhere in this report.

We decided that even in the absence of trademarking a name or acronym of an IGO it would have standing to bring a UDRP or URS if it had applied for protection under Article 6ter.

And I think on the question generally of whether we have to amend either the UDRP or URS, I think our basic bias is to provide guidance unless we believe when looking at the actual language of the rights created, for example, by Article 6ter or by the formal language of the existing RPMs, whether we need to go in and actually suggest some minor drafting change in the actual policy. Other than that we want to veer towards providing guidance.

I believe that Article 6ter establishes protection in the trademark regimes of the signatory nations and the WTO nations. We can regard them as equivalent to trademark rights, at least in terms of protection afforded them and see these are rights protection mechanisms, I think they will suffice for trademark.

I think we have to look at the actual language of Article 6ter again and see if there is a significant variation that would require some special treatment from the rights created – the trademark rights that are basis of standing now.

And on how to deal with the sovereign immunity, agree with Petter, we've come to the conclusion that there is no universal global rule on the scope of immunity or whether it exists and that the only way to know what it would be for any particular action would be to go to a court in a particular jurisdiction where the dispute arises.

Of course the court would only get involved in an appeal from a decision. And we've talked about agency or licensing of rights as a further protective mechanism and other things. We can get into all those nuances when we

start drafting respect to the maximum extent possible, the potential sovereign immunity rights of the IGOs.

So I hope that's helpful. That's just my quick summary of where I think this group is at. And of course we have to get into greater detail as we start drafting the actual language of the report and work out what that's going to be. Thanks very much.

Petter Rindforth: Thanks, Phil. And before I leave over to Mary, just comment, fully agree with your comments. And I think that what we need to do is to clearly, and this would be some extra points on this document, but we really need to clearly describe how we have discussed and come to each conclusion.

And one of them is of course the sovereign immunity appeal case where we in fact, we have the expert – external expert report with conclusions was that there is no 100% sure solution on that. So independently if we should create some kind of specific appeal stage of dispute resolution policy it could still be built in completely different way in a national court independently on the country and jurisdiction.

So I think it's important that we describe in detail our discussion and the plus and minus of each possible solution to declare and describe in a clear way how we come up with our conclusions. Yes, Mary, please.

Mary Wong: Thanks, Petter. And thanks, Phil. This is Mary again from staff. So a couple of thoughts from this downside as we were trying to get into the actual drafting in the hope that we can offer the working group an initial draft. Because as I think everyone knows it's a lot easier to see suggested language and react to that than to propose in a vacuum.

On the question of outstanding, we did go back and look at Article 6ter and in connection with some of the discussions that I understand was going on in the GAC in the small group about the nature of the legal rights of IGOs, it

seems to us, and they want to put in the caveat that I'm certainly not the world expert on this, but that while 6ter confers a certain set of protections over IGOs, it doesn't confer substantive trademark rights, which can only be done through national legal systems.

So in other words, an IGO that files the requisite notification under 6ter does get the protections that that treaty allows in those countries to which it applies. So in those countries a third party technically could not register a trademark that is the IGO name, flag or acronym.

That, however, seems to us to be not the same as saying that the IGO actually has a substantive trademark right. And so while this point has come up previously, I think when we first discussed this point, from the staff side we did want to be sure as to whether or not that is or is not the legal position and in either case what the working group's recommendation and belief about that particular point is.

On the issue of jurisdictional immunity, what we then wanted to offer is for the working group to come to a point where you feel that you have gone through all the policy options, some of whom were identified by Professor Swaine. This includes looking at the UNICTRAL model rules that Professor Swaine also suggested and looking at possible modifications, as Phil has noted.

So all this I think is summarizing what we've talked about before. But I should say that from a staff side we don't really feel that we have the very concrete consensus and guidance to actually phrase the specific recommendation at this point. Thank you Petter.

Petter Rindforth: Thanks Mary. And I also see on – what I would like to state, and I think we all agree with that is that Article 6ter is not exactly the same as traditional trademark rights, and it's not intended to be a trademark right in that aspect. But it is some kind of protection for the name and the acronym.

And also having – talking to IGOs, those that we have on a couple of our meetings and also others during ICANN meetings, I have the feeling that what they really want to do is not fully trademark protection but the possibility to stop someone from registering and misusing their protected names.

And I also see from the chat here that, yes, as George Kirikos said, Article 6ter is more about blocking rights. And it doesn't mean – doesn't make it until the blocking if the proposed trademark application isn't going to cause confusion, etcetera.

So, yes, we don't, I mean, Article 6ter is not 100% trademark rights cannot be compared to trademark rights in that aspect. But it's the – it's in fact an existing rights for IGOs.

And then what we may need to, at least to comment in our report, if we refer to Article 6ter is that the fact that GAC has provided a list of their own protected IGOs that are not related to Article 6ter. And frankly I'm not so sure what they base that list on. When it comes to identification of IGOs, for instance, that is the list that will be used by ICANN.

So if we still refer to Article 6ter we need to make some comments on the two different lists and why we have chosen Article 6ter. And again, personally, I think Article 6ter is the most jurisdictionally accepted and most close to the trademark protection that we can find when it comes to IGOs.

Yes, Phil.

Phil Corwin: Yes, thank you Petter. Phil for the record. I've always been a very strong advocate of the view that ICANN have some obligation to – if it's going to provide additional protections to have them keyed to existing law that ICANN has no ability to create rights that don't exist in existing law.

But Article 6ter, I think we all need to – it's been quite a while more than a year since we really looked at that specific language and we need to go back to it as we are drafting here. And I hope later in this call when we get into the actual mechanics of the drafting. It sounded from what Mary said that staff may be doing some initial work which cochairs can then review and then put out once we've reviewed it to the full working group.

But Article 6ter, you know, yes, creates blocking rights but if somehow they fail to block something or if something is out there that an IGO deals is infringing and deceiving the public my impression was they have some additional rights. But I wonder if all of that is that's important because we are just talking about the very limited protections of the UDRP and URS which the requirements are that the complainant must establish that the domain was registered and is being used in bad faith. The only difference is the burden of proof in the two RPMs.

And we're just talking about conferring standing. So I'm not sure we need exact confluence between national regime trademark rights and the rights conferred by Article 6ter since we're only talking about establishing standing. I think we have to look at, again Article 6ter in the exact language to see – decide whether we can just provide guidance to examiners on this point or whether we actually have to suggest an amendment to the respective policies.

Well, UDRP is a policy; URS right now is just an implementation detail, has been labeled as such. But I think you get my drift. That were just talking about standing and not creating a whole class of protections. The protections under those RPMs are limited. With URS it allows for suspension through the remainder of the registration term. For UDRP the remedy is extinguishment of the domain or transfer of the domain to the complainant.

So I think for standing within that framework it's sufficiently related to national trademark regimes to confer standing. Thank you.

Petter Rindforth: Thanks, Phil. And I see Mary, you have your hand up, but I'll just read first what you put in the chat room on the 6ter language. (Can't) response to refuse or invalidate the registration and to prohibit by appropriate measures the use without authorization by the competent authorities either as trademarks or as elements of trademarks.

And then George Kirikos says that if one consults with the US (PTO) trademark database and such as for Article 6ter there are 704 marks under the – well, I don't know how you spell it out – the (89,000) series that are in the database.

So, yes, Mary.

Mary Wong: Thanks, Petter. And thanks, Phil. Actually you probably put it much more clearly than I did. And I think one of the threshold questions that staff has is when we talk about standing do we simply mean the right to file a complaint or the ability to file a complaint but the substantive grounds still need to be proven? Or do we mean that, when we say standing, that that personal entity has the necessary rights?

If it is the latter then looking at the wording of the UDRP and the URS the question further then would be, as you put it, whether or not this needs to be modified to make clear that we are talking about an Article 6ter protection or whether it's sufficient to have some kind of policy guidance that's authoritative.

So that really was I think the threshold question or the other threshold question for us as well.

Petter Rindforth: Thanks, Mary. If I understand you correctly, and is at least as I see it, this is the first (unintelligible) steps to identify the legal rights to use the UDRP or the URS as such. And then of course it's each IGO still have to make it

somewhat clear that the protected name has been misused and that the holder has no rights to it.

And I think it's also important that we don't create either by recommendations or specifically if we turn out to do a new or additional dispute resolution process, that we don't create any protection for IGOs that are extending what they have today.

And I think that's also what we have heard during our time of work both from the ICANN Board and from some GAC members that have referred to their own country names. And so still, I think that some kind of guidance can still be the best way to solve it.

And also what I have understand specifically when we discuss this issue with WIPO, I think the most problematic part of it for those where the sovereign immunity, the appeal step so if we can conclude that it's enough with the Article 6ter guidance, we still need to describe in detail in our report and to come to some kind of – and how we come to the conclusion that there is no need for a specific neutral second step appeal because that's, again, that's our understand is the main problem for the IGOs.

And I see Phil in the chat room – Phil said, "When I say standing I mean, the qualification to initiate the UDRP or URS due to rights in a name or acronym that is identical or confusingly similar to the allegedly infringing domains."

And Mary says, "So basically a policy guidance authoritative that say trademark rights under the UDRP and URS includes for IGOs only the protection under 6ter. If they fulfill the filing and notification requirements." Yes, that's also my conclusion.

Phil says, "Article 6ter clearly creates certain rights in signatory and WTO nations." But I see rather active chat room. Someone that wants to make their voice heard? Okay.

So, yes, George sends a note here also on WIPO views which is also very broad making standing fairly easy for IGOs. And, George, what do you mean with that? Is it – makes it clear on the – on identification for IGOs or?

George Kirikos: George Kirikos here for the transcript.

Petter Rindforth: Yes.

George Kirikos: It just talks about what needs to be shown by the complainant in order to assert common law or unregistered trademark rights. And it provides consensus view in some cases. And so I think it wouldn't be very hard for IGOs to demonstrate that, you know, if the acronym or the name of the IGO is the mark under question that they'd have, you know, does it meet the first part of the three-pronged UDRP test.

Petter Rindforth: Okay, yes. Yes, I think you're perfectly right there. I mean, there have been some cases we can look at the initial UDRP which is where there was not the traditional registered word trademarks, but the names of – the personal names of famous writers or artists, they were actually identified as a protected trademark. And also in some cases company names that had been so well known that they are not just the identification of a specific company as a company name but also become a trademark.

And also, we have to have in mind when we're still talking about the first step to identify the rights on – that makes a base for the possibility to file a UDRP or URS. As such it's, we're not talking about name protections in the same country as the domain holder or even that kind of well-known trademarks. It's just that you need to identify that you have trademark rights.

And in fact not even that you have trademark rights that are prior to the registration of – or to dispute the domain name. It's – in that space it's quite – at least when it comes to traditional registered or nonregistered trademarks,

it's quite simple just to identify, to have a ground as such to deal with these disputes. And then when it comes to Step 2 and 3, in all cases you have to see what actions have been taken by the domain holder.

And as said, it's important that we have the same way to deal with disputes when it comes to IGOs, at least from my point of view. And Mary says, "We just wanted to raise our concern over the possible distinction between a right to prevent third party registrations and their substantive legal right that can be enforced."

Yes, and as we were in to here, we have to go back and clearly look at Article 6ter. And maybe there are even some kind of documents regarding to Article 6ter that the preparatory documents and so that can further give us indication of what it was meant so that we can be sure that we refer to the right legal base.

Paul Tattersfield says that, "This is reinforced in 1c which goes on to mention cases where 1a shall not apply or when it is not – and is probably not of such a nature that as to mislead the public as to the existence of a connection between the use and organization."

And before I go on there were – yes, I mean, that's the second step of the UDRP that deals with how the domain name is used. So, I mean, the first step to identify some kind of name rights doesn't mean that you will win the case. Each case has to be or each panelist has to go through all the other steps as well.

And Paul further states, "That this is very important because more broad interpretation risks creating a false sense of entitlement in the same way some companies and even certain panelists when represented with a new registered trademark feel the UDRP gives them an explicit right to have a domain transferred even when there is no infringement whatsoever of underlying goods and services."

Yes. Phil says, "The (unintelligible) language from Article 6ter refers to confer substantive legal rights in signatory nations." Do we then – when it comes to the signatory nations, do we by then – is it – and I have to go back to Article 6ter, but could it be so that some IGOs cannot register under Article 6ter depending on where in the world they are situated? And now I'm not sure which one of Mary or Lori that was first but I give it to Mary first.

Mary Wong: Thanks, Petter. So I think I had a follow up or more of a question in relation to Paul's point in the chat that you just raised that that is indeed another question from the staff side in relation to whether there is a need to modify the UDRP and URS or whether clarifying policy guidance would be the most appropriate way forward.

And that is what you noted, Petter, that we are talking now about the other grounds of the UDRP. So our question – and the URS – and so our question is whether the language in 6ter is equivalent or broader or narrower? Thank you.

Petter Rindforth: Thanks. Lori, your turn.

Lori Schulman: Can you hear me?

Petter Rindforth: Yes, we can hear you.

Lori Schulman: Can you hear me?

Petter Rindforth: Yes, we can.

Lori Schulman: I've been having problems with my mute and unmute today. Okay, I just wanted to take exception to sort of this blanket statement about newly registered trademarks that trademark owners with newly registered trademarks, Phil,

UDRP get explicit right to have a domain transferred even when there is no infringement.

I do take exception to that broader statement because I think there's a complicated issue particularly in common law countries because a newly registered trademark may in fact not be a new trademark. It may be a trademark with long-standing rights but a new registration I don't know. So I would just caution to make very broad statements about what owners may or may feel entitled to particularly with newly registered marks coming from common law countries.

Petter Rindforth: Thanks, Lori. So do you mean that if – if we're still talking about the initial step of the UDRP (unintelligible). Do you think that if we go back to IGOs and their identity protection is there any specific need to further clarify or change that referring to what you said?

Lori Schulman: I don't – honestly, Petter, I'd like to think about that because I thought with the IGOs we pretty much had decided that the – that – oh I'm sorry, I'm confused again, with the IGOs there may. I mean, there may to the extent that an IGO has both a Article 6ter right and a trademark registration sort of double duty. I haven't thought that entirely through. But it may be worth thinking through.

You know, because there could be an IGO that has long-standing rights as an IGO but only very recently, let's say, hired a counsel that said, hey, by the way, you can also protect this from a trademark perspective. And this is how you do it and they get their registration. And it's a newly registered registration but they have accumulative 50-year use or whatever it is. I don't know. I mean, if so, you know, that's the problem with trademark litigation, it's so fact-specific.

And, you know, in terms of crossing it over with the UDRP, UDRP is not trademark litigation. I get that. But it's also fact-specific.

Petter Rindforth: Yes, thanks. Well, that's what I tried to state initially that, I mean, it's – the first question is just to identify the rights independently on where in the world they are registered or well known, in some way, or even when they are registered or protected compared to the disputed domain name.

I mean, if you can't show that you have any specific rights then the whole case would fall on the first step and there's no need to go into the bad faith issues. And in fact, I've seen during the cases I've done during the years I've seen some of those that the – the trademark holder as such could not identify their rights in that initial step.

So and again, that has nothing to do with when the rights were established. But then of course, I mean, if they can show that okay we have registered our – or used our IGO for a number of years and then this domain name come up and then we filed an application for a trademark, I would say that then you have in one – in some way established if we can accept Article 6ter as a base for name protection, then you still have shown that you have established rights prior to the disputed domain name.

Phil.

Phil Corwin: Yes, Petter, I wanted to address this good then services question. You know, under the existing UDRP and URS you don't have to make any reference to specific goods and services in the initial complaint. What you're alleging is that hey, there's this domain that's identical or confusingly similar to my mark and it's being used in a way that's infringing.

And then you look at the actual used to see if the registrant is in some way trying to confuse the public between the registrant's identity and the trademark owner's identity.

It does seem to me that we're going to have to address goods and services – so I don't think we need to address that with anything specific about alleging

specific goods and services for standing purposes. I do think we do have to think about the fact that trademark law is basically rooted in commercial law. You look often at validity of trademark to whether it's being used. You look to whether the alleged infringer is trying to hurt the mark holder in a commercial way either by diverting business or by diverting customers away from them, disparaging their reputation, something like that.

But it's all about use and commerce. And IGOs are noncommercial entities, their nonprofit entities. The services they offer are not commercial type services, they are other types of services. So we may have to think about that issue and whether we need to say anything about that. But I don't think we have to do anything about goods and services in terms of just using that Article 6ter registration as a basis for standing to bring a complaint. Thank you.

Petter Rindforth: Thanks. Okay well now discussed Article 6ter and it seems that we have enough to go back and check it out further on also to see the initial base to create the Article 6ter to have some further guidance on that.

And we have talked about briefly the sovereign immunity that we also need to further at least – well we have this – we have the well done expert report so what we need to do is to refer to the conclusion there and examples made by our expert just to show that there is no clear answer to the sovereign immunity question.

Mary, I think your hand was first up.

Mary Wong: Yes, thanks, Petter. And actually before moving to the immunity issue, staff had actually one final for now question about standing and 6ter. So our first question was obviously to make sure that we all understood and agree on the meaning of standing, which was discussed today.

Secondly, and I asked this earlier, whether the scope of the 6ter limitation is the same or different from the UDRP. And the third and final one is given where we're going with this recommendation is there any reason why this would apply only to the IGOs on the GAC list and not every IGO that is the same sort of legal creature, say, basically formed by governments and with independent standing or something like that? Thanks.

Petter Rindforth: Thanks. Phil, is that a new hand?

Phil Corwin: No, sorry, Petter. I'm going to take it down.

Petter Rindforth: Okay. Yes, just mention briefly again the sovereign immunity issue. I don't think we can come to any specific further conclusion here today. As I see it, we can refer to the expert and showing that there is no clear solution there. And that's also one reason why we cannot recommend to create a specific dispute resolution policy that deals with this in a kind of second step appeal procedure as there is still a risk slash possibility that each national court will make their own decision on that.

And Phil says, "In my humble opinion if an IGO is a little bit (unintelligible) Article 6ter protections it can start UDRP or URS standing regard on whether it is on the GAC's list." Yes, I mean, it's – we are talking about Article 6ter and you need to be – to apply to be registered and be on that list so – and that is in fact a name protection list that is internationally legally accepted even outside ICANN.

And we also have to have in mind the registrars' position and the people and companies that register their domain names. And I think it's more easy to accept some kind of protection that has been, in fact, existing generally outside also the specific domain name part of the world to identify specific groups and their name protection. So as we said, we – we're still of the conclusion that Article 6ter is the best reference for us.

Now we have just some minutes left. And I also say on – if time permits and we can discuss outline of possible working group initial recommendations. And I was – I think that was – yes, Section 6 that I mentioned initially. And we have talked about this briefly.

But, if we – the staff and we chairs come together – work a little bit more on the documents and put in some more – some more text and history and then come back to you. And I see a question from Mary, “Do we have conclusions from the working group on the policy options for immunity?”

Well I think that what we have come up to, if I think back in our latest meetings, was when we have started the expert report that we want to have to leave that to local court to decide if there can be a second – a step and take the case to the court.

We also saw that some IGOs – what's interesting there is the – with the United Nations relations that they specifically state in their regulations that they can – they can refrain from the sovereign immunity aspect if they take a legal case and put it forward.

So it's the possibility for some IGOs both to do it directly or at least for a court to decide that they have done it if they agree to be part of a UDRP procedure. Phil, your hand is up.

Phil Corwin: Yes, thanks Petter. And I'll be brief because we've got three minutes left here. On immunity I believe we've reached consensus that there's no single global rule; that different nations treat it differently, that it only arises in the rare instance of an appeal brought by a losing registrant. We've – I think we have a consensus that we're going to let IGOs in addition to having standing to bring UDRP or URS through an agent or a licensee to further insulate themselves.

And that since the appeal or the – to a court of mutual jurisdiction is a de novo action that an IGO would be free to assert sovereign immunity in an appeal from a UDRP decision where the registrant demurs from that.

Now there's – what we haven't decided is that happens if you have a UDRP decision ordering extinguishment or transfer. Registrant appeals and the IGO successfully asserts sovereign immunity leaving the registrant without a viable appeals mechanism. Do we then vitiate the original UDRP decision and return to status quo ante as if it had never been brought or do we set up an arbitration procedure to provide the registrant with some rights?

I think that's where we're at and I'll stop there.

Petter Rindforth: Thanks. Just a quick comment to Paul's question, "Should we suggest that the RPM working group look at a voluntary internal appeals process for the UDRP, IGOs raised in the issue of other decisions by panels?"

I'm not so sure that we should do it from our working group's side. I'd rather leave that generally to other working groups' upcoming work in the future looking at the UDRP as a whole. And I don't think that it will assist when it comes to IGO disputes.

Okay, thanks, all. We have a lot of interesting discussions and both oral and written here in the chat room. And that we have the possibility to look at when we got the agenda out from – or the protocol out from this meeting.

Just a quick – back to Mary on the next steps and next meeting. If you can just make a comment of that.

Mary Wong: Hi. I guess this is Mary again. So as Petter, Phil and staff discussed, for the meeting next week it – we are going to suggest that instead of 1600 UTC that we have the meeting an hour later at 1700 UTC. Our understanding is that there are some conflicting calls involving various groups and members of the

ICANN community, including staff. So starting at 1700 may not eliminate all the conflicts but would reduce them for quite a few people. Thank you.

Petter Rindforth: Thanks. And then we are in fact one-minute past so if no one has any, you know, further hands up thanks a lot for this meeting today. And see you next week. Bye.

Terri Agnew: Once again, the meeting has been adjourned.

END