

ICANN Transcription
IGO INGO Curative Rights Protection PDP WG
Thursday 04 August 2016 at 1600 UTC

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Coordinator: Your recordings have started.

Michelle DeSmyter: Thanks Marie. Good morning, good afternoon, good evening. Welcome to the IGO INGO Curative Rights Protection PDP Working Group Meeting on this fourth of August at 1600 UTC. On the call today we do have George Kirikos, Petter Rindforth, Jay Chapman, Phil Corwin, Paul Tattersfield, Mason Cole & David Maher. From staff we have David Tait, Emily Barabas, Berry Cobb, Mary Wong and myself, Michelle DeSmyter.

I would like you all to please state your name before speaking for transcription purposes. Thank you, I would like to turn the meeting over to Phil Corwin.

Phil Corwin: Well, welcome everyone to the - to today's call, the IGO Curative Right Process Working Group. I know George Kirikos commented in the chat room that we have an equal number of staff and actual members of the working group on the call. Today I'm not that surprised that the attendance by members is low in August and that's going to tie to final agenda item which is talking about taking the rest of the month off but doing a lot of work by email with the full working group including the members who aren't able to make it to the call and then reconvening in first week of September. But we're going to continue discussion of policy options; fellow staff could put the operative document on the screen.

Okay, okay so can we unlock that so I can scroll? Oh I think it is now. So let's see, this is a three page document so - and this was updated two days ago. Okay so let's go through it.

The background I think we all know the background to where we are and how we got here. Let's go through policy options see if there's any remaining discussion on any of them. Item A, no change to the mutual jurisdiction cause in term procedures but add the ability for IGO to design as substantive legal that is trademark rights to another party or assign its right to (Sue) or a point of agent or have a licensee. And I think on last week's call my recollection is that we with (George)'s help and some other folks we got more - we identified the license option and found that that has been accepted in prior (UDRP) and might also be the most acceptable one on appeal to a court of mutual jurisdiction rather than assignment or use of an agent.

So I think this is about you know providing IGO's which are reluctant to exercise their rights and any process that might lead them to a court room down the road to give them some insulation by acting through a third party. And I think we have general consensus that we should make that available. Any discussion on that point? Petter and then George, go ahead Petter.

Petter Rindforth: Hi it's Petter Rindforth. I was typing it but I'll just state it shortly. What is needed is at least some kind of document sharing that the complainant has rights from the holder. So as I said they are clear documentations as license agreements but they also added kind of corporation agreement or when you can show that you're a subsidiary in the group representing the (unintelligible) as a trademark holder or vice versa. So there's some kind of contractive document. And - but as you said if we can see a pure traditional license agreement that's of course the best one, the most clear documentation. Thanks.

Phil Corwin: Yes thank you Petter. Let me just comment before we go to George that I think on all of these things we're considering we're going to have to look at when we get down to the final report recommendations whether these options that were agreed upon through consensus can be accomplished simply by providing guidance to the (UDRP) providers or if we have to amend the actual language of the policy. We haven't really looked at the language yet but I just wanted to note that to accomplish many of these things, guidance may be sufficient on some of them we may have to actually go in and suggest a very surgical limited amendment of the policy to make sure that these things can be accomplished.

Go ahead George.

George Kirikos: George Kirikos here. Yes I was just about to say what Phil just said that the current document says that add the ability for IGO, blah, blah, blah to assign its rights. As Phil said, we don't necessarily need to add the ability if the ability's already present. We just might need to highlight that that ability already exists and you know provide guidance in a supplementary document and not change the policy at all.

Phil Corwin: Okay next item is item B; amend the current procedures by adding an arbitral appeal mechanism for IGO domain dispute. And there was a note we need to discuss whether (unintelligible) rules were appropriate for this purpose. I

would add personally, speaking personally, I also have to decide whether the (unintelligible) because it's part of the UN family is the proper venue for if we went with this option to hear disputes brought by UN affiliated agencies or whether that creates a perception of some bias for the registrant who would be involved. Let me ask staff have we - Mary I think you may have provided the rules to us, am I correct on that? If I could call on you.

Mary Wong: Hi Phil, hi everyone, this is Mary from staff. Yes I sent around a note to the working group list after the call last week that enclosed a link to the (unintelligible) rules and several notes that the staff made in a quick review of the rules. I should say of course that none of the staff are experts on international arbitration or using the (unintelligible) rules but we believe that those notes and observations in that email are of interest to the working group. In particular the fact that those rules are procedural only and they don't bind the parties even if they agree to use the (unintelligible) rules to a particular venue or a particular institution. So in that respect they're different from some of the rules that you may be familiar with. I believe the ICC and others have a venue based arbitration.

So I won't repeat what else is in that email but those were just some initial observations that we thought were interesting to help the work group deliberate whether indeed the (unintelligible) rules as procedural rules would be helpful. And we note that this is also one of the options that was brought up by Professor (Swain) in his memo in terms of looking at this particular option. Thanks Phil.

Phil Corwin: Right so Mary just to clarify are you saying that the (unintelligible) rules being nearly procedural that (unintelligible) wouldn't necessarily be the deciding forum for an arbitration?

Mary Wong: So I would defer to experts on this point but from our reading of the (unintelligible) rules that seems to be the case yes.

Phil Corwin: Okay and - alright I think we're going to have to look into that and maybe ask staff to take a look at when disputes are brought under the (unintelligible) rules what forum are they brought in. So you're basically saying the parties adopt the (unintelligible) procedural rules but the actual arbitration takes place outside of our (unintelligible) in a different arbitration forum that's mutually agreed to by the parties.

Mary Wong: Phil if I may, this is Mary again, like I said that is our reading and the rules themselves do seem to contemplate that you may not need to have a full oral physical hearing. That said as you know that we don't have any particular experience nor have we done any research on how a proceeding under the (unintelligible) rules is actually done.

Phil Corwin: Yes let me on that point and again speaking personally the fact that they say you don't need a full detail hearing I'm not sure that's satisfactory for our purposes where the losing party in a (UDRP) whether it's the registrant or the IGO. This is a substitute for a court of mutual jurisdictions so they're giving up or choosing an alternative to a judicial procedure with all its discovery and safeguards and all of that. And I think we have to be looking at something that's fairly robust if we're going to look at replacing access to court. And George I see your hand up, is that for this issue? Okay George's hand is withdrawn.

Alright so unless there's further comment on B let's go to C. No change to mutual jurisdiction clause in current procedures that add an ability only for particular IGO's to arbitral appeal most likely the UN and specialized agencies based on international conventions applicable to the UN and absolute immunity in at least jurisdiction.

Yes my comment personal on that is that I don't - given what Professor (Swain) told us about basically you won't know what the jurisdiction rule is for particular agency until a judge in a particular jurisdiction decides whether or not it could be brought into a court room there. I'm just wondering if we have

the ability to pre-identify them or whether we make this an option when an IGO is brought into court or goes into court.

As we described last week there's two situations. One, the registrant appeals and the IGO being brought into a courtroom says we shouldn't be here, we have absolute immunity and the court agrees. And then you would want an alternative process so the registrant has somewhere else to appeal the decision. The other would be more problematic where the IGO is dissatisfied with the (UDRP) result. And it would be put in the strange position of going into a court to ask the court to decide that it can't be part of a process in that court. So we have to think more about that and my personal opinion. Comments on C?

Okay next option is rewrite the mutual jurisdiction clause. Yes and this would basically be - it would cover the first situation I just described where the IGO was brought into court involuntarily by an appealing registrant and is immune and the court agrees then we're providing the registrant with an alternative forum, some type of forum for their appeal.

I know that George has suggested that if the - if the IGO successfully insists on you know gets a ruling in favor of its having immunity that the original (UDRP) decision should become null and void I'm personally not sure I go for that because that would leave us with situations in which no one can decide in which a (UDRP) panel or panelist has found infringement to be occurring and the end result is that it's allowed to continue if that decision is correct. Of course the registrant would be contesting it but I'm kind of troubled by the fact that there'd be no final resolution of the dispute and the status (unintelligible) be returned too. Other comments on D?

Oh George said that was Paul Keating suggestion not mine. Sorry George for misidentifying that and apologies to Paul who's not on today's call for appropriating his idea to you.

And a note from Mary in the chat room on option C staff notes the (unintelligible) did not make a distinction within UN and other IGO's. Okay well they didn't make a distinction but we can if we so decide to do so.

Okay option E, the last option on this list. No change to mutual jurisdiction clause and current procedures but clarify that standing to file for IGO's must be that the notification of (unintelligible) has been made pursuant to the article six tier of the (Paris) convention. We would nevertheless discuss the separate issue of what substantive legal rights would form the legal grounds for the complaint.

Yes we do need to discuss that. One personal comment again I think that this is - we've already agreed of course that an IGO which has registered trademark rights has no problem bringing a (UDRP). So this would be I think (unintelligible) that's standing to file for IGO's this would be an additional ground for standing in addition to its trademark rights. I think we should just clarify that in this.

And I think the substantive legal right we need to flush that out but obviously article six tier registration provides IGO's with protections in the trademark regimes of the signatory nations to article six tier as well as WTO members. So those are the rights, we're saying that those rights because they're interwoven with the trademark system to give standing to bring a (UDRP). And again we're going to need to look at whether that can be accomplished by guidance to the dispute resolution providers for the (UDRP) or whether we need to actually go in and do a surgical amendment of the standing provision of the (UDRP). Comments on item E?

Alright seeing none, discussion, okay introducing an (unintelligible) mechanism, would it be an effective and (unintelligible) with the ability to file in a national court. Open that for discussion. We have to make sure that if we go that route that it is - does provide sufficiently robust procedural and

subsistent rights to be the you know or rough equivalent of a court proceeding and that's an objective forum. So those are my comments on that.

Let me go through all this under discussion and then we'll open it for discussion by the working group. Considerations, substantial number of (unintelligible) (P-decisions) are overturned by subsequent adjudication. So we have to leave the respondent with no - with additional avenues of redress. And yes personally absolutely agree with that and that's particularly the case where the registrant appeals to the court and the IGO would successfully assert its immunity from that court proceeding.

In that case, access to arbitration would be to the benefit of the registrant. So I think we need to keep in mind that we have situations where an arbitration form availability would benefit the registrant who's lost a (UDRP) and believes it was wrongly decided.

Next point the working group may need to consider if changing immunity for IGO's would have ramifications elsewhere. Yes we'll take a look at that. I'm not sure it would but we'll consider that as we prepare the final report. Pull of cases is likely to be very small. Agreed on that you know we've I think that's the reason we already had a consensus not to create an entirely new CRP. What we're talking about is the possibility of arbitration at the end of a (UDRP) or URS not a procedure that's entirely separate from the beginning.

And valuable domain name, some are very valuable, okay unless we get rid of the (UDRP) and that's a possibility I think we've ever discussed and I think one that the ICANN community would never support. Why would a registry give up rights to seek protection in national court? Good question but as I just pointed out there maybe in situations where registry and appeals to a mutual jurisdiction and because it's lost the (UDRP) and the IGO successfully asserts immunity then the availability of an arbitration forum would give the registrant at least some possibility of a reversal decision.

Without that there'd be no effective appeal. And you know Mr. (Caden)'s suggestion was on that case (visiate) the (UDRP) decision but that could have an undesirable effect of permitting infringement to go on with now effective remedy which we probably wouldn't want to see happen either.

So those are my personal thoughts on these points. Let's open it up for group discussion on everything under the discussion before we get into the additional suggestions. And meanwhile I'm looking at the chat room, yes, George I would just say personal comment I'm not sure we're talking about compelling a registrant to give up - I think we're considering what happens where an IGO can successfully assert immunity in the applicable courts.

So, okay no further comment on George's comments in the chatroom and Mary noted that these - all these considerations are summaries of comments made by members of this working group in prior meetings. And Mary we - or whether or not there are staff observations just excellent staff summaries of working group observations.

Mr. Kirikos please proceed verbally.

George Kirikos: George Kirikos here. That part about, unless we get rid of it, the (UDRP) kind of misstated what I intended to say. What I meant by that last part is lets imagine that the (UDRP) didn't exist you know I can't - didn't need to create the (UDRP), (UDRP) is entirely optional compliment to the legal system. If we imagine a world without the (UDRP) what would happen? The IGO would by necessity have to go to court and thereby waive immunity. And so all I kind of meant by that is why would a registrant you know voluntarily give up their right to access to courts when an IGO would have to you know give up their immunity and go to those courts for redress.

Phil Corwin: Right.

George Kirikos: There's no way that an IGO could say you know I have a dispute with you and I'm going to force you to come to you know where I want you to go to handle that dispute. You know it would be laughed at by you know whoever they had the dispute with and that was kind of the point I was trying to make with the examples of where the IGO's send the cease and desist letters. Like they send these cease and desist letters with a threat of something and that threat of something usually is legal action.

And so that's how the real world operates and there's no reason why the domain name world should be any different. Like we shouldn't be creating a policy that replaces the legal system, just acts as a convenient alternative that compliments the legal system for some kinds of disputes, not all disputes. And that procedure is complimentary, it doesn't replace it because it allows appeals to that you know full legal system. Otherwise there'd be a divergent between the two systems if that separate process existed without the ability to appeal to the real courts. Then you could see how it would be very dangerous because a set of parallel laws diverge well parallel you'd have a separate court with its own jurisprudence without the ability to go back to the real courts to see you know how things should be decided.

And so I guess the fear is that you would get results in the arbitration that don't reflect what happens in the real courts. And that's you know what's the ultimate danger.

Phil Corwin: Yes thank you for those observations George. Petter, please go ahead.

Petter Rindforth: Thanks, I'm also want to talk about the publication. I understand that as we have heard from ideas that they may accept there are no specific changes in the policies as such if there is a way to take the next step to arbitration rather than having to go to specific national court. However - and well I've seen a lot of these kind of disputes, resolution processes, when it comes to other kind of IP disputes. And as it said, George, it's a difficult way to solve them if you take it to the traditional court action.

But I think the main problem here is if we decide that we should not change the policy but rather come up with some recommendations then it will be - I can't see how we can introduce an (unintelligible) an appeal mechanism without changing the policy as such.

So and also as we have seen there are - there have been a lot of traditional national court cases. And some states that they can deal with ID related disputes and other states that they can't. So I think that is actually something that we have to leave to the market and to the - each national court.

And I prefer if we can stick to some kind of just clarification or recommendation rather than making any additional policy amendments or even creating some of kind next step because I don't think we can do that without also changing the (unintelligible) solution policies as such. Thanks.

Phil Corwin: Yes thank you (Petter). And speaking personally I agree. If we were going to create any - a - an avenue by which an IGO could get to an arbitration forum by any means we'd have to amend the UDRP to do that. On the other things we're talking about in terms of using a licensee or an agent or and relying on Article 6 tier registration for standing grounds and for bringing in action we need to look at the policy but that may be achievable simply by guidance to the providers. But certainly the arbitration route would require this.

And again speaking personally yes George I took all your points. I would point out UDRP was created for all trademark holders, not just IGOs so they'd have a less expensive way of resolving domain disputes faster and less expensive way than relying on the court system and so far as, you know, any access to immunity to arbitration will be based on immunity.

And I think the one clear thing from Professor Swaine's memo is that there's no blanket rule. It's going to be decided differently for different types of IGOs

in different national courts. Some will find immunity, some will find no immunity. So it's not something we can create a blanket rule for.

So let's seeing no further hands up and, you know, George I'm going to ask you a question about your last comment in the chat room. How would we know what's a very valuable domain? I mean would it be based on what the current registrant pays for it? But what if the registrant, you know, was the original registrant and has just kept the - paying the registration fees year after year?

The registrant might asserted has a four, five, six figure value. But how would we test that? And would that - I think introducing that would certainly require amendment of the UDRP. So it's great to introduce domain valuation for what would happen in or after a UDRP.

George Kirikos: George Kirikos here. I don't think the UDRP panelists are typically very expert at valuing the domain names. But just thinking rationally a UDRP costs, you know, \$1000 to \$2000 to file, maybe \$5000 for, you know, the legal costs involved. So it's really meant for early, you know, design for disputes over relatively small things whereas the court action might cost somebody \$50,000 or \$100,000. So it'd make very little economic sense for somebody to appeal to the courts over, you know, a \$100,000 domain name when it would cost them \$50,000 or more to fight for it like just thinking rationally.

Well we know that, you know, every two letter .com for example has a wholesale value of at least \$800,000 these days. Three letter .com's, you know, anywhere from \$50,000 plus, you know, some hit seven figures. Some actually had eight figures the techs.com but those a word as small as an acronym are the full...

((Crosstalk))

Phil Corwin: Yes but George are you suggesting we create a rule that IGOs have to waive immunity if they file UDRPs against two or three letter .coms or are you asserting that we should create a provision in the UDRP where a registrant can assert, can provide some proof of alleged valuation and say if this is going to proceed the IGO as to - I'm just trying to figure out the mechanics of this and then would certainly require some extensive amendment of the UDRP policy to introduce the concept of considering valuation and what effect it should have on the procedure.

George Kirikos: George Kirikos here again. Sorry perhaps the point I was trying to make I didn't make very clearly. My point was that IGOs should continue to waive their immunity for all cases just as they would have to do under the existing UDRP. My point was that their only concern really is that the appeal is only going to happen for high value domain names.

And so when, you know, as a practicality most of the low value domains look let's say somebody registers a Unescotshirts.org or something like that. That's a relatively low-value domain name. If they won the UDRP the odds of the registrant appealing that are very low given that it makes almost no economic sense for them to do so. However, you know, if they went after a different domain...

Phil Corwin: Okay.

George Kirikos: ...say uf.com that domain name is very valuable so the registrant is undoubtedly going to appeal if they lose. And that actually maintains the status quo that would exist if the UDRP itself did exist. You know, it would - and then it'll be end up in court. And so that waiver of immunity didn't really change things because it would go to court anyways. So and that UDRP was designed that way. It ways here's the procedure. You know, we're a guide. The courts exist. If people agree that the UDRP is the final decision they both, you know, don't...

Phil Corwin: All right, so you weren't suggesting we create a separate valuation role.

George Kirikos: No.

Phil Corwin: You were suggesting that appeals were only - appeals by registrants will only likely occur when it's a valuable domain name?

George Kirikos: Correct. And so - and that's when you want the legal court to exist to exercise, you know, their jurisdiction and when it's, you know, an important dispute. And the UDRP kind of wasn't really designed for that. It was, you know, a streamlined procedure with no discovery, you know, not all the safeguards that exist in a real...

Phil Corwin: Right. Okay, all right. Mary I see your hand up.

Mary Wong: Yes thanks Phil, not so much to respond to George but more broadly on the general question of a kind of arbitral appeal mechanism that could be an alternative for going to court. We just wanted to note for the record again that the staff had prepared a note that we referred to in our last email in the (unratrar) rules about how that kind of appeal mechanism might function. And that was a reference to a paper that was done by the WIPO secretary some time ago in relation to country names and state immunity so not specific to IGOs .

But they had set out some general principles that would be in our view relevant if this ground is considering that as well for example that it should be a de novo appeal. And so the case should be basically something that can be argued anew and that the burden of doing an arbitration should not be more burdensome than if it were in a national court and of course that the arbitrators one or more would need to be neutral and not connected with the original decision.

But on top of that we also thought what was interesting was that from that paper the implication was that the mutual jurisdiction clause could stay as it is but that in initiating a complaint the IGO or in that case the state would have to agree to the arbitral appeal mechanism. But whether or not that mechanism is triggered at the appeal stage is for the losing respondent or whichever the losing party is to decide.

So in some ways that preserves the ability to go to a national court while also adding the express alternative of an arbitral appeal mechanism. This is not the staff view as to whether this is the way to go, whether it's better or worse. But because...

Phil Corwin: Right.

Mary Wong: ...it's somewhat of a tweak on Options A to E we thought it might be timely to note this for the group. Thanks Phil.

Phil Corwin: Yes thank you Mary. Have we seen that WIPO paper and has that been distributed in the past to this working group?

Mary Wong: I think it would be the - did in distant past but we're happy to recirculate though.

Phil Corwin: Yes why don't we recirculate it? It's - I think it's timely now. All right, let's get to additional suggestions here. We're at 36 past the hour. Number one consider a tweak to the procedures rather than replacing the right to appeal to a national court if a winning IGO is brought to court by alleging respondent allow for the result of the IGO's successfully winning a claim of immunity in that court to be a nullification of the UDRP decision. That was Paul Keating's suggesting.

And again personally that one disturbs me somewhat because that would permit the situation where a low value domain like Unescotshirts.something

that was clearly infringing in selling tshirts, the proceeds of which were not supporting Unesco in any way to continue its operations even after it lost - even after the registrant lost in the UDRP proceeding. I'm not that accepting of that possibility.

Question A would this preclude the IGO from them proceeding the final acclaim against the respondent in court itself? I don't know that we have personal - these are all personal comments. I don't know that we have to decide it. I think the burden would be on the IGO to successful assert that it was immune and then go back to the same court or a different court and said - and initiate a legal proceeding. I think the registrant would say, "Hey wait a minute judge. They just - how can they both successful ascent immunity and then access the courts?" I'm not sure we're the ones to decide that but we can discuss that.

Number B, may need to consider legal implications of nullification or procedure rather than substantive ground. I have nothing to further say on nullification. Item 2, would it be better to create a policy guidance framework rather than change the underlying policy? I think it's based on all the comments that are made I think that it's the general consensus that I'm hearing in this group that when we come to our final recommendations they should only result in very surgical revision of the UDRP itself only if it's absolutely necessary to implement those recommendations that if they can be implemented by guidance that's the preferable way that we should change the UDRP to the minimum extent and only where it's absolutely necessary to get the results that we want to see implemented.

So I will stop there and see if we have any group discussion on these additional suggestions. And I'm seeing and hearing none. So and I'm looking at the chat room, nothing new on these issues. So all right, well it's 39 past the hour. That's all this - oh wait, wait. I - there's one last one. I just scrolled down. There's one short paragraph on the top page and I hear a barking dog reminding me that I have missed it noting that a guidance document would

not be addressed enough to address the trademark rights subs the base of the UDRP URS. This may require actually amending. Yes I think we've taken note of that and we've noted we're going to have to look at the actual language of the UDRP and the URS in regard to use of a license agent or other third party to bring the action and to use the Article 6 Tier registration as a basis for standing and decide whether we need to surgically amend the - recommend amending the policy or whether that can be done through guidance.

So I don't think there's any dispute. I'm not sure this is correct this assertion that it wouldn't be enough. But we - I do agree that we need to look very carefully at those questions when we put our final recommendations to get there. All right so unless there's - last change now for any substantive discussion on this paper and then we're going to describe next steps what we're going to do the remainder of the month in this working group, what we propose to do with your acquiescence.

So with the acquiescence of the working group the co-chairs were posing no further telephone meetings of this group for the remainder of August. Reasons for that is that I cannot be on the call next week. I'm going to be on vacation in a very remote area of Maine and also I'm just unplugging for a week. And (Petter)'s going to be able - unable to be on the call - following two calls from August.

So we have just one co-chair and we think we're at a critical stage where we want both co-chair involved. We also think there's work to be done that we can do accomplish through email and then kick off in September. And let me just look at the calendar.

So we're proposing that not to have working group calls on the 11th, 18th or 25th of August the next three weeks and to reconvene on Thursday September 1 but to use the time in-between to create a - to work with staff to create an outline of what should be in a final report and recommendations

from this group to list all the considerations, all the things we've taken into consideration, all the preliminary recommendations we're going to make and get that outline completed so that when we come back together on September 1 we can actually get into the - begin the drafting of that report.

Now Mary has just put a draft anticipated timeline. So you can see the rest of the month we straw poll the members, all the members, not just the ones on the calls. Lori Schulman let me just get through this and I'll take your - I see your hand up. I want to note that but I want to just go through this and then open it for a group discussion.

First two meetings in September discuss the outline and its elements and have staff begin filling it out. Second half of September discuss our preliminary conclusions. Then staff would draft and circulate a initial draft report for consideration throughout the month of October looking to publish that initial report in late October so that it's out there for the community to discuss when we meet in Hyderabad in early November. And then after Hyderabad through the rest of November begin discussion of community feedback and public comments. The public comment would close early December. We'll continue that discussion in the first two weeks of the public comments, the first two weeks of December, no meetings the second half of December.

We get back to considering the public comments in first part of January and consider changes to a - any changes to be made to a draft final report and then with the aim you see the rest of February basically aiming to wrap up and submit a final report for GNSO Council consideration as they approve it for board consideration the end of February. So we're not projecting to be done this year but we are projecting to get a draft initial report out by late October and then to wrap everything up in February of next year and to be done with our work in February and hand it off for GNSO Council consideration. Lori Schulman, I see a comment by you in the chat room. I'm

not comfortable ruling it out if we don't have any data. I'm in the dark, which data are we talking about here?

Lori Schulman: Yes can you hear me?

Phil Corwin: Yes I can hear you.

Lori Schulman: Can you hear me?

((Crosstalk))

Phil Corwin: I see the data on the operation of the (Untra) trial rules. I see that now.

Lori Schulman: Yes this goes back to my question from last week when I raised it because I understand your point about the offset. You don't want to - you want to raise an appearance of impropriety. I get that. But on the other hand I gave it more thought in the team calls. And I'm still stuck on this point and I can't just put a leaf in it and I will look at.

To just make sure we understand it, you know, are these rules (unintelligible) for event agency rules are truly balanced participants that are coming up on the rules balanced (unintelligible)? If they are balanced if this is being sort of a 50/50 batting average on this then I think it's realistic if we see something like 90% in favor (unintelligible) agencies and I would tend to agree we would want to (unintelligible) that as even an option. That's all. I'm just - I guess I'm speaking on data points if there is...

Phil Corwin: Right.

Lori Schulman: ...data.

Phil Corwin: Yes thank you for that Lori Schulman. I think, you know, just off the top of my head I see a couple of questions about the (Untra) trial procedure. One, we

have to determine whether (Untra) Trial is the forum which creates what could be negative optics or whether these are just procedural rules that are applied in a separate arbitration forum that's mutually agreed to by the parties.

The second is whether - Mary described them as pretty bare-boned rules. And I think that raises a question of whether they really - you know, I think we all agree it's going to be a de novo consideration. It's not really an appeal. It's a new de novo procedure but whether it gives the same procedure on substantive protections and rights that you would get in a court procedure.

And I think third we have to look at the cost question. Professor Swaine seemed to suggest that arbitration could be even more expensive than a judicial proceeding and that raises some issues. So yes I think there's the threshold question whether we're going to provide for the possibility of recourse to arbitration in any circumstances. And then there's the secondary question of if we are where that would be and under what rules.

And I'll stop there. And do we have further comment on that topic or on the proposal to suspend calls for the remainder of the month, create and outline for a final report and recommendations to email and then reconvene on September 1 to discuss the outline? Any comment on that, any objections? So I see George a checkmark so I guess that's people agreeing with the proposal.

So all right, we're seeing lots of agrees and no Xes. And hearing no objections from - so we've now got agreement from four of the five folks here. But now I see Jay Chapman and David Maher have their hands up. Jay and then David, go ahead. Oh I think that was just agreeing because I see the hands down now.

All right so seeing and sensing agreement and hearing no objections we're going to go ahead and cancel any working group calls for the remainder of

August. That doesn't mean we won't be working. We will be working with staff to create and approve an outline for everything that should be addressed in the draft final report and recommendations to be issued by this working group later this fall. And we will reconvene by phone on September 1 to discuss that draft outline and then move forward with actually making final decisions and working with staff to draft the actual text of that initial draft report. So that's the plan going forward.

And we will - I'm going to ask staff to memorialize that in a short email that can be circulated to the entire working group so that the folks who were not on this call though I see that our attendance has increased since the beginning of the call. I think we still have some members who weren't on the call. So everybody's aware and all the observers are aware of exactly how we plan to proceed.

Okay staff? Mary says to - will do in the chat room. So it's ten before the hour. Unless someone has anything else they want to raise verbally I'm going to give you those ten minutes back. And we'll speak by phone again on September 1. So I see no hands up so we're going to adjourn the call now. Everybody if you're taking off for August have a good and safe vacation and please...

((Crosstalk))

Man: Thanks.

Phil Corwin: ...participate in the work we'll be doing by email through the remainder of August. Thank you. Bye now.

Woman: Thank you. Today's meeting has been adjourned.

END