

**ICANN
Transcription
IGO-INGO Curative Rights Protection PDP WG Meeting
Thursday, 14 July 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
Osvaldo Nova – ISPCP
Paul Keating – NCUC
Holly Lance – IPC
Keith Drazek – RySG
Jim Bikoff - IPC

Guest Speakers:

Jon Passaro (OECD)
David Satola (World Bank)

Apologies:

Lori Schulman - IPC

ICANN staff:

Mary Wong
Steve Chan
David Tait
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the IGO INGO Curative Rights Protection PDP Working Group call held on the 14th of July 2016.

On the call today we have Osvaldo Novoa, Petter Rindforth, Phil Corwin, Holly Lance, Keith Drazek, John Passaro, David Maher and George Kirikos. I have listed apologies from Lori Schulman. From staff we have Mary Wong, Steve Chan, David Tait and myself, Terri Agnew.

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

Petter Rindforth: Thank you. Petter Rindforth here. And I welcome you and I especially welcome - I see one of our IGO representatives, Jonathan Passaro. So we shall welcome to the meeting.

David Satola: Yes, David Satola is on the line as well.

Petter Rindforth: Okay. Excellent. Welcome.

David Satola: Thank you.

Petter Rindforth: And glad you could join us today for - as you can see we have added a special point on the agenda today where we will hear further from you and that will also give us the opportunity to get direct reply to some of our working group questions.

However, we'll start with a brief review of the ICANN 56 discussion on the internal legal expert opinion on from Professor Swaine. I don't know how

many of you that were not on the - on the Helsinki meeting that I have today. But we - just mute my - we had an initial brief on Professor Swaine's support and discussion on that in Helsinki. And I can't really remember if we had any specific topics, questions that we didn't have time to discuss in Helsinki.

But just start with some initial interesting comments from Professor Swaine where he said that even focusing on immunity some generalization is required and immunity obligations very best state and by the IGO concerned. Immunity declarations are often based on organization specific treaties to which not all states are party and even states subject to the same international obligations implement, I mean, in varying ways.

So there's no clear yes or no when it comes to the immunity. That was my comment. And Professor Swaine also said that while jurisdictions in which the IGOs act may offer guidance. Other jurisdiction offer much less and there is no certain overlap between states with a developed IGO immunity jurisprudence. And those hosting registrars or domain name registrants.

And he also said that his memo will focus on jurisdiction in which follow on litigation seems likely and particularly the United States. He also said that one relevant question is whether in light of an IGOs assent mutual jurisdiction its immunity remains. And here the more likely answer is - and this is Professor Swaine - is that it will not - IGOs are capable of waiving their immunity from suit and if they do so they may no longer (unintelligible) immunity as it offends if another party commences (unintelligible) action falling within the scope of that waiver.

The grant of mutual jurisdiction would likely establish that (unintelligible) waiver as it would, for a state entity otherwise and (unintelligible) foreign sovereign immunity. And this waiver would be construed narrowly but it would likely permit proceeding against an IGO in at least some domestic courts.

And if we just turn quickly to his final comments. He said at one legal available option is to maintain the status quo meaning for us, that there is no changes or modifying or creating any new dispute resolution policies. As one of the alternatives (unintelligible) the way that IGOs typically resolve the tension between immunity and judicial processes is to establish a non-judicial dispute resolution process usually consisting of some form of arbitration. And I presume that is also one of the possible solution at least at the second step for us.

I'll leave it there and see if there is anyone from our working group that wants to give us some more comments. Yes, Phil. I see your hand is up.

Phil Corwin: Yes. Thank you, Petter. Phil Corwin for the record. And I just wanted to point to two short provisions of the Swaine memo, which I certainly like to have a dialogue with, with the - our guests from the IGOs when they present orally their views.

And the first is on Page 26 of the memo directly under the heading of maintaining the status quo where he writes, "Even if one assumes that an IGO, absent mutual jurisdiction might be capable of asserting immunity affording them a means of surrendering that immunity via the mutual jurisdiction provision, is not itself an infringement."

"Accordingly, as a purely legal matter it seems unlikely that the mutual jurisdiction provision as it may be accepted by an IGO, establishes or occasions of violation of IGO immunity and is expelled further below. It may seem more appropriate to require an IGO to abide by a judicial process given that an elected - to initiate UDRP proceedings than it would be to require a domain name registrant to accept the IGOs preferred alternative."

That passage, and just in combination with the final paragraph of the - let me see, I'm looking for the other provision I wanted to cite. Oh yes, in the final paragraph he describes in discussing the possible alternative. He says, "At

the final,” and this is the final paragraph of the memo, “whether such an accommodation is appropriate in light of the immunity often owed IGOs is ultimately a policy question.”

Now I don't - I take these passages not as dictating any final outcome for this working group but standing for the proposition that there's no legal compulsion for us to create a separate CRP for IGOs with an arbitration type of appeal rather than the mutual jurisdiction - court to a mutual jurisdiction appeal that it's a policy question rather than a legally compelled outcome.

And I'll stop there but I - that's the main thing I drew from Professor Swaine's very long and detailed memo and one I'd like to hope that the IGO folks will get into when they present their views. Thank you.

Petter Rindforth: Thank you, Phil. And I also see the chat room George Kirikos referred to Paragraph 69 explicitly when compared one treaty for World Bank from a different treaty in a different Supreme Court of Canada case involving Northwest Atlantic Fisheries Organization.

And I also saw that you referred to the Canadian case in your report. So going into that in a moment. Phil, your hand is up. You want to add something? Okay. And I see also for possible options Mary Wong says, “For possible options where identified by Professor Swaine in his memo for the working group to consider as part of its deliberations.”

I'm not sure if - will someone make their voice heard online or shall we perhaps pass into Point 3 of our agenda today. I think we can do so because there are already some discussions and questions. Sorry, Part 4.

So thanks again for our IGO guests to be here today and thank you for your written input and comments on Professor Swaine's support. As you may know, we have - we look forward to updated comments from IGOs during our

work, not just reminders of the initial statements that were made several years ago so this is very welcome initiative.

But before we start with the topic as such, just let me refer to your initial statement that it is important to remind ICANN community in general of the broader context of the IGOs' requests for protections of their names and acronyms at the top and second level.

And the first part of your comments relate more to the ongoing work with finding a way for permanent initial protection for IGO names and acronyms. And I can assure you that we fully agree that it's important to find an acceptable solution on this part. And even if the initial protection is not the topic of this working group, my cochair, Phil Corwin, and I discussed this yesterday with ICANN staff. And we're planning to find a way to remind ICANN Board that we need a decision on this topic.

That is also because depending on the solution of such initial protection, the preventative aspects, the outcome of our working in this working group regarding dispute resolution may end in a different way. So enough for me, please Jonathan Passaro or David Satola, who wants to start comments on your comments? Your memorandum.

David Satola: Well thanks, it's David Satola here. Thanks for the invitation to participate in your working group deliberations today. I don't think we have a lot more to say than what's in the memo. We, you know, the memo was prepared by the three of us who were at the ICANN 56 meeting in Helsinki so it's our views.

Doesn't purport necessarily to be the views of the entire IGO coalition, which number about 60. And I think in terms of the memo, I mean, we made our comments in the working group meeting that you had in Helsinki and then took you up on your offer to provide some written comments on the Swaine memo itself. And we've done that. So we don't really have additional things to say.

And I think if you're looking for an IGO position, meaning from the IGO coalition, we can go back to the other members and seek to do that. Otherwise you have our - the reflections of the three of us who attended the Helsinki meeting here.

Petter Rindforth: Thanks. Yes, so I would say that we have sent out a couple of times or so some specific questions and of course, I mean, the topic we are dealing with in the working group as we have done for quite a long time now, it's related to you. So apart from the external legal experts' comments it's of course, very interesting to have your inputs.

But that the same time, we are also in the phase where we will - we have to come out with our initial comments and suggestions. So that's why it will be very interesting today as well as we had the opportunity in Helsinki to hear if you have any specific further inputs.

One note before we proceed to the discussion list, I saw you referred to the recent (unintelligible) with World Bank case in the Canada Supreme Court. And what the Supreme Court made clear that was that the World Bank's privilege and immunities stand firm in preventing access by third parties to its archives and its staff. Also noting that any implied waiver of its immunities would have a chilling effect on collaboration with domestic law enforcement.

And that's of course relates to immunity but not on the same - not on the name rights. And not connected to domain names as we are dealing with here. And also as we heard from Professor Swaine, if we look at this in a global perspective we don't have any clear answer yes or no to that immunity case.

I know mine is not here but I don't know if any of you other IGO representatives could say something about how many IGO related dispute resolution cases that you think can be expected annually or - and also have

you tried to use or thought of using either the UDRP or the URS through the years? And if you haven't and if you decided to not use it, what was the most important reason.

David Satola: Thanks, Petter. David Satola again. In fact, the World Bank did go through a UDRP process in the early 2000s. It's a case that's cited in Professor Swaine's memo. And we prevailed in that case. I don't - I speak only for the bank in that regard and not the other IGOs. I have no idea whether they would seek to get such relief through that forum or not because of the immunity issue.

To the first part of your question, when the guidebook came out for the new gTLD round in late 2011, 2012, we took a look at the number of domains that others had registered using World Bank in one form or another. And at that - excuse me - at that time there were - I forget the exact number but something like 300 domains. And we looked at them and determined that there were about 50 or 60 that we really cared about. And were able to deal with most of them through cease and desist letters.

But again, that was, you know, in the age when there were 20 or 23 gTLDs. There are a lot more now. I don't have current numbers on domain squatting but, you know, we would be interested in.

The issue for us is the - one of the issues for us in that context is the cost. And I don't know what the cost was in 2002. I, you know, I don't know the multiple of that cost if we had to resort to either through the UDRP or UDRP like process that had an arbitration provision associated with it. The arbitration, I assume, would still incur a cost for the IGO so that's still an issue for us.

So it's not just the immunities. And I think that goes back to the point that, you know, your cochair, Phil made, in Helsinki and that we reiterated in our comments that the discussion is really in a broader context for us about, you

know, the totality of protection of our names and acronyms at the first and second levels. And that our comments in this regard were really just for the purpose of the exercise that the GNSO working group is going through.

Petter Rindforth: Okay, thank you. And sorry, John Passaro, I see your hands up right now. Please. The line is yours.

David Satola: Maybe he's on mute.

Petter Rindforth: Yes. John, can you hear us? We can't hear you. No, sorry we can't.

Terri Agnew: John, this is Terri. I see your microphone has been activated. And it's not muted on our side. If you could just please check your microphone on your side. Otherwise I'll send you a private Adobe Connect chat and you could provide me your telephone number if we need the operator to dial out to you.

Petter Rindforth: Okay in the meantime I see Phil, your hand is up, if you want to give us your comment.

Phil Corwin: Well, Petter, I wanted to have a little bit of a back and forth with Mr. Satola and Mr. Passaro so might be better if we wait until John is...

((Crosstalk))

Petter Rindforth: Yes, okay.

Phil Corwin: I just have a couple clarifying questions about their memo.

Terri Agnew: And John is now on audio.

Jonathan Passaro: Great. Sorry about that. I guess my computer microphone isn't working.

Petter Rindforth: No problem, you're welcome.

Jonathan Passaro: So I - so, yes so it's John Passaro from the OEC for the record. I first wanted to speak to this question of - I don't know if I can mute my - hang on for a second. Speak to this question of waiver of immunities because for me I would say it was never claimed that we cannot waiver our immunities but we tried to explain to you why this is something that we in general don't do and why immunities are so important to the functioning of international organizations.

And in that respect, I'd like to direct you to the memo that we sent to all of you on the 16th of January, 2015 where we actually specifically responded to this question of waiver of immunity. And we said, "Submission to the UDRP and URS, as currently drafted, would necessitate waiving IGOs' immunity from legal process which would involve a specific decision taken at the highest level of every government structure. In fact, IGOs have only rarely and exceptionally waived their immunity for any purposes. Doing so for applications in the UDRP would be unacceptable."

And so, you know, again this question has been sort of a moving target because from the outset when we started discussing these issues the question was, you know, why can't IGOs use the UDRP currently. And we explained to you that we couldn't use it because of mutual jurisdiction provision which, again, entails a waiver of immunity and that's - and again we've gone through pains to try to explain why in general we can't do.

So again, like just to refer you to those responses that we gave to you a year and a half ago because it's useful to keep in mind for this instance. And then with respect to an estimated number of cases per year, as you know, that's something that we haven't really had to deal with at this point because there are the temporary protections in place. So a bit of a catch-22 question I suppose. Without, you know, because we have those kind of protections in place fortunately we haven't had to deal with domain name disputes has

been a rule with maybe some - a few exceptions, I'm not aware of any related to the OECD.

But again this is something that could become a major problem and a significant issue for us in the event that our temporary protections were lifted. Also a statement from George Kirikos about something involving an ambassador from Switzerland at the OECD. I just want clarify that diplomatic immunity and immunity of international organizations are two separate questions.

On a more technical and specific point specifically related to that case, the immunities of ambassadors to the OECD depend on the states which they represent. They don't come from the OECD. So the only person these immunities depend on the OECD itself as an organization would be the people who actually work for the OECD secretariat. So our Secretary General and then much lower down the totem pole, people like me have what's called functional immunity which are just related to the task that we carry out specifically for our organizations.

So it's a very different question when you're talking about diplomatic immunity versus the immunity of international organizations. Thank you.

Petter Rindforth: Thank you. And now, Phil.

Phil Corwin: Yes, thank you, Petter. And Phil Corwin for the record. And I just had a couple questions for John and David about the memo just from as a clarification of the group.

In the first paragraph it says, "The views expressed in the memo are those of the authors may not be shared by all IGO observers in the GAC." We understand that. "And are subject to confirmation by respective management of the author's organizations." I take that statement to mean that at this point

this memo is just the personal views of the three authors and has not yet been endorsed by any of the IGOs you're employed by.

Is that correct? And are you seeking the endorsement of your organizations for this or is it going to remain strictly a personal statement?

David Satola: David Satola here. Well, Phil, we wanted to be able to respond to your invitation to submit remarks in advance of this working group meeting and really the only practical way to do that without running it up the management chains of even three organizations and then coordinating it was to put that small caveat in it.

Phil Corwin: Yes, I understand that and I appreciate the fact that you, you know, provided us with this memo and attended the session in Helsinki. I'm just wondering, you know, in terms of the weight of this whether this is just going to remain a personal statement or whether there's going to be any attempt to make it a more official statement on behalf of your organizations.

David Satola: Again, David Satola. I suppose the question of the weight would depend on - or the gravitas - would depend on both the clearance within our three respective organizations but then also by the IGO community and to get a consensus view on that. That, to me, doesn't change the - what are the underlying arguments. And we, you know, made an attempt to make those arguments factual. These are - the positions that are stated there about context are - reflect what's in the overall ICANN record.

And I, you know, I don't think we really provided any opinion one way or another on Professor Swaine's memo. So whether we run it up the organizations or not I don't think would affect the underlying message. So, I mean, you can judge for yourself whether you think it's going to, you know, be helpful for your analysis or not...

Phil Corwin: Oh, well it is helpful but, you know, when we consider, you know, there is some (unintelligible) considering it as personal views and considering it as official views of prominent IGOs.

Let me move on to the next clarifying question. I just have four. This won't take a long time. There are parts in this memo where you agree with the parts - portions of the Swaine memo to support your views. But then on Page 2 you say, "No inference should be drawn as to the applicability of the questions posed in the Swaine memo or the adequacy, correctness or completeness of the analysis in the memo or in general or as applied - or to be applied to any particular set of circumstances."

So having taken that into account, have any of you identified - are there any important questions you think he wasn't asked? And is there anywhere where you think his legal analysis is just incorrect because it's not clear from that, you know, kind of - that statement how you feel about the overall memo.

Jonathan Passaro: Okay sorry. If I may, this is John Passaro from the OECD. So Professor Swaine in dealing with extremely broad and complex set of questions in a fairly short amount of time. As we tried to put in our memo, I think - we think ah the only really pertinent question is the one regarding the specific context of IGOs protecting our name through UDRP disputes. And on that question it came out pretty clear from him that the IGOs do have a right to immunities in those cases.

So the caveats that we put in there, one of the main issues we - one of the main reasons we put that in there was because he's dealing with a very complex set of issues that touches on a lot of things that are of no relevance to the specific matter. And we didn't want that - we didn't want to endorse the memo as a whole or anything like that because the analysis on specific issues that aren't necessarily directly relevant might not be exactly how we interpret things so we just wanted to be clear that what the scope of our endorsement analysis was.

Phil Corwin: Yes, okay. Last two questions. You know, in your memo you repeatedly refer to the immunities enjoyed by IGOs and this working group recognizes those immunities and that of course is why we sought an expert in this field to give us guidance. And took the time to get that input rather than trying to guess what it was.

Having said that, clearly you're asserting that any mutual jurisdiction clause is violated - violates the recognized scope of the immunities. I'm just trying to understand, are you asserting that in the context of trademark or trademark like disputes that IGO immunity is absolute? He identified three forms of immunity, absolute, restrictive and functional. And so are you asserting it's absolute in the case of trademark disputes or trademark like disputes?

Or are you asserting that it's one or the other two choices but that the legal analysis would compel creation of a new CRP because requiring submission to a court of mutual jurisdiction if there is an appeal would clearly violate the relevant immunity under any circumstances?

Jonathan Passaro: Yes, John Passaro from the OECD. Again I think we're mixing several questions here. As I said a few minutes earlier, as we said in the memo that we sent in January, as we've tried to make clear over and over again, it's not a - you can't violate our immunities just by asking us to do something. The question is when we've stated from the beginning is that submitting to the UDRP would require us waiving our immunities, which is something that we don't do for the reasons that we've expressed over and over again.

And then the - I think we're also getting a little bit confused on the issue of absolute versus functional immunities here. Those aren't types of immunities in the context of the Swaine memo he wasn't talking about different types of immunities, he was talking about the different approach that courts might take to analyzing the scope of IGO immunities.

Phil Corwin: Right.

Jonathan Passaro: And there's no need to choose between any of those different avenues because, again, and even the more restrictive approach that Professor Swaine discussed he said that IGOs would enjoy immunities in this context because protecting our names and protecting our identities would, on most courts' reading, be something that is fundamental to the functioning of an IGO. And so this would clearly fall within the scope of immunities even if they were analyzed on a restrictive approach.

Phil Corwin: Okay. Hey, final question. The memo refers to the ongoing consideration by the Board of the conflicting views of a previous GNSO working group and the GAC recommendations on IGO protections. That was a topic that received some substantial attention at the Council meeting in Helsinki. And some dismay, which you I'm sure you and the GAC share that that process has gone for two years now without resolution.

And from the point of view of this working group whatever that final Board decision is going to be will be very helpful in the final stage of our work to know what the final decision was because the preventative remedies adopted to the extent they are, would, you know, feed into our analysis of what's required to add to that for when there is despite those protections at the second level an alleged infringement. Do you guys have any feeling for when the Board is going to wrap that up?

David Satola: David Satola here. Thanks, Phil, for raising that. And you also very kindly raised it during the joint GAC GNSO meeting in Helsinki. And like you were very anxious to see if not a resolution at least a decision, but I don't - I haven't found the crystal ball that would allow me to make a prediction about when that's going to be unfortunately.

Phil Corwin: Yes, yes, I mean, we had thought we had gotten the signal last summer - summer of 2015 - that we'd have something final by the fall. And now it's...

David Satola: Yes.

Phil Corwin: ...almost a year past that.

David Satola: Yes.

Phil Corwin: Okay. All right well thank you for responding to my questions, that was helpful.

Jonathan Passaro: Thank you.

Petter Rindforth: Thanks, Phil. And I see that George has also been very active on the chatroom but you have your hand up now for a while so please go ahead.

George Kirikos: George Kirikos speaking. Before I ask my questions I'll ask Paul Keating's question which he posted to the chatroom. Can you ask the current UDRP mutual jurisdiction would work if it was accompanied by a corresponding waiver by the respondent of a right to recover damages. This would not be an obligation but would give the IGO the ability to terminate the UDRP.

David Satola: Well, David Satola here. From my point of view, and for reasons that you can probably guess, I'm really reluctant to address a hypothetical. I don't know. And it wouldn't be my call anyway. I'd have to, you know, run down the hall and consult with some people. So sorry, can't answer it.

George Kirikos: George Kirikos here. Well I think the reason why Paul Keating asked that question is that, you know, the PDP working group has kind of bent over backwards to consider alternatives. And one of the alternatives is to, you know, basically maintain the UDRP but circumscribe the scope of that immunity so that, you know, we're trying to ascertain which aspects of immunity are you concerned about?

Are you concerned about some court, you know, giving a, you know, \$10 million damage award to somebody if you brought a UDRP and it was challenged in court? Or are you unconcerned about, you know, production of documents, you know, for discovery of documents in a law suit? Are you concerned about, you know, perjury if, you know, a witness in a court case was found to have perjured in support of, you know, that dispute?

Or are you just concerned about, you know, money basically that, you know, if the dispute is only about the domain name then all that the, you know, domain owner could get in terms of property would be the domain name so that's the only item under dispute. I think that's the motivation for Paul Keating's question.

David Satola: David Satola again. You know, I think those are all fair questions and they're all so fact-specific that I just - I wouldn't know where to begin to start addressing them.

Jonathan Passaro: John Passaro from the OECD. Just also to add that it's - the issue is - when it comes to immunity the issue is - again, it's a fundamental question of how IGOs operate and allowing us to operate without interference from any one state. And the problem is when you submit to the jurisdiction of a national court it opens up the door for undue interference with our activities from specific member state.

So that's where, you know, that's where the issues lie. And I'm not sure that it's really - would be possible to circumscribe immunity in, you know, stepping into a court and saying, okay, we now decide that our immunities extend to, you know, Point A but not Point B. it's, you know, this is just - it's - again, you know, these are really fact-specific questions and it's - I've never encountered a case like that when we're talking about trying to waive certain immunities but preserve others.

I mean, it's just that - I'm not sure that it's legally coherent or possible and it's - and I fail to see the relevance of the question because, again, we're talking about a fundamental issue or principle here and one that worries us in terms of interference from the state courts. And it's difficult to see how those issues could play out. And so attempting it circumscribe immunities in a certain way wouldn't necessarily be helpful and wouldn't necessarily protect us from the kinds of interference that we're concerned about.

George Kirikos: George Kirikos here. Let me just kind of respond to that before I ask my next question. I think the concern of registrants is that they have, you know, when you look at the IGOs giving a principled response instead of a pragmatic one that it almost compels the registrants to give their own principled response that, you know, we have a right to the national courts.

The UDRP supplements the laws, isn't a replacement for the law. And so if there's not going to be any compromise then you're not giving any reason for domain owners to compromise either. And so if there's going to be a middle ground both sides would need to, you know, shift their positions and be a little bit more pragmatic.

And I mean, specifying exactly which aspect of immunity is most concerned rather than just, you know, a theoretical approach. And so, you know, registrants, you know, have valuable property like these two letter dotCom domains, for example, can wholesale value like a minimum floor value of \$800,000.

And many of them could be, you know, in the tens of millions of dollars for, you know, specific strings. So these are not, you know, somebody doing, you know, a typo, www.oecd.org or something like that like a basically worthless domain name. Those are the kinds of disputes the UDRP I was designed for, you know, clear cut abuse.

But the disputes that would be brought into court, you know, the cases that the UDRP was not designed for in which, you know, expressly allowed for court action are the kinds of cases where a registrant is not going to waive their right to national court proceedings. And, you know, if the UDRP didn't exist in the first place the IGOs would have had to go to court and waive their immunity by default like if that's the only way they can dispute a domain name they have no way to compel a domain owner or a property owner or an alleged infringer or malfeasant, malfeaser or whatever, to stop doing what they're doing.

And so, you know, if you expect, you know, one side to compromise when - and only compromise and not move your position then, you know, that basically argues with the status quo to let the courts decide and how...

((Crosstalk))

David Satola: George if I could, it's David Satola here, if I could jump in. We - with respect - I think your questions go way beyond why we were invited to attend this meeting today, which was to respond to questions about our memo that we submitted. We certainly can't, and don't, represent, even in the context of this meeting, the other IGOs. So, I mean, the kind of open ended questions that you're asking may be valid but they're beyond the scope of why we're here today.

And we - it would be inappropriate for us to even purport to respond on behalf of the IGO community at large or even our own institutions. That's not why we're here today.

Jonathan Passaro: And John Passaro from the OECD. Let me also just add that in terms of talking about a middle ground I think there has been a great middle ground that was proposed by Professor Swaine himself, and that was the arbitration option. So it's very unfair to say that we haven't been willing to compromise at all.

Arbitration presents a great way forward. And as Professor Swaine noted in his memo, it's what we use with - when we enter into commercial contracts with suppliers and things like that in order to ensure that everyone does have recourse to some sort of dispute resolution mechanism without IGOs having to waiver our immunities, which is also not just a principle point, it is also a pragmatic issue, again, for the reasons that we said in the memo which are that it presents real opportunities for states to interfere with us and compromises our ability to carry out our activities.

Petter Rindforth: Thanks. Petter here. If I can just step in. I can understand that you cannot reply to all questions today and also that we want to make some pretty soon some initial conclusions on the working group so we don't - we're not before that reach out formally waiting for long time input. But I think was it you, David, that said that if we have additional questions we could communicate even if it's not official IGO community inputs.

But it would be good if they come up some specific topic that we would - before we end up we were initial suggestion and report to have some quick input from at least IGO representatives even if it's not official, to guide us. And also if we do so we need a fairly quick and clear reply back, so to speak.

Is that possible to have that kind of communication?

David Satola: Well David Satola here. Again, I think the issue - one issue for us comes back to how that to and fro would fit into the broader discussion that we're having with various parts of the ICANN community, the Board, the GAC, the staff, I mean, you know, it's not without its own resource implications on our side, you know, we're - of course in principle we're happy to do so.

I don't know, you know, we also have this small core group of IGOs that was constituted in part at the request of the GNSO back in - at the ICANN meeting in Los Angeles a couple years ago, which is, you know, really probably where

those kind of questions should be addressed. John and I and Brian's institutions are part of that core group but we also importantly have the UN and a couple of other organizations there.

And I - that also involves the GAC as well as other members of ICANN - the corporate entity. So I mean, I'm cognizant of wanting to be responsive to help you guys get to a resolution, but I'm also cognizant that we've got a lot of irons in the fire and that we're kind of spinning our wheels a little bit in getting towards resolution.

So I'm struggling a bit with where it's all going and, you know, how much more time it's going to take and...

Petter Rindforth: Yes. That's also why I just put up this question. I know that from all groups of interest in order to get a formal reply everybody must be heard and writing down and decides on the reply.

But from time to time it's also good to have, even if it's not an official comment and a comment that we cannot officially refer to, if there is some way to get just an input, even if it's not, I mean, a quick reply even if it's - sorry this time we can't say yes or no, we can't reply to this, it must be going further to the group or hopefully it could be this is our - my opinion or the three of us that thinks this could be a good solution or reply to your question, if you understand me.

David Satola: Yes, understood.

Petter Rindforth: Okay well I take it that we can at least try to do it that way. And now I give it to Mary, sorry, your hands are up.

Mary Wong: Not at all, Petter. This is Mary from staff. And I suppose at risk of jumping slightly ahead to the last point on the agenda, which I'll try not to, Petter, it seems to staff we have been trying to help coordinate and align that the

different groups and type of work that David and others have spoken about that particularly in light of the most recent GAC communiqué as well as the discussions in Helsinki between the GAC, the GNSO, Board members and the IGOs, that there is a sense amongst most, if not all, that this needs to be resolved or at least, you know, carry forward towards resolutions in a fairly short period of time.

So to the extent that it helps, Petter, David and everyone, staff would be happy to try to facilitate communications amongst the different persons and parties to the extent that we can. Thank you.

Petter Rindforth: Thanks, Mary. That was excellent. And then I think we have to proceed with the two last topics there on the agenda. But John and David, thank you so much for your input here today. I know that Brian, at least, follow us as an observer, I'm not so sure about you two, but you're of course free to do so to see what we are working on. And also to give us input as we discussed.

Point 4, I don't think we have so much time to discuss that further today. But just saying quickly that we are obviously in the final phase. We will start discussion next week. And as you can see on the agenda, there are - initially we had three possible policy options to modify the UDRP/URS based on alternatives identified today throughout the suggestions. And recommend no changes to either processes or develop a new separate procedure.

And well I'm not here to take the lead forward to any of those possible solutions as is up for this working group to decide. But I understand that from both our discussions in our working group as well as informal inputs from at least WIPO that there is so far no strong support for making a formal modifications of the (current) UDRP and/or the URS.

And as you know there is a new working group dealing with the review all rights protection mechanisms in all gTLDs, and Phil Corwin is one of the three cochairs there. And they still work on the URS at the beginning of next

year if I'm not wrong. And with a review of the UDRP at the beginning of 2018. So without possessing any statements I think it's not our case to make the - or suggest the modifications on the UDRP.

As you may know, we had, back in January 2015 we discussed some kind of informative instructions, guidelines, rather than a change were suggested and reference to article 6ter of the Paris Convention. But there was not suggested as an amended UDRP but more of some kind of informative instructions, guidelines rather than a change.

Okay, so next steps, timeline to initial report, if I understand it correctly we plan to have our initial report before ICANN in Hyderabad. Hopefully a decent time before that. And I think also - if Phil is still on the - yes, will this be up to the GNSO Council meeting next week on the agenda?

Phil Corwin: Excuse me, Petter. Phil here. What's the question about the Council?

Petter Rindforth: Will the topic of our working group - will it be up on the Council in some way or...

Phil Corwin: I don't think so really. Actually I just saw the proposed agenda while this call was going. It might only come up in passing about ongoing working groups. We're not one of the working groups that's being considered for a possible face to face meeting on the first day of the - at the facilitated face to face meeting. We would still have our regular, you know, one or two-hour slot during the meeting.

But since we're at the end stage we're not one of the big new groups that's being considered for that. So no, I might - I think there will be probably continuing discussion on the Council meeting perhaps of the state of play on the blocking mechanisms which are just temporary right now.

And because there was continuing the discussion in Helsinki about there was some disquiet within Council about the fact that the Board's been engaging with GAC and the small IGO group for two years and the Council, you know, which is supposed to make policy, has had no idea what's going on behind those closed doors. And no projected date yet for when the Board is going to come down from the mountain and present their findings and opinions. So, but I don't know if any specific thing on the agenda relating to our working group.

I can do a quick report to them about, you know, that we anticipate having at least a preliminary report and recommendations out for public comment before the Hyderabad meeting.

Petter Rindforth: Okay thanks, Phil. And where we are on the end of the agenda today. Mary. Sorry.

Mary Wong: Thanks, Petter. No, no problem. I just wanted to follow up on Phil's comments as he notes there is a not a specific agenda item for the GNSO Council's meeting next week on this topic. But the working group might like to know that one of the agenda items is actually the possibility of the GNSO Council providing a response or input to the Board on the GAC's communiqué. And the GAC communiqué from Helsinki does include advice on the IGO topic noting the work that's going on and the need to resolve it.

So in that context the points that Phil made about the concerns that were expressed by the Council and discussed in Helsinki could come up and it would probably be helpful for the Council to know what the timeline of this group is. So to that extent, for the last agenda item, and Petter and Phil, you guys have already mentioned this, we would have quite a substantial period of time, you know, optimistically speaking. We're in mid-July now. And if we would like to publish our initial report prior to ICANN 57 the latest time we would want to do that is mid-October.

So that still gives us up to three months. And the idea for that would be once it's published at least two weeks of the Hyderabad meeting we can use ICANN 57 to discuss any initial community feedback or to present the reasons and rationale for our recommendations to the Board or community.

The other thing about setting the date, of course, is going back to the conversation with David and John that we just had this past hour which is trying to align all the different things going on and trying to get a final sense from the Board as to the - I guess the fate of the work of the small group. So those are just my thoughts trying to sort of tie everything together and looking ahead for our group.

Petter Rindforth: Thanks, Mary, for that update. And I think that we all agree to that timeline and that we are actually in the phase now where we can make that preliminary report at least to get the initial comments. So thank you all for today. And I end the meeting. Thanks.

David Maher: Thank you. Bye.

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

Phil Corwin: Bye all.

Terri Agnew: Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END