

ICANN Transcription
IGO INGO Curative Rights Protection Mechanisms PDP WG
Thursday, 15 September 2016 at 16:00 UTC

Note: The following is the output of transcribing from an audio recording of IGO INGO Curative Rights Protection Mechanisms PDP WG on the Thursday, 15 September 2016 at 16:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance is available at:

<https://community.icann.org/x/0QK4Aw>

The audio is also available at:

<http://audio.icann.org/gnso/gnso-igo-ingo-crp-access-15sep16-en.mp3>

Coordinator: The recordings have started.

Michelle DeSmyter: Great, thanks,. Good morning, good afternoon and good evening.
Welcome to the IGO INGO Curative Rights Protection Mechanism PDP
Working Group call on the 15th of September at 1600 UTC.

On the call today we do have George Kirikos, Petter Rindforth, Jay Chapman, Philip Corwin, Paul Tattersfield. We do have apologies from Mason Cole and David Maher. From staff we have Dennis Chang, Steve Chan and myself, Michelle DeSmyter.

I would like to remind you all to please state your name before speaking for transcription purposes. With this I will turn the call back over to Petter Rindforth.

Petter Rindforth: Thank you. Petter here. And first, is there any new updates on statements of interest? Seeing no hands up, so let's proceed directly to the topic of today to continue discussion on proposed recommendation. And I don't - frankly not sure which version we will - because I saw that there are differences from the wiki and the Google version where we had comments that were visually - this is clean document.

Yes, I agree with George and I think it's best to have just one version. If Steve - the one we see here on the screen, is that - because this is a clean version. I presume that we have the comments at the end of the document as such. Is that...

Steve Chan: Hi, Petter, this is Steve Chan from staff. There's actually a different document I'm trying to bring up right now. This is indeed an older version.

Petter Rindforth: Okay.

Steve Chan: I'll bring up the latest extract from Google docs, which also has the comments from Paul Keating I believe, and maybe others. So just give me one second please.

Petter Rindforth: Yes. Good. We have something that we can also see. And if we go - so it's - the stuff we put in there's several open questions on which the working group has yet to reach preliminary agreement of which the working group would like to see community input prior to finalizing this - its recommendation on those topics.

And I think we can - when we finalize it can perhaps delete that and put the Google - there was a general reference to what's going on within GAC. That sentence could be good to put in there in initially. Because otherwise from other points of view I think we will reach conclusions within the working group on most of the topics here.

Okay, you - I hope you all can see the draft Section 6 on the screen. And we go to, what, our first comment. They're already allowed and permitted to use the UDRP URS, the issued limited to the demand to retain any unity relative to post-UDRP URS proceedings concerning the domain names as issued.

And that was on the initial general note that's described in the charter for the working group. I see that more as a general comment as what we see here is what the text from our initial questions. So I don't see any reason to change that first sentence. Phil, your hands is up.

Phil Corwin: Yes, Petter, just - we're on the first paragraph under the General title, is that correct?

Petter Rindforth: Yes.

Phil Corwin: Yes, I think Paul's comment, while correct, misses the point. I think this sentence should read something like to allow clearer - which really we've done is we've clarified and actually broadened our access. They have access now, you know, access is a question of standing. We've clarified that standing can be conferred not just by trademark registration but by Article 6ter registration.

So we both clarified and broadened the standing to use the existing mechanisms but IGOs, I think the allowance of access is different from whether they have concerns about the access in sovereign immunity. I think we need to keep the two issues separate. So while Paul's comment is not incorrect, I think it kind of misses the point, which is that we've allowed clearer and broader access through our recommendation to allow standing through the 6ter registration. That's all I had. Thank you.

Petter Rindforth: Thanks, Phil. And if I understand you correctly, you still take it as this comment to us all and nothing that we need to change or add. Because I see

it's more as a conclusion and then if we change anything or add anything it should be after the citation of the...

Phil Corwin: Yes, well really I think the first sentence of the next paragraph is a little too curt where it says, you know, our answers are no but we are - while saying no we're also clarifying the ground for standing to utilize the mechanism. So we're not just doing nothing, we're providing a clarification that allows more certain access on broader grounds than is clear at the moment. And I think we should emphasize that.

Petter Rindforth: Yes. Good. I see George Kirikos in the chat. Is there perhaps anything you would like to state more vocally?

George Kirikos: Sorry, I was muted. George Kirikos for the transcript. Yes, I agree with Phil, like we don't necessarily have to change it if you want to, you know, wordsmith a little bit. Conceivably you could say improve access or remove obstacles to the use of those mechanism. I think if they're not necessarily changing anything from the recommendation point so it's just an explanation of the recommendation.

Petter Rindforth: Okay thanks. Okay, so we'll move on to the Recommendation Number 1. And I see no comments on the recommendation as such, but on the description of it, so one comment is it's similar lacks clarity, similar to what, each other or other complainants? And what is either case being referenced. Delete thus. Well that I can accept. And then it's more of a general - if - actually well should we write UDRP/URS or UDRP and URS? I'm completely open for any of this but in that case we need to make changes in the whole document so everything looks similar.

But I've suggested addition, while issues have to do a little bit larger just like that. What issues pertaining to immunity may persist the working group realizes that, A, the certain of immunity is an election and not a judicial requirement, B, there is a certain unfairness in permitting a claimant to claim

trademark rights and seek enforcement while simultaneously proceeding - simultaneously precluding the domain (unintelligible) stems from seeking judicial recourse, and, C, there appear to be alternatives available to the IGO/INGO to permit them to effectively refer to relevant trademark rights such as utilizing of third party commercial organization to assert trademark-related claims.

And that, as I understand it is suggestion to put in instead of just manner INGOs already have and reinforce the trademark right and there is no perceivable barrier to other INGOs obtaining trademark rights in their names and/or acronyms.

So first of all our first initial - I see no reason to change or to further clarify the similarity in the first sentence here as this is the word that was used in the procedures as such. So the question out to you is shall we add a more descriptive suggested here - the sentence that starts with, "Many INGOs already have..."

I see no hands up on that. I think also that we have some kind of further description in the document so I suggest that for the moment leave the document as it is on that.

Then, page 2, "Unlike IGOs, who may claim jurisdictional immunity in certain circumstances, INGOs are not hindered from submitting to the jurisdiction of national courts under the Mutual Jurisdiction clause within the existing DRPs."

I agree that INGOs may (unintelligible) immunity but is optional. They may elect not to do so. Because I think we have - is it later in the document that we - and also in this paragraph we have examples on how IGOs can opt into not state their immunity. As we have in the Professor's support for instance the regulations that United Nations have on this topic. And I presume that there are also other IGOs that have the same.

And then we have the next - there should be a separate bullet point and after first or second on the list I suggest that we change the sentence to read, "The existing system appears to be sufficient. The Working Group's research revealed that some INGOs regularly use the UDRP to protect their rights. Although the working groups sought comments directly from the NGO/INGO community, it would need new evidence that any NGO/INGO had forgone existing their rights under the UDRP URS because of the immunity issue."

And I - I can accept to put in that clarification because that describes, as I see it, also the situation that we concluded on - rather early stage. And then we have the - and Lori agrees on George about the formatting. Yes.

We also have comment 10, "While some INGOs may be concerned "While some INGOs may be concerned about the costs of the UDRP/URS process, the working group found that such issues were beyond the scope of the working group charter. Evidence showed that the majority of costs related to a UDRP/URS proceeding are professional fees as opposed to ADR processing fees. The working group saw no reason why INGOs/INGOs could not request processing fee reductions directly from the ADR provider. No evidence was received to indicate that any INGO/INGO had requested such relief or that any request had been denied."

Maybe it's - I'm not sure that we should make such a conclusion. I think it's - from my point of view at least it's better to just end that it's outside the scope of the working group charter and then up to each dispute resolution providers. But everyone is free to make a comment on that. I see there is a lot of chat going on but you're also free to raise your hands. Yes, George, please.

George Kirikos: Sorry. George Kirikos for the transcript. We might want to even point to the fact that ICANN has that \$200 million or so from the new gTLD auction proceeds that they're looking for possible uses of it. So perhaps some of the INGOs or INGOs or other ones who feel that they need some form of subsidy

for dispute resolution proceedings could, you know, propose that in that venue. So it would be outside of our scope but we can at least point out the existence of that working group.

Petter Rindforth: Yes, thanks George. And I suggested we can have that in mind when we discuss the topic at least when we discuss it in a more in official way with IGO representatives and perhaps also with ICANN Board but still I see no reason to get it into our comments officially. Phil.

Phil Corwin: Yes, thanks Petter. Phil for the record. I have several comments here. Number 1, you know, this is stylistic. I mean, some of this is factual; and, you know, but it's about what facts we should - and some about style. I think stylistically on each of these recommendations we have the bold face recommendation and then we have an explanation of why we reached that - why we are making that recommendation. And that explanation should be as narrow as possible. It should be targeted explaining the particular recommendation. And I'm concerned that while some of Paul's suggestions are correct, he's mixing on other issues that are addressed in other ways. And it kind of muddles the clarity of what we're trying to do here, which was to explain, you know, the reason we're reaching the conclusion.

So for example, in Comment 9 where he says - when he starts adding in NGOs and I don't know what an NGO is or, you know, the immunity issue, that's really confusing because they don't have any immunity; they're nongovernmental entities. So that I think muddies it.

And then I think we should confine our discussion to things we actually discussed and have a record on. I don't recall - maybe I missed it - but I don't recall ever discussing whether any UDRP or URS provider ever provided reduced fees or no fee filings to any party. And under what circumstances that occurred. So if we didn't get into it I don't think we should start, you know, throwing in references to - which has no evidence we received. I don't recall us looking for any evidence on fee relief.

And frankly, the - any discussion of fee relief doesn't belong in this section, which is explaining why we didn't think we needed to address, you know, nongovernmental organizations. That belongs in a completely separate section if we're going to have it regarding - I would favor in the overall report, not in the recommendations, some discussion of the GAC input we received, the GAC communiqué recommendations relating to our work.

I think we should address them in a final report just as we should address some comments I believe would be proper regarding our relationship to the Board negotiations with the GAC and the IGO small group. But I don't think they should be mixed into these parts which are - should be as narrow as possible explanations of the recommendations we reach. So some of that is style but I really think we want to not have cross references to every other topic in these explanations. We want to keep them focused on explaining the particular recommendation. So thank you for letting me air those thoughts.

Petter Rindforth: Thanks. So let's go on to Recommendation 2. And again, the comments are more on the explanation. I note the comment - Comment Number 16, the change - both UDRP and the URS complainant must - threshold established (unintelligible) holds rights in a trademark or service mark.

I suggest that we keep the txt as it is because I see it's more as the general legal text. Phil, your hand is up. Okay. Then it's the comment also on the generally accepted that the ownership by a complainant of a trademark is sufficient to satisfy the threshold requirement of having trademark rights. So that's a change reading that, ""threshold may be satisfied by establishing either ownership or exclusive license rights in the trademark or service mark." In the UDRP context, trademark rights do not require registration and may be established by evidence and use referring to, yes, etcetera, etcetera, you can read it here.

That I can agree to because it's - it describes more specified the differences between the UDRP - the URS when it comes to what you initially have to show. And as said, the URS is - is more restricted there on the first issue.

Okay, then there is also on next page, a proposed addition on the reference to the Paris Convention. I think it could be legally correct to have it there. And then as discussed further below in, and there should be the input on the page where it is, the working group believes that when it comes to limitation reflects the other substantive grounds of the UDRP and URS, which require that the respondent have no legitimate rights or interests in the domain that is identical or confusingly similar to the complainant's mark, and has registered and used the domain in bad faith.

And I see comments on Article 6ter that it does not provide for any trademark rights itself. It is perfectly correct. It merely imposes a burden on signatory states to prohibit registrations of trademarks or use in trademarks that are identical but only if it suggests a connection at the public level.

Yes, maybe we should have any more description of Article 6ter that should more be on the next article that started it consequently. And I see George saying that instead of burden of signatory state perhaps obligation of signatory state. I think that's - yes, George, take that as a note. Good suggestion.

So and then we have on the next page at the top, "To enshrine this recommendation as part of binding Consensus Policy and/or contractual agreement with ICANN's contracted parties, the working group recommends that a binding Policy Guidance document be prepared that will describe the scope of the standing issue for IGOs, as well as any other points that may warrant clarification should the GNSO Council and the ICANN Board accept these PDP recommendations."

And, Phil, I turn it over to you.

Phil Corwin: Yes, I just wanted to suggest that - and somewhere in the 1 or the 2 - in either of the two paragraphs at the top of this page, where it's talking about Article 6ter and armorial bearings, flags and other state emblems, and then to - okay. Well okay I guess at the end it says, "abbreviations and names of international intergovernmental organizations." I just saw that.

So but maybe we should empathize that because just that - that's the part that's relevant to what we're looking at is that it's the names and abbreviations of the IGOs. Maybe put that in bold and emphasize that. But - or add a sentence at the end of that first paragraph to, you know, acknowledging that that the extension of its scope in 1958 is what it makes relevant - what makes it relevant to our work.

So just - what's there is okay, I'm just suggesting some emphasis or additional explanation to tie it better to our work. Thank you.

Petter Rindforth: Thanks, Phil. And I take it as you see on Page 4 we then have a specific article that describes Article 6ter. So I suggest that everything we note that is not perfectly clear about Article 6ter in the document maybe it should be better to refer to this part of the document so that the description on legal issues and everything is on one at the same place.

And then I go to Recommendation 3. Let's see what - comment, "It could be easily argued that Paragraph (c) in fact operates as a condition for the recognition of the right and that this condition presents a higher burden for the complainant because it is not merely a text versus text comparison but necessarily includes establishing an element of confusion at the level of the public."

There is also some other note. I don't see what we have to change in this recommendation as such, so I proceed to Number 4, which is, "In relation to the issue of jurisdictional immunity, the working group recommends that no

change be made to the Mutual Jurisdiction clause of the UDRP and URS; and IGOs be notified that they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; such that claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will fall to be determined by the applicable laws of that jurisdiction.”

And then Option 1, the decision rendered against the registrant in the predecessor UDRP URS, question, shall be vitiated; or, Option 2, the decision rendered against the registrant in the predecessor UDRP may be brought before, and the name of arbitration entity for de novo review and judgment.”

So here we have two specific options. And I presume that to be clear in our report we should decide on one of these options, 1 or 2. Or shall we have it as two variations that people outside our group can make comments on? Yes, maybe it's also an option.

I think that what we have discussed before may be - I mean, Option 1 is the - we included - concluded in our working group. Option 2, as said, when we discussed this to - with IGO representatives especially with WIPO before, they stated just after our meeting in Helsinki that they could accept with Option 2. But we need to make a conclusion within our working group. So what do you think is the best?

And George says in the chat, “although we seem to believe that in many/most jurisdictions, an IGO would have been deemed to have waived immunity and the court would recognize that. And I take that more as you prefer Option 1. Yes, I see also Jay Chapman says that between Option 1 and 2, Option 1 is preferable. And George, please go ahead.

George Kirikos: George Kirikos. Yes, I think as Jay said, you could start the paragraph which is, where an IGO succeeds, like conceivably we could remove that paragraph

- sorry, that sentence entirely where it has the two options because right now we don't - the UDRP doesn't say anything about what happens if an IGO files a UDRP and succeeds in asserting its immunity in the court. So in some sense we would be modifying the UDRP slightly if we implement either Option Number 1 or Option Number 2.

And so it would be kind of like taking into account the scenario that might not have been contemplated at the time the UDRP was created. Personally I'd be in favor of Option Number 1 because it would kind of close the loopholes and ensure that the existence of the UDRP doesn't create a problem that didn't exist without it having not - having been implemented in the first place. In other words, if the UDRP didn't exist a complainant - an IGO as a complainant would have had to have waived its immunity by bringing a suit in a court.

And so they shouldn't be able to avoid that waiver of immunity simply by filing a UDRP first to create the conflict. So that would be my reasoning for going with Option Number 1. It kind of eliminates that kind of a loophole.

Petter Rindforth: I also see Lori Schulman says that Option 1 doesn't seem to be an option. It forces the IGO to waive its immunity. If we can't say that starting a UDRP or a URS procedure is in fact a thing to have waived their immunity, I'll leave it over to you, Phil.

Phil Corwin: Yes, thank you, Petter. And Phil here. I'm going to violate my own general rule against kicking cans down the road and suggest we lay out with much greater detail the pluses and minuses of each option and invite comment in the comment period.

We need to explain that this situation - first of all appeals are going to be rare if a IGO brings in a UDRP or URS and it fails the complainant does not prevail, the only way this is going to arise is if they exercise an option to take it to a court of mutual jurisdiction in which case they waive any immunity,

unless we're going to give them an option in that case to take it to another arbitrator.

For the registrant, if the registrant is - there's a negative finding by the panel against the registrant that would result in extinguishment or transfer of their domain.

We can't - it'll be - I think we need to discuss the possibility that Option 1 might incentivize some infringing registrants to seek review despite the cost of doing so knowing that a particular IGO tends to assert its immunity and is hoping that they will do so vitiate the case. So on the other hand we don't want to leave the registrant without any relief because there's a negative decision against them. And if the IGO successfully asserts immunity they'd have no appeal right. So then, you know, you have two not great choices.

One, allow an infringing registrant who's forced the decision in the court hoping to have the IGO assert immunity and therefore vitiate the UDRP decision, or without an arbitration system, if they're successful assertion of immunity, there is no way for the registrant to get review. So I think we have to lay out that these are all imperfect options. They're all going to be extremely rare cases in our estimation. But I would prefer laying out the pluses and minuses of each and not making a final decision until we get community feedback on this.

Petter Rindforth: Thanks. Before I leave it over to Lori, hearing you and reading the chat I think it would be perhaps good to rephrase the Recommendation 4. And I am not the perfect language for that right now. But to - even in the recommendation 4 more stating that there are two possibilities - sorry, two possible options that we recommend Option 1 and then, as you said, in the further text, make that a plus and minus to explain why we have come to this conclusion on Option 1.

And I think it's also - it's important to make, you know, further description and on our Recommendation 4 that it's not - there is no perfect solution but based on all the plus ones we recommend Option 1.

But also that each one have - had a possibility to look at Option 2 and come in with comments on that. Lori, please.

Lori Schulman: Yes, hi. I just wanted to support Phil's suggestion about I think we should emphasize that more thought (unintelligible) pros and cons (unintelligible) of the actions (unintelligible)...

Petter Rindforth: Sorry, Lori. Is there any possibility that it can get out of the noise behind you?

Lori Schulman: I don't know what noise you're hearing. I (unintelligible). I don't know what noise you're speaking of. Do you want me to type or I could try to go to the other room? There's nothing where I'm sitting that seems to be projecting noise. What are you hearing?

Petter Rindforth: Yes, if it's possible for you to change room - you're perfectly welcome back. Sorry, I couldn't hear you.

Lori Schulman: Can you still hear me?

Petter Rindforth: You there?

Lori Schulman: Can you still hear me?

Petter Rindforth: Yes, we can hear you. But please. Okay, I don't hear Lori at all. Thanks, George. Because everything was so silent. Lori, I suggest that you call again. In the meantime, I'll read Phil's comment on the chat room. "We should also emphasize in extended explanation that Part B of Recommendation 4 allowing action to be brought by assignee, agent or licensee, should eliminate

most assertions of sovereign immunity at appeals stage, providing that the court recognizes validity on the original procedure transfer of rights. Yes.

And, Lori asks someone to call out.

And George says, "Right, Phil, IGOs concern about immunity have routes around it using assignee, agent and licensee." That's appeals stage in my comment. Yes. So we should definitely put in - put that explanation and clarification under Recommendation 4 on our notes there.

Lori's hand is up but - oh she's typing. Yes, she agreed with Phil that we should put more explanation in about the group's thinking and the pros and cons. And I think we're all agreed about that. It needs to be put in in a very clear way, although I still - I still think that it's best way for our clarification to have even if we have two possible versions of it, for our working group to come to a common conclusion that we should recommend one of those. And then it's up to each party outside our working group to come into with comments and votes for version 1 or 2.

Lori, is you - online now? She'll call out. Okay, I proceed to Recommendation Number 5. And insert text here about how this may be beyond the scope of the working group's authority. In respect as a reminder of the GAC's advice concerning access to curate processes for IGOs, the working group recommends that ICANN investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS with the accompanying Policy Guidance as recommended in this report, at no or nominal cost, in accordance with GAC advice on the subject."

So here come the costs aspect. And we have already talked about why it's not up to us to make comments on the costs and which service provider or ICANN should assist in lowering the costs. So as stated by the staff here, we should insert the text that describe why this is beyond our working group's

authority, but I don't think we need to so many lines on that. But should be something there.

And then Recommendation Number 6, "To the extent that the GNSO receives a concrete proposal from the Board-GAC-IGO small group" - the one that we have not heard so much from, "prior to the issuance of this working group's Final Report, the working group requests that the GNSO Council refers to the working group those aspects of the proposal that affect any curative rights protections for IGOs, so that the working group may review the proposed recommendations with a view toward discussing them in its final report."

And here insert text here about the known status of the IGO small group discussions. I think that's the ones that maybe can do that the best way is the staff that have the recent updates on it.

And now I think we have Lori online.

Lori Schulman: Yes, you do. You do.

Petter Rindforth: Welcome back. Yes.

Lori Schulman: Thank you. Sorry about - I don't know what you were hearing. I was in a room with no machinery so I'm not sure what you were hearing unless it was the buzz...

Petter Rindforth: Yes, we heard everything except for you.

((Crosstalk))

Petter Rindforth: Everything is clear.

Lori Schulman: Okay. So I think my headset is probably dead. Okay, yes, I was just making some general observations. I think Phil's idea about expanding on how we

think about this is very important because, you know, based on the conversations that we had last week and that we could go around again this week in terms of Option 1 or 2, I am definitely in the camp that neither is a good option for a variety of reasons.

And while I do respect the points of view, particularly of George and Paul, when you certainly don't want a registrant held hostage to an IGO without recourse. I understand that. But I also - you know, alternatively also understand and perhaps it's because I do have an American-centric point of view on some things and I fully admit that, that goes to this issue of sovereign immunity with in the US court system in a lot of circumstances we live with it.

You know, and so that could just be part of my own built in mechanisms for how I handle disputes in my career. That's just as an explanation to the group since we've gotten to know each other the last couple of years.

But these are terrible options, I think in some respects. And if we're going to go down these options, then I think, yes, we need a more fulsome explanation of why we're here rather than just have these stark recommendations without a lot of supported thinking.

Petter Rindforth: Okay so if I read you correctly, you are more going back to that we - even if it's called a recommendation we describe just briefly in the recommendation as such the two possible ways to solve it and then we insert more text with our plus and minus. But in this first draft, in this first recommendation, we don't recommend any specific ones of them and we leave it to the public to come in with comments on either A or B is the best solution so to speak.

Lori Schulman: Right. Or we explain that there's rough consensus here, not full consensus. And, you know, in the interest of transparency that...

((Crosstalk))

Lori Schulman: I don't know if that helps or hurts the cause. But it's...

((Crosstalk))

Petter Rindforth: Well total, just from an administrative point of view, I've been in working groups with where we had not full consensus on everything and it's always - I think it's always the best if we can come out with recommendations to have full consensus as much as possible. But also this is not our final recommendation. I presume that we come in with comments from the public and then we come up with our final recommendations.

So I think it's not so - it not look so bad if we, in one of the recommendations, have two possible options. And then we can describe more the plus and minus and of course it will be more plus than minus for Option 1. But rather than to, at this stage, indicate that we don't have a consensus, because we haven't made our final decision on it.

Lori Schulman: Right, I understand that. I wanted to address George because he said he'd like to ask me if I think a licensee, assignee methods aren't viable. I actually think they are viable. But that is where I'd like to hear from the IGOs because that maybe a very good road to go down. I mean, American companies, the companies do it all the time, they put their IP into holding companies and it's the holding companies that instigate the actions and they do it for tax reasons, they do it for liability reasons.

And I don't see why, on an IGO level, the same type of strategy couldn't be employed to enforce domain, you know, issues around domain names in the UDRP. But that is something that I think legally it seems to make sense and could be exactly the type of work around we suggest. But I certainly would want the input of the IGOs on that.

Petter Rindforth: Thanks.

Lori Schulman: Yes. Yes. To George's point...

((Crosstalk))

Petter Rindforth: Yes.

Lori Schulman: Yes, to George's point, if we could get the IGOs on that bandwagon I would have a higher comfort level. Yes.

Petter Rindforth: It seems that in the time between our next meeting next week we should have the possibility to discuss online the Recommendation 4 to see if we can come to some kind of conclusion by the next meeting. Phil.

Phil Corwin: Yes, thank you Petter. And I'll be brief because I know we've got two minutes left here. Quickly on 5 and 6, Recommendations 5 and 6, on 5, I believe in this section we need a full recitation of all the GAC communiqué - portions of the GAC communiqués that have been issued on this subject of IGO protections particularly the ones since we began our work.

So, one, they're there on the record and, two, we can respond to them and that would be the place to discuss the - where it says, "In respect to the remainder of the GAC's advice," we really haven't set forth what the GAC's advice has been. I think this is the place to do it. And to - on the lower no-cost to explain why that's a matter of someone either the dispute - DRP providers voluntarily providing discounts or free services or someone subsidizing and that's not - we have no authority to do that.

But I think we need to lay out all the GAC advice and discuss it. We may want to say some more once it's in here in print. I want a very comprehensive report because I expect, frankly, some criticism from the same folks in the IGO community who have been pretty much not engaged in our work because it's not going to come out with the recommendation they want. So I think we need a very full and fully discussed record on all of these points.

On Number 6, let's discuss this more next week but I think, you know, I have real concerns about what the Board's been doing. The Board's in a situation where they've got conflicting recommendations from the GNSO Council, which is the group, charged with making gTLD policy, and this is what all of this relates to. And they got GAC advice, which is supposed to be the lesser - have lesser weight than GNSO Council adopted recommendations. And since - and the recommendations and the advice were contrary.

And since receiving the contrary input the Board's been meeting in closed-door sessions with the advisory group and has had no discussions with the Council or any subset of the Council on their recommendations. They've - and they've been extremely tardy in communicating what's going on with that group or conveying final thoughts.

So I want more discussion next week where it says we're going to review the proposed recommendations. Are we really - after we put our draft report and recommendations are we really going to consider rewriting everything and beginning extensive new discussions to deal with whatever finally comes from that Board GAC IGO negotiating group? I'm not sure that's proper. But I'm not sure how to handle it.

But I think we need a lot more discussion on Recommendation Number 6 next week.

((Crosstalk))

Petter Rindforth: ...Phil, is that you don't look forward to another two years with our working group?

Phil Corwin: Well, what I'm saying is, you know, the - that Board - that Board small group negotiating group has been - they're well aware of our presence and where we are in our process. They've been extremely slow and extremely opaque in

what they're up to. And this current language seems to say that we're going to put out draft report and recommendations before Hyderabad. That's our aim.

And then suddenly they, you know, throw something in over the transom during the public comment period are we really supposed to - it seems to me the only way to properly deal with that would be to withdraw the initial draft report and recommendations and spend many more weeks discussing what they've sent us and then put out a revised version. Are we committing to that? That's what I want to discuss next week in terms of how this recommendation Number 6 is drafted at - as it is currently drafted. Thank you.

Petter Rindforth: Thanks, Phil. And then it throw us automatically over to Point 3, next steps, next meeting. And we see next - as I see it next week our main issues will be Recommendation 4 and 6 but also Recommendation 5 to make further comments on that. And we have a long list of notes from the staff, thanks. So we are - what we are two minutes past. Anything the staff would like to note or add? No?

Steve Chan: This is Steve from staff. No, thank you.

Petter Rindforth: Yes. Okay. So thanks everybody for fruitful discussion and meeting today, and see you again next week. Bye.

Michelle DeSmyter: Thank you, everyone. Again, the meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Everyone, enjoy the remainder of your day. Take care.

END