

**ICANN  
Transcription  
IGO-INGO Curative Rights Protection PDP WG Meeting  
Thursday, 5 October 2017 at 16:00 UTC**

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Coordinator: Recording has started.

Julie Bisland: All right thank you. Well good morning good, afternoon good evening everyone. Welcome to the IGO INGO Access Securitive Rights Protection Mechanisms Working call held on the 5th of October 2017. On the call today we have Petter Rindforth, George Kirikos, Mason Cole, Imran Ahmed Shah, Philip Corwin, (Matt Cohen) is on audio. David Maher is on audio. Osvaldo Novoa. Oh David Mayer just joined. We have no apologies at this time. From staff I have Dennis Chang, Steve Chen, Berry Cobb and myself Julie Bisland.

I'd like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. And with this I'll turn it over to Petter Rindforth.

Petter Rindforth: Thank you Petter here. So let's start as usual with the question if there is any new statement of interest? And as usual no hands up so we go directly on the point two of the agenda which is to proceed where we started last week. And I'll just make - yes Phil?

Phil Corwin: Yes thanks Petter. Sorry to interrupt but the proposed agenda items two and three are reversed from the agenda, proposed agenda that Steve sent out last night. I think it might be more useful to start with three to update those on the call of what we've been doing for outreach and kind of what our process is going forward so that everybody understands the following discussion of the options paper in the context of a very tight schedule where we all have only two more calls after this one before the working group meeting in Abu Dhabi. So I hope you can take that suggestion under advisement again noting that the agenda that order has been switched since the email was sent out last night. Thank you.

Petter Rindforth: Thanks Phil. And as staff just before you join noted that Mary is the one that has all the updates. And she will arrive a little bit later to the meeting. That I think it was like 50 minutes or so. That's why it has changed on the agenda.

Phil Corwin: Okay. Well then let me just follow up briefly just so...

Petter Rindforth: Yes sorry yes.

Phil Corwin: ...if I could make...

Petter Rindforth: If you have any specific information or want to discuss...

Phil Corwin: Yes.

Petter Rindforth: ...Mary's inputs that's okay yes.

Phil Corwin: Yes just I'll be very brief. Just so participants on the call understand the general process going forward. Our – I believe our objective today is to reach near final agreement on this options paper. When Mary gets on will describe the outreach efforts we've undertaken over the last week but we expect by tomorrow to have a final curated list of the still active members of this working

group. We're considering the possibility of a Webinar on where the final report stands, all of the provisions and final discussion of the options on the remaining question next week and then to put out a consensus call by email and report back on those results on the call the 19th so that we can go to Abu Dhabi and have a session where we can present the outlines of all the key points of the final report and take feedback in Abu Dhabi and then come back after Abu Dhabi and move towards a consensus call on a final report which everyone will have an opportunity for, you know, to suggest edits to it. So I think that's correct. If you have any corrections or anything to add to that but I just thought it would be good so people understand the context for this call and what our plans are for the next two calls and then going to Abu Dhabi. Thank you.

Petter Rindforth: Thanks Phil for that, sorry. The only thing I may add to that is when we had our call this Monday to discuss for instance this - the seminar for that is focused on the members that have not participated but still want to be updated there was also a request from was it both from the council and the board to have the opportunity to participate and get updates on that call? I don't remember correctly.

Phil Corwin: Yes Petter, Phil again. Yes that's correct. And you're correct on that. We had considered also inviting if they're interested people from outside the working group to attend that session to get an update but the primary purpose would be to make sure that all working group members are familiar with the entitle and, you know, where our final report stands and then we can take a consensus call on that and hopefully get the results back for the 19th. Thank you.

Petter Rindforth: Thanks. So and of course that's whole seminar could also be good for one of us to also those active members to have an update and hopefully also to get some new input and comments and clarifications from members that have noted that they still want to be members of a working group but for some reasons didn't have the possibility to participate in our meetings but actively.

Okay I'll just check out the chat room if there is anything to - I think that what George has stated are more of the general topic but I will reach out to you in a minute. So you can see from the documentation here we have already gone through the preliminary notes and there is no amendments made there. We finalized the discussion about Option A last week but here you can see just a minor amendment in the text that I believe is based on what we discussed there. So we're losing where there's some challenges the initial UDRP URS decision by filing suit international court of mutual jurisdiction. And I know that that succeeded in its initial UDRP URS complaint also succeeds in asserting jurisdictional immunity and that's taking away a claim of. So that's the only change there.

And in Option B there are a little bit more changes but I presume that George want to proceed with the comments that we when we need - had to finalize our meeting last week and we're in the middle of the discussion on Option B. So do you have any further comments, information on what you think about Option B there? George?

George Kirikos: George Kirikos for the transcript. Yes those changes look fine. But on the right-hand side the - there's comments on when the applicable date would be. That's probably an implementation detail but I would be in favor of it being, you know, the policy effective date, the third option on that list because you don't want to kind of be backdating the rules. And when they become effective you don't want to let potential registrants know that the new rules are in effect as of the date that the policy is finalized. Thank you.

Petter Rindforth: Okay good. So then I'll try to read it here and should be going to explain it with a creation date. There's a note there. Let's see what's creation date. It's a field contained in the Whois response format. It is the understanding of this working group that for this specific field the creation date value will not change as a result of change (unintelligible) including from, you know, catching scenarios.

So also so that I have it clear from last week what - what's meant here in Option B with the creation date is that the first date of the registration of the domain name. And as long as it's a domain name that's still in life that is not be registered for over some time even if it's ours. But if it's just transferred directly to a new holder it keeps the creation date. That's the creation, not the registration date of the current holder but the creation date of the domain and as such. And having in mind that a domain name lives as long as it's still registered. So if someone don't renew it and it comes out in the in the free air so to speak again then it's and registered, the same domain name is registered again then it becomes a new creation date for that.

Okay then Option A applies in relation to domain names with a creation date on or after. And there we had this clarification that the date should be - that date should be that date of when this new reservation is in force. Option C shall apply. After five years or ten instances of option C being utilized whichever occurs first ICANN and the various dispute resolution providers including any who have a domain dispute arbitration proceedings under the new Option C will conduct a reviewing to determine the impact of positive and negative as a result of trying out Option C. So that's the new text of Option B.

And then we come to Option C. We - yes see that's Phil says I'm fine with the proposed edits on pages 1 and 2 prior to the heading general principles for binding arbitration. Okay good. So Option C where complainant IGO succeeds in the UDRP URS proceeding the losing registrant proceeds the final suit in a court of mutual jurisdiction and IGOs (unintelligible) succeeds in asserting jurisdictional immunity the registrant shall have the option to transfer the dispute to an arbitration forum meeting certain pre-established criteria. And we have a list of them a little bit further for determination of international law that the original appeal was based upon which such action limited to deciding the ownership of the domain name.

An IGO who finds the complaint under the UDRP URS shall be required to agree to this limited arbitration mechanism when filing the complaint. The parties shall have the option to mutually agree to limit the original (UDCL) proceedings to solely determining the ownership of the domain name. Subject to agreement by the registrant concerned the parties shall also be free to utilize the limited arbitration mechanism described about at any time prior to the registrant filing suit in a court of mutual jurisdiction. And there's the new line area in agreeing to utilize the limited arbitration mechanism, both the complainant and respondent are required to inform ICANN.

And what we have added here from last week was the what we have discussed previously from general principles for binding arbitration. And if you'll remember we talked about also last week that it could well be that there are some details to decide upon whatever of these options we proposed and that there could be a new working group leading with that. But that's why I wanted to remind us about that we actually have discussed some general principles which is could be more of a guidance for how this binding arbitration shall be done. So on the first point here are substantive law. Arbitrator decides disputes under the national law under which the initial repeal was reasonably brought, not the UDRP. Both parties can mutually agree to proceed under another national law. This is the normal practice in arbitration cases. So this is - this text I see is not perhaps finally formally written but this is something for us to further discuss.

And the procedure rules same as in the (applicable) judicial system, different rules can be mutually agreed to by both parties. And again this is also to get it similar to the UDRP as it is today wherein fact if both parties agrees upon it there could be both when it comes to the language of the dispute and when it comes to which court to appeal. But otherwise there are specifications in the regulations on where to appeal so to speak.

The venue to be conducted in an arbitration forum certified to meet certain basic criteria. And those basic criteria we can either further discuss or lead to

the group that then will put this all in practice and cannot be an IGO just to have it 100% neutral or the arbitration forum that decided the underlying UDRP to show lack of bias and de novo review. And I will say that even if the risk that for instance WIPO or the underlying UDRP would be - not be neutral in this space we need to make sure that there is not even a risk or a gray zone for any parties to think that there could be - that there is not perfect neutrality in this part.

Panelists the fourth option is a three-member panel and a chair of which must be a retired judge from that jurisdiction explore possibility of creating a standing panel from which to choose the two panelists other than the chair. And that means the parties cannot choose the chair on the panel. And that is the same as in a three panel UDRP when the parties if they want to have a three panel they can choose from a list or they can propose one panel on their own and the other party will have a list with their suggestions in the panels but the chair should be definitely completely neutral.

Language, the same language to be used as in national jurisdiction forum. Alternative language can be selected by mutual agreement of the parties. And again I think that's important to have is similar such from the original UDRP so that the parties can understand. And also if they have in that dispute decided on a specific language it's good to probably also safe for those parties to proceed with that language that all have decided upon.

Discovery, same as in judicial case. And then we have the interim remedies the same as if court case had continued. Now I think by an example there with domain locking I see that effect that's the only possible interim remedy in a case like this. And it's also very similar to the URS proceeding. Remedies same as in judicial case. Costs seems to be the same or lower than in judicial case.

And although when it comes to the cost here I presume that that would be a question that ICANN board will have to decide upon in the final phase to

avoid that the costs are extending. But at least the same as in a normal judicial case. Enforcement of award efficient to uphold UDRP determination would result in domain transfer or extinguishment. Enforcement of an available monetary award against IGO needs to be considered but at the minimum failure to pay could bar it from any future ability to file a UDRP or URS.

And then we have the presidential value of decision. Was this the way to fully replicate the precedent of a court decision? Policy could state a distinct recommendation that any case shifted to arbitration should consider and seek to follow judicial precedent on similar cases brought under the same law and also be consistent with prior arbitrations under that law if (unintelligible) similar that exists. So that is Option C which is also the option that now I (beat) personally here and the option that have the best chances to be efficient and to be accepted by all parties that are involved. And as said before there are in these cases hardly rarely any options that are – can be 100% accepted by everyone and are perfect but we need to find a solution that actually in - is in response to the work we have been cited to do and also to be accepted by the council and GAC and ICANN board and as said also the other parties involved. So George?

George Kirikos: Yes George Kirikos for the transcript. I raised this point at the end of last week's call briefly talking about how there had been some interesting matches in Google if you do the search for court appointed arbitrator or court appointed arbitration, et cetera. And I sent out - posted a link in the chat room out from Justice Department of the government of Canada talking about dispute resolution and arbitration and how parties can go to the courts to help clarify, you know, who the arbitrators would be or the venue, et cetera, because one of the issues I have with the proposal is that conceivably you could have panelists who are outside that country's jurisdiction. Like let's say I'm a Canadian registrant I would want to - and I want to have the dispute handled under Canadian law I would want to have arbitrators who - or panelists who are familiar with the Canadian law and so I wouldn't want to

have panelists say from China or Iran or South America who have no familiarity with the Canadian judicial system even though there's, you know, a retired judge as the - from that jurisdiction as the chair I don't think it would be very helpful to have the two other panelists not be familiar with that jurisdiction's laws.

And so the (Derrek) law I linked to showed how perhaps the court could be involved because Phil had pointed out that the court might not want any involvement because the immunity claim was accessible. However that being said the arbitration clause would then be binding unless the IGOs make the claim that the arbitration clause is not binding which I guess conceivably they could make if you follow that logic. But assuming that the arbitration clause is binding and we do know that IGOs have agreed to arbitration in the past then one could just leave the procedure some specific procedure to be approved by the court. Thank you.

Petter Rindforth: Thanks George. Phil?

Phil Corwin: Thanks Petter. Phil for the record. I want to say kind of three different categories or things here. First our goal hopefully today is to agree on final language of this options paper that where members of the working group agree that it gives a reasonable accurate description of the three options on which we'll be taking a consensus call.

And again I just want to remind members that the job of this working group is to give broad policy recommendations with detail but not to the level of detail of an Implementation Review Team would get into if any or all of these recommendations are ultimately approved by council and the board and need to be implemented. So we want to give sufficient guidance so that an IRT would understand what the policy group recommended and not go off on their own and negate or change those recommendations. But we don't need to get down to far into the weeds on that.

Second, in regard to George's suggestion I think it's worth listing my concern is that in some cases if the - once the judge says, "Okay IGO you're not properly before this court. You have immunity under international laws and under the facts you presented to us," I'm not sure we can rely on the judge to do anything other than terminate the case at that point. And many judges might not be willing to appoint arbitrator. So I think we need at least a backup if it's the view of the working group that that should be a primary goal. I have no opinion one way or the other whether that's a good idea to let the judge appoint the panelists. I also think we have to look at whether what would happen if an arbitration body selected by the panelists has one group of panelists they use and the judge appoints panelists who were not affiliated with that arbitration body. That's another complication.

So far as the IGO attacking the arbitration clause or refusing to consent to the arbitration and appear at the arbitration I believe we had agreed at least on the last call that we're going to make clear on the final report that if the registrar will have a reasonable period of time to decide to go to arbitration if the judicial action is dismissed. And that should probably be added to the details of Option C and make clear that if the IGO refuses to participate in the arbitration the effect of that is to permanently stay enforcement of the underlying UDRP decision that the IGO cannot (unintelligible) the UDRP result effectuated by boycotting the arbitration. So that's another detail that should be added here.

Finally in reviewing the language under general principles for binding arbitration which is language where I was the original drafter but it was quite some time ago at an earlier stage of our deliberations two, three months ago I do note that there were two places, one where I think we should consider it whether we want to keep it and one where I think we have to make a change. The first is under substantive law. And the language there is arbitrator decides to see it under the national law with the judicial appeal - under which the judicial appeal was originally brought, not the UDRP and then slash, both

parties can mutually agree to proceed under another national law. This is -  
and then in parentheses this is a normal practice in arbitration cases.

I'm not necessarily opposed to that and I believe Petter added just the  
second part of that about mutual agreement on - under another law. I would  
only note that this might - we've got a situation where the ability in the first  
place to bring a judicial appeal is not available to all registrants. It's only  
available to registrants who have some ties either through their residence  
through the registrar they've used to a nation which has an law like the USA  
CPA which provides for separate adjudication of domain name trademark  
disputes. So I'm just wondering whether it's appropriate since that's a  
precondition for bringing the underlying judicial appeal to then let the parties  
choose a different law. But I'll leave that open for discussion.

The one place where I think we need to edit this to be accurate is noting that  
on Options C subject to further discussions we've had it says that - and this is  
in regard to the arbitration that it says such action limited - it says with such  
action limited to deciding the ownership of the domain name. So we've  
narrowed down the scope of the arbitration to disposition other domain  
names and not other remedies that might be available under national law for  
various reasons including questionable ability of the arbitration forum to  
enforce such other provisions. So down in the description under Enforcement  
of Award it's says decision to uphold IDR predetermination would result in  
domain transfer extinguishment. And then there's a semi-: based on the  
description now contained for Option C the remainder of this language  
regarding enforcement of available monetary awards seems to be  
superfluous no longer relevant. And if we're going to stick with the narrowing  
of the scope of the arbitration continued on Options C then that language  
after the semicolon should be deleted.

That's all I had on the - on this right now. And oh and other typographical in  
Option C in the paragraph in the sentence on the fifth line that says an IGO  
who files a complaint it should be a IGO which files the complaint because a

IGO is not a natural person. It's an organization. So who should be changed to which. That's all the comments I had. Thank you very much.

Petter Rindforth: Thanks Phil. And Petter here again. Just a note that to what George said. I think it's meant to be clarified also under the panelist point where it's - it says that at least the chair must be a retired judge from that jurisdiction. And that jurisdiction means referring to the point of substantive law. So I think those two points, substantive law and the panelists at least tries to explain that the chair judge must have knowledge about the legislation that the dispute is related to. And again I think that it could be good and fair to both parties if they have the - if they (unintelligible) the agreement to use another national law. But again said that it must be both parties, both the domain holder and the complainant. And in that case of course the panelists referring again to the first point there would be the chair would be someone that are very similar - familiar with and hopefully come from the specific jurisdiction related to that national law. And if we have these – points clearly stated in the general principles I don't think we need to have some additions turning to the judge and the court to decide upon that. If it's clearly stated which jurisdiction, which national law that is to be used for this binding arbitration it would be enough I think.

So maybe we need to make a little bit clarification on that when it comes to the definition of the - on the panelists and perhaps also on the substantive law. Okay I saw that Mary welcome. You have joined us now. So I'll let you squeeze in here -- sorry for that expression -- and update us on the outreach to working group members before we proceed.

Mary Wong: Hi everyone and thank you Petter. This is Mary. And apologies again for being detained by another call. In terms of outreach to all the members of the working group as noted and as instructed by the co-chairs we not only sent emails to everyone who has not been attending the calls asking if they wish to remain members and asking if there's anything we could do to bring them

up to speed if they have not been following as closely because of other commitments.

We did receive as we reported last time some responses. Some people said yes I'd like to remain part of the group. Yes I intend to participate in the consensus call. A couple of people said no, I don't wish to continue as a member and so their status has been changed to that of observer.

If you go to the Membership Page right now and this was updated I believe two days ago by staff, you'll see that we have updated the numbers according to the responses we received. And at the moment we are listing 26 members. We are still outstanding despite the reminders responses from I believe about six individuals or so. So we can follow-up with those folks but we are remaining about six, maybe seven nonresponsive folks. The rest have either confirmed or asked to be removed. Petter?

Petter Rindforth: Thank you Mary. And as was said we plan to have an informative session to those members. Phil?

Phil Corwin: Yes Petter. I wanted to thank Mary for that update. That's good news. So it appears that we have at least 20 members and possibly up to 26. I think we ought to agree on this call what the deadline is for the remaining six who haven't indicated a preference to get back. I would suggest, you know, a few more days but before our next call on the 12th, you know, maybe set a deadline of the 10th or 11th so that we have a firm number of members. But I'm encouraged that we I think have a good enough list of members that we're fairly well insulated against any allegations that might be made that we have too few or insufficient representation of various elements of the ICANN community. Thank...

Petter Rindforth: Thanks Phil. And I also note that I sent over to you - and I think and Mary...

((Crosstalk))

Petter Rindforth: ...the George note here that once a decision is no longer appealable under the time limits of the various countries then the clock starts ticking on the arbitration options. And thanks for that. I think it's important to put that in as we cannot write a specific time and date here. As George said when we go to court it could be quick or a solution or a decision the takes a very long time before the court make any decision even if it's the initial one if they can take the case or not. So then we have to put in some more neutral language to clarify that. I will take George's words there as something to add and to start with in that aspect. Yes Mary?

Mary Wong: Thanks Petter and Phil. I just had one last follow-up on the outreach question and then if I may I did have a question regarding George's suggestion. So let me just complete the outreach item. So our understanding is we will reach out one more time to those few individuals that haven't responded. And we had asked them to respond to us if possible by today. But we will reach out one more time and give a deadline of a specific date next week. But in addition to that if you look at the list of members you'll see that even without the individuals that haven't responded we do have representation, in some cases perhaps just one member but you'll see representation from across the GNSO and with a couple of individuals and representatives or legal representatives of nongovernmental organizations so just to give you a spread of the membership as we have it today. I'll stop here Petter and hold my question because I see that George has raised his hand.

Petter Rindforth: Thanks Mary. And that's also something I noted when we looked through the list of members and the list of active members there not - may not be so many but we have a good spread out about the interests and that the active members (unintelligible). Okay George?

George Kirikos: George Kirikos for the transcript. Yes I just want to talk a little bit about that representation aspect. I'm not sure what the rules are say on representation but it seems to me that on the various PDPs that some topics or issues will

affect some stakeholders more than others. For example this particular topic would most affect registrants and IGOs. And in this case at least the registrants are well represented and the IGOs have had, you know, many opportunities to have their views represented. And we've also had some of the trademark people at least represent themselves in comments and occasionally on this PDP as well.

Some of the other GNSO constituencies might not be as directly affected by the topic so if their representation didn't exist it doesn't necessarily mean that it should affect the outcome of the PDP. So I just wanted to raise that as a comment. Thank you.

Petter Rindforth: Thanks George. I'm glad to see Mary's hand's up again because I had a question to you based on that if it's possible to see from that practical view that some topics are a specific interest in for - from our ICANN members and groups of interest. And that's why you don't see so many participants from other groups. Mary?

Mary Wong: Thanks Petter and thanks George. So kind of starting with Petter's comment it is true and I think this is something that's recognized within the ICANN community that certain issues even if it is a complex or simple PDP would be of more interest to certain parts of the community than others just by the nature of the topic. And I believe this is actually specifically recognized in the GNSO's working group guidelines. So when we speak of representativeness and inclusiveness it is with that backdrop in mind.

In relation to membership and representation going to George's initial question typically and as a general rule everyone who participates in a PDP and participants as an individual it is also possible that a person participates on behalf of a group. And that group could be one of the GNSO stakeholder groups or any of the other ICANN supporting organizations or advisory committees. So for example we've seen in some PDPs participants from the at-large community or the at-large advisory committee and we've also seen in

some of our groups that some GNSO participants even though they are members of a particular constituency or stakeholder group they may be participating in that PDP as an individual. Conversely for another PDP they or some other member of that group could be representing that stakeholder group or that constituency same with, you know, trade associations, lawyers representing their clients and so forth. So there aren't any restrictions as such. There aren't any rules as such.

One of the things that we did create as I think everyone on this call knows is observer status so that for individuals or representatives who are not able for any reason to participate actively they can still follow the mailing list. And of course regardless of whether anyone is a member or an observer all the calls are recorded and transcribed. All the documents are published so that there's every possibility of anyone who isn't if you – signed up as a member or observer are really still following along all the discussions that take place. So that's really kind of the mechanics of how the multi-stakeholder model within the GNSO PDP works writ large. And I hope that's helpful.

Petter Rindforth: Thanks Mary. And I would say that when it comes to IGOs that this topic is actually for them. Even if we don't have any active members in the working group we had three of them twice making presentations and participating in the discussions in – on our working group meetings and we have also made comments on our proposals and more from time to time informing contacts. So they have participated in the way they have choose to participate. Mary?

Mary Wong: Thanks Petter. And I forgot to add that, you know, the working group guidelines in the GNSO procedures do explicitly do two things. One is require a PDP working group to seek input from the other community groups. And this is something that this group did early on. And the requirement is to do it early on. But secondly there is also the possibility for a group at any time to solicit further input whether directly and specifically or through public comment. So that's also another way in which input can be received. Thanks Petter.

Petter Rindforth: Thanks. Phil I see your hand's up.

Phil Corwin: Yes thank you Petter. Phil for the record. Two quick things. On the final working group membership looking at that list and noting that six may still be in doubt but, you know, I'm comfortable that, you know, if we have 26 it's more than two dozen members. If it winds up only being 20 that's still reasonable numbers for a standard ICANN working group. And there's members from, you know, all the parts of the Commercial Stakeholder Group other than the ISPs from the noncommercial. We've got registries, registrars. We've got people in their individual capacity.

So I think, you know, I'm quite comfortable we can withstand any criticism of not being represented of the community. And we've had a completely open process. And as noted while the IGOs chose to be only observers not members they've had multiple opportunities to provide direct input to our working group.

Returning to the other issue of flushing out the final details of Option C I think we should settle on the or try to settle today on the time in which our - a registrant if there is a judicial decision grant - recognizing an immunity defense how long that registrant has to invoke the arbitration option or as George ably pointed out to undertake a judicial appeal if they believe that the lower court erred in finding valid immunity. And looking at the UDRP itself I note that section let's see what it is, Section 4K of the UDRP gives the domain registrant if there's an adverse UDRP decision it gives the registrant ten business days to notify the panel that it's invoking it's right to seek judicial review which would in turn stay enforcement of the decision.

So that's one possibility. That would be one that's based right on the current language of the UDRP, ten business days after the court decision. Whatever we decide on that I'm thinking about this I think we should also recognize that bringing an appeal on an issue of law is somewhat more complex sometimes

and the law of the jurisdiction may in fact give a period that's longer than ten business days or whatever period we decide is appropriate for that decision.

So I think, you know, if we use the ten business days I think the UDRP decision should be continued to be stayed unless the applicant advises the UDRP provider within ten days of the court decision that either is seeking arbitration or in the alternative that it intends to bring an appeal on an issue of law but that if it can cite a national statute or a procedures which gives it a longer period to file that appeal I think we should give it that longer period.

You know, if a jurisdiction gives someone let's say 30 days an example to file an appeal on an issue of law to question an underlying court decision we should recognize that and not hold the applicant to a shorter period particularly since those type of appeals may take some time to research and before a final decision can be made. So I just wanted to speak to that in our attempt to flesh out the final details of these options on today's call. Thank you.

Petter Rindforth: Thanks Phil. And so we will have within ten business days to go to arbitration or otherwise if another party wants to appeal the first court decision it depends on the normal time for appeal legislation in that country. And I have to say that I haven't thought appealing the court decision that way but of course that means that the final decision may take years and it's up to the parties of course.

I think also talking about the timeline it's good if we have a suggested to put in that the parties can agree on a very early state to skip the court action and go directly to arbitration. And that's something that I think could be well worth for the domain holder. But it's also something that one of the few conclusions that at least I could take from the very general expressions and comments from IGOs that they like to see the possibility to go directly to an arbitration after the UDRP. Okay good I see George comments there. So and further comments and thoughts? Phil?

Phil Corwin: Yes Petter thank you. Phil for the record. Just a comment and your observation that an appeal on an issue of law could take an extended period of time. I recognize that but, you know, we've taken a pretty firm position throughout our work that we're not going to have ICANN for closing legal options for either party. And noting that if a judicial appeal was brought and the court decided that under the applicable national law the - that there was no trademark infringement that the IGO would be free to appeal that decision if they thought there was an error of law the way the appeals process works in most jurisdictions. So it's an evenhanded suggestion to I don't know how many registrants would want to appeal an immunity determination but some might and we shouldn't be foreclosing their legal rights. And IGOs would have the same legal rights to appeal a determination that no infringement had taken place. Thank you.

Petter Rindforth: Thanks Phil. Yes, I agree with you. I just made my personal comment on that if any of the parties appeal the process will take a very long time until they have a final decision. But as you say it's not up to us to decide upon how they should proceed that way. And also again talking about the time limits when the parties they choose to appeal instead of go to arbitration.

I also agree that we - it would be strange if we had specific rules with definitely more limited time for that when it comes to domain name disputes then are actually the practice in that specific country which could well be 30 days and perhaps even could be, you know, extra time if the parties wants that. So in short we have to accept national law when it comes to that point.  
(Matt)?

(Matt Cohen): I think I actually had my question answered by reading - rereading Option C which was that by mutual agreement both parties could go directly to arbitration and avoid the back and forth and going to court. Is that correct?

Petter Rindforth: Yes it is.

(Matt Cohen): Okay. Yes I think it seems likely that rather than spend a lot of resources on a big court battle that it might be in the interest of both parties just to go directly to arbitration. And I see that that's already accounted for here so I will take down my hand.

Petter Rindforth: Oh good. Yes hopefully I mean we're still talking about very rare amount of cases but I presume that in most of those the parties will use that possibility to skip all the time-consuming process of having the case to a court and then to a court of appeal. George?

George Kirikos: Yes George Kirikos for the transcript. Yes I did want to add that the - it could be that the IGO, the one that's appealing the immunity issue for example they might - sorry, the initial court might rule that the IGO doesn't have immunity and that the court case could proceed. And then the IGO could appeal to a higher court based on that issue alone before the merits of the actual action are considered by the lower court whether or not they do have immunity. So – and that could happen multiple times for example Ontario usually there's a lower court and there's a say an Ontario Court of Appeal and then conceivably the Supreme Court of Canada. And we've seen some of these IGOs take the cases to the Supreme Court of Canada. And I assume that there's probably three levels of courts in most other large developed countries as well.

And as for the time aspects I think what happened is that we would ever - only ever see this option in the cases of it being a very valuable domain name so say a two or - a two letter domain name, a three letter domain name or a single dictionary word domain name or whether it's, you know, a very high principles at stake. For example let's say WIPO wanted to go after WIPO.coms. If the domain owner is well off financially they might want to spend all their resources to, you know, defend their rights to free speech, et cetera. So there these cases perhaps don't have any, you know, burning

house or any emergency aspect to them where it needs to be necessarily resolved in a quick time manner.

And that's actually one of the impetus is between Option B because for all of these domain names that have already been registered IGOs have had, you know, 20 plus years to go after the domain names. You know, why should they now be subject to a new mechanism that might expose them to risk? Thank you.

Petter Rindforth: Thanks George. Okay so good. I see from the notes that we have got some points from today to add and rephrase. And once that is done we will have our three options with that are now finally specified to send out. If I remember correct send out to the full working group for comments about for the possibility to make a decision in the nearest weeks. And then I think we have actually we are done with the topics of today. George?

George Kirikos: George Kirikos again for the transcript. If we're on the all other business I wanted to raise a point that I had actually posted at the top of the chat room early on about an article in Domain Name Wire that talked about domain name seizures. And that might be something that we could incorporate into our final report because it talks about how, you know, law enforcement can quickly take down allegedly illegal domain names that are in this case it was in the pharmaceutical industry with allegedly faked pharmacies or illegal pharmacies. And similar procedures could be used by the IGOs. The UDRP and the URS aren't the be-all and end-all in terms of their available procedures to combat cybersquatting and so on. And I noticed that in the first page of the document that the words under these mechanisms were added in the second to last paragraph and that kind of falls into that same topic. Thank you.

Petter Rindforth: Thanks George. And I think we have talked about for a time - long time ago once we finalized our suggestion in the comments to have some note that

there was other alternatives for IGOs at least to have a note somewhere.  
Phil?

Phil Corwin: Yes thanks Petter, two things as we move toward completion of this call. The first, I have no problems within our final report referencing other possible ways that IGOs might seek to address alleged trademark infringement. I think on domain seizures we want to be careful to just note that this has been done without endorsing it because that practice is undertaken by some national authorities particularly in regard to allegations of copyright infringement has been somewhat controversial within various sectors of the Internet community. So I think we just want to be on the side of noting the possibility without endorsing any particular alternative action.

Turning to next steps I just, you know, my - just want to stay my understanding of how we're going forward and make sure others share the same understanding that following today's discussion staff will circulate an updated version of this options paper which incorporates all the changes that were just in here in red line form and also add some of the additional detail that came out of our discussion today and that we'll circulate that to working group members and hopefully by email can ascertain that everyone's agree that that's a reasonably accurate description of the options for consensus call purposes recognizing that nothing's final until we go to looking at a draft of a final report which will be post Abu Dhabi.

And that when we take the consensus call on members we're going to be asking for on each of the elements of the final report an indication of support opposition or neutrality. And particularly in regard to Options A, B and C we need to determine under the GNSO methods not just support but opposition so that, you know, an option that gets 12 let's say there's 20 members, an option that gets 12 votes of support and no opposition is in a quite different situation than one that gets 12 votes of support and eight votes of opposition. It's a different description of the general tenor of the working group's disposition.

So, you know, we'll work with staff and we'll put out those details before there's consensus call but that's my understanding of how we're going forward. Thank you very much.

Petter Rindforth: Thanks Phil. So at least by our meeting next week we will have the final amended script that we have discussed today and last week. Mary?

Mary Wong: Thanks Phil and thanks Petter for outlining the steps clearly. The staff just had a question and maybe there's more question now for Petter or Phil - and Phil but it's also a question for planning for the next couple of weeks before the Abu Dhabi session. You'll remember that a few members had indicated that they thought a Webinar to bring everybody up to speed might be helpful. So we're just wondering if we should try to schedule that if not for next Thursday the 12th then the Thursday following which would be the Thursday before folks start to travel to Abu Dhabi.

Petter Rindforth: Mary thanks for reminding me about that. And I think that if we should have that Webinar it must in our (life) I think (unintelligible) out. But I think the only time we have for that would be to combine with on next week's working group because if a Webinar hopefully can activate some of our members that are still interested in the topic but will be in our meeting it must be fairly soon from now and so that they can also come in with their comments on our proposed final report. I don't know what Phil think about that timeline?

Phil Corwin: Suggests Petter I...

Petter Rindforth: Yes Phil?

Phil Corwin: ...just typed in the chat I agree. We should aim to have that October 12. The purpose - the main purpose of the Webinar is to make sure that all members have an opportunity to participate and be fully informed on - and ask, be able to ask questions about anything they're being asked to, you know, show

consensus disposition on before doing so. So doing it after the vote, not really the vote but the determination of disposition of the working group members wouldn't make sense. We want to do it before. And the secondary purpose is to bring other interested members of the community up to speed on where we are before we get to Abu Dhabi.

Petter Rindforth: Thanks. So let's proceed that way. George do you had - any comments on this?

George Kirikos: Related. Back in September (Jonathan Pisaro) -- and I just put a link into the chat room -- had inquired about possibly going to the Abu Dhabi meeting. And I don't know if there was any update on that perhaps off that separate mailing list. And he also might want be reminded that even if he doesn't get travel funding to Abu Dhabi he could obviously participate by all remote participation through Adobe chat if we have a Webinar. Or even during the Abu Dhabi meeting there is always the remote participation available. I don't think that was mentioned to him on that mailing list. Thank you.

Petter Rindforth: Okay. Thanks, good point. Mary?

Mary Wong: Yes. I just want to thank George for that reminder. And we will certainly be sending all remote participation details. And what we can do on the staff side is to send the details as well as the, again the time and date of our session to that mailing list as well which I think George if you're referring to the discussion group for the reconciling the Red Cross and IGO protections issues.

And just to note that staff has not heard further from (John) or anyone else. I don't know whether he will be getting travel funding from OECD but if he does one will hope that he and other interested IGOs will be able to attend our session in Abu Dhabi. And if he does not travel to Abu Dhabi interested IGOs including the OECD can as George said participate remotely. Thanks very much.

Petter Rindforth: Thanks yes. And then he was obviously interested in the topic to see how far we had come so at least he could participate online. Phil?

Phil Corwin: Yes thank you. Just quickly adding is working group members know both Petter and I have been involved in that separate discussion group chaired by Bruce Tonkin. Frankly that discussion group activity has fallen way off since in the last few months. And we've heard nothing further in response to (Jonathan)'s question. So as far as we know there are no plans for convening that informal group in Abu Dhabi. If we get advised that there is going to be such a meeting we'll certainly try to attend unless we're physically unable to.

But and noting of course that our working group meeting in Abu Dhabi will be an excellent way for any interested party to know the likely components of our final report and provide final input and that ICANN for those who are unable or unwilling to travel to Abu Dhabi that ICANN's remote participation technology is very good and affords people not on the scene physically full opportunity to participate. Thank you.

Petter Rindforth: Thanks. And that actually - let me phrase a question here, could be interesting to see how many of you that participate today will also have the possibility to be physically on the spot in Abu Dhabi. So if those that will attend physically can just click on the Agree button.

Okay I see me and George, Phil. I mean okay. But I hope that the rest of you can participate online so that we can have a further inputs and comments and (unintelligible) a bit further to our final conclusion. Good. Okay then I think we are finalized for today. If no one wants to spend some more minutes on any of the topics we have discussed, I see no hands up -- excellent. So we will likely have the informative Webinar by next meeting next week and hopefully then also we'll see some more of our previously active members to participate in that and also there also give comments on our proposals.  
George?

George Kirikos: George Kirikos. Just a small point, I know the ICANN staff is very pressed especially before these ICANN meetings but if it's possible to get any document, you know, a couple of days before the next meeting that would be great because I've noticed at least in the PDPs that I'm participating in that sometimes the documents are coming, you know, the day before or sometimes the same day as the meetings so it's very hard to catch up on the reading. It kind of forces one to do it immediately instead of having a few days to incorporate it into one schedule if that's possible. Thanks.

Petter Rindforth: Mary what you think about that? Well we'll...

((Crosstalk))

Mary Wong: Hi.

Petter Rindforth: Yes I see your comment there.

Mary Wong: I just typed it. I typed in AC chat but thanks George. And we will do our best. And I do know what you mean that there are times when documents may not come in at an optimal time for folks or very close to a call but we will definitely try our best especially in relation to this group as you move towards consensus. Thanks.

Petter Rindforth: Thanks Mary. And I know that you - you're all doing an enormous and excellent work not just for our working group. But of course also if we are going to have the Webinar next week it would definitely be good to have all the updated information as early as possible. And I haven't said any number hours of days but this time. So thanks and see you next week. Thanks for today.

Phil Corwin: Bye all.

Mary Wong: Thank you Petter, Phil, everyone. Goodbye.

Julie Bisland: Thanks for joining everyone. (Jeff) can you please stop the recording? And everyone have a great rest of the day.

END