

**ICANN
Transcription
IGO-INGO Curative Rights Protection PDP WG Meeting
Thursday, 13 July 2017 at 16:00 UTC**

Note: 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. The audio is also available at: <http://audio.icann.org/gnso/gnso-igo-ingo-crp-pdp-13jul17-en.mp3>

AC Recording: <https://participate.icann.org/p5274qbiyij/>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. And welcome to the IGO INGO Access to Curative Rights Protection Mechanism Working Group call on the 13th of July, 2017.

On the call today we have George Kirikos, Petter Rindforth, Mason Cole, Paul Tattersfield, Phil Corwin and Jay Chapman. I have no listed apologies for today's meeting. From staff we have Mary Wong, Berry Cobb, Steve Chan, Maryam Bakoshi, and myself, Terri Agnew. I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn it back over to our cochair, Phil Corwin, please begin.

Phil Corwin: Okay, welcome everyone. And appreciate your being on the call today as we try to move toward discussing content of the final report with a couple of major issues still to be resolved. So we'll go to Agenda Item 2, review

discussions and feedback from our open community session, our 90-minute session in Johannesburg two weeks ago.

And, staff, do we have any notes or anything on that meeting?

Mw: Hi, Phil. This is Mary from staff. We don't have any formal notes from the meeting. What we did do was send around the links to the transcript and recordings. For today we have on hand the slides that were used, if you think that would be helpful to jogging folks memories, we also have the GAC communiqué if you wish to address that.

Phil Corwin: Yes, yes, let's quickly go through, let's take five minutes just to go through the slides to refresh everyone's recollection, those who were there in person and those who joined remotely. And I'll just have some brief commentary and then anyone else who want to comment on what happened here, what happened in Johannesburg.

So basically that was a recap for the community of where we are. And you can all - you have scroll control here. We went through the timeline noting of course that we - everything was delayed by about a year as we took time to secure funding and then locate and then get a report from a legal expert, an independent legal expert on the generally expected scope of IGO immunity and domain related disputes as best as that can be determined.

We went through the fact that we had received 46 comments on our initial report which was published back in January, one from the GAC, four from GNSO constituencies and stakeholder groups, 21 from IGOs, although many of them were just endorsing larger statement submitted by another IGO, one from the USA, that was on primarily on Article 6ter impact and 10 from other individuals.

And that we advised them that we had reviewed all comments received and to cull out any new facts or new arguments that were raised in those

comments. We didn't - we weren't going to go forward and review things we'd already heard. I'll just get through this slide, Petter, and then I'll - I see your hand up, I'll call on you.

And let them know we were looking to make some changes based on those comments and were hoping to submit our final report to Council before the next ICANN meeting which is in Abu Dhabi at the end of October. Petter, go ahead.

Petter Rindforth: Thanks. Petter here. Just looking at the transcript from our meeting, and if I'm can do some quick summarize more or less based on also my own conclusions. What can be noted is that we had some general questions about Article 6ter again, it was Heather Forrest in Johannesburg representing IPC.

And also we had - just let me just scroll down - John Rodriguez with the USPTO that also wanted to have some clarifications if we still saw Article 6ter as the only base or if it also could be traditional trademark protection.

And then if I may so just quickly go through some of the notes from Brian Beckham...

Phil Corwin: Sure, go ahead.

Petter Rindforth: ...that he said that at the end of the day he'll have a de novo appeal through an ADR procedure and said that it's - maybe it's simpler just to go straight to that option and cut out the court looking at the immunity issue for whatever that's worth. And then I'm reading right from what he said.

So and he also pointed out that whatever suggestions we have for the second site, so to say, all parties are free to take the case to a court. And he was a little bit afraid of if we formally put in the court action first in the system, it will take a little bit too much time. But he did not come up with any specific suggestions on how that could be rewritten.

And I also heard some comments, I think it was also John Rodriguez that said that talking about trademarks and there are some IGOs that are indeed not dealing in the commercial way. And if I understand him correctly he made a conclusion that would be hard for them to show that; their names were in practice protected as trademark. But - and this is, again, my personal view, there are actually, if we specifically look at services, there are some services for instance, charitable services, that belongs to different kind of service classes, and as they are described in the new specification, they could, as I understand it, will be non-monetary.

I mean, charitable services namely distribution of blankets, for instance, in Class 39 or providing medical services to needy persons in Class 44. It says nothing about that it's a commercial way. So I think if we hear any arguments that some IGOs actually not using their names in a trademark way, if they're not selling anything or marketing anything in that way, it cannot be trademarks. Others not agree with that conclusion.

But as said, just to summarize, we had some more, as I saw it, more formal follow up questions on Article 6ter and my conclusion from that meeting we had in the room and also by some follow up meetings is that it's - our suggested rephrase is accepted or at least understandable by those groups that made some initial questions about Article 6ter, namely that Article 6ter is one way to show something that could be actually related or seen as a trademark.

So for this moment, thanks, was just my quick summary of the discussion we had there.

Phil Corwin: Yes. Thanks, Petter, that was useful and it spurred some recollections of my own. There was a lot of discussion of 6ter. I think the group - attendees understood after some discussion that we were looking to dial back our initial recommendation and no longer have it WIPO notification be an independent

basis for standing but simply to be evidence of common law trademark rights and that would fit within the current policy framework of the UDRP and URS.

On the issue of whether an IGO can get trademarks, we had a - as I recall rather robust discussion on the email list after that meeting in which a number of participants made the point that noncommercial entities could still get trademarks and of course we've seen instances where IGOs did bring a UDRP action on the basis of trademarks they had registered. So it's not clear that that's any kind of insurmountable bar to having standing.

One other thing, toward the end of our meeting Brian Beckham raised the issue, again, of - and maybe I missed this for the last few years but I thought we're always looking at access to either the existing UDRP or URS or special analogs of those for IGOs. And he raised the issue of a more rapid takedown procedure for cases of, you know, where an IGO name or acronym or confusingly similar variation was being used for, you know, deceptive fraudulent fundraising, malware, phishing, etcetera.

And of course those were - I was very involved with the discussions that led to the adoption of the URS and note where exactly the types of harms for which the URS was created. And I commented in the meeting to Brian that, you know, word "rapid" is in URS, it's Uniform Rapid Suspension. And the question as to whether it's sufficiently rapid seems to me one that should be addressed and will likely be addressed in the separate RPM review working group of which I'm a cochair. But I don't - I'm willing to hear from other members of this working group, I don't think we're tasked with creating a new super rapid takedown scheme separate from the existing URS or something that's similar to it just for IGOs.

And then finally in discussion of our Option 2, James Bladel of Go Daddy and also Chair of the GNSO Council, raised a question as to why we wouldn't just - if the - if an IGO succeeded on its immunity defense in a judicial action, why we wouldn't just revert to the current rule on - that would reinstate the UDRP

decision. And I don't think I gave the best answer in the context of that meeting but I did have an opportunity to discuss that further with him during the Johannesburg meeting with the view that this working group thinks it's important to maintain some type of fairly meaningful appeals procedure for a domain registrant even where an IGO is successful on its immunity defense.

And that would swing back to Brian's comment, why not just take the court out of the middle and the reason is, and it's stated in our initial report, we didn't think it was appropriate or effective for ICANN to essentially grant blanket jurisdictional immunity to IGOs and all potential domain related disputes that it was something that a court should decide, not ICANN.

And, Petter, I see your hand up again, go ahead.

Petter Rindforth: Yes, Petter here. Just a quick comment on Brian said on that rapid relief mechanism, frankly I understood that as something completely new and separate also from the other working group. He described it as some quick mechanism for taking down a domain name whether it is fraudulent activity that needs to be taken down in a swift one or two day timeframe. So I'm not sure that it fits into the URS or the UDRP. I understood it as a separate and new mechanism related just to IGOs. But I may have heard it wrong.

Phil Corwin: Yes, and Petter, I agree with you. You know, it seems to be an issue that's come up at the 11th hour whereas we've always been discussing either assuring access by IGOs to existing UDRP or URS, or a separate procedure like them. But they're adjudicatory procedures, it's hard to conceive of any adjudicatory procedure that would act within 24 or 48 hours. It is my understanding that many registries and registrars will, if they receive evidence that a particular domain that's either from their registry or that's held by the registrar, is involved with really egregious action, that they have administrative mechanisms for dealing with that very rapidly.

And I see a comment from Paul Tattersfield in the chat similar to that. And I also just personally I don't understand why an IGO would be more threatened by that than, you know, the Red Cross or some well-known charity, other organizations would have similar concerns about their names being used particularly for fraudulent fundraising schemes.

But to me, it's not an issue that, you know, a non-adjudicative very rapid 24-48 hour takedown of a domain - I don't view that as something that was ever within the scope of our responsibilities. If that's an issue if the registries and registrars don't provide adequate relief in those situations now, my personal view is that's a different PDP or a different approach. George, I see your hand up.

George Kirikos: Yes, George Kirikos for the transcript. Yes, I agree with Phil's statements, there's nothing unique about IGOs in terms of wanting a super rapid procedure, there's nothing, you know, while they might feel that emergency is, you know, some site that masquerades as them and takes donations, you know, copyright holders, other victims of crime might feel that, you know, their emergency also requires that rapid response.

And the appropriate forum is to use a court, as Phil said that some courts can't move that fast. That's actually not true because there are courts that are open 24 hours a day that serve that purpose exactly. You know, you can go in for an emergency restraining order to whatever and then take that to a registrar or to VeriSign if need be, probably VeriSign is fastest because they're 24/7 and can remove it without the registry - without the registrar's involvement at all.

To go back to Paul Bladel's comment that was mentioned earlier, it seemed like a very odd statement to make, that seems to totally ignore the rights of registrants to due process. You know, here we have the complainant, in this case an IGO, making an undertaking that when they file the dispute that it would be reviewed by a court and they picked a court - the middle ones that

even pick the mutual jurisdiction, they have two choices often, the location of the registrar or the location of the registrant.

So that's the price they paid to use the UDRP or the URS and then to say that it might be unfair if, you know, what happens if they claim immunity in a court, well, they caused the problem by, you know, failing to follow through with the undertaking that they made when the UDRP or URS was filed. So that failure to fulfill their undertaking shouldn't cause them to necessarily be in a sympathetic situation, you know, the sympathy should be the registrar - sorry, registrant, who, you know, filed the procedure as it was designed.

And when we talk about de novo review, also, we're talking about totally ignoring the past results so it makes sense to set aside those past results if there's no other results, you know, that's what a de novo review is supposed to do. It's not saying let's take the status quo of what that prior decision is, it's saying, you know, set it aside and we'll review it from a fresh slate. So that's entirely consistent with the folks who are, you know, advocating the Option Number 1 in this case, setting the decision entirely aside and, you know, requiring the court action. Thank you.

Phil Corwin: Okay. Yes, thank you, George. You know, two quick comments, one, as I noted I had an opportunity later during the meeting to engage with James Bladel further on that and explain that at - that the Option 2 we were looking at was trying to balance two objectives, which was to assure that where immunity was asserted successfully that the registrant still had some meaningful de novo review of the original UDRP or URS decision and at the same time, respecting a judicial finding that the IGO in a particular dispute had immunity.

And there's of course no perfect balance of these goals but that was the intent there. And he took that - he was empathetic to that explanation. As we get into more an Option 2 and on that, again, we have to keep in mind that at least - and I'm open to further evidence but at least in the discussion we had

in this working group and the call prior - just prior to Johannesburg, we had Petter and Paul Keating, who's not on today's call, agreeing that under current UDRP procedures, if a de novo judicial appeal was dismissed for any reason, that the original UDRP would be reinstated, the decision be reinstated.

So on our original Option 1, if that's correct then our original Option 1 recommendation, our initial report, would be a substantial policy change to not reinstate it but to vitiate it. And I'm open to further discussion on that but based on that discussion and other attorneys I've talked to familiar with UDRP and, George, I'm not trying to keep, you know, a secret list here, I just don't feel free to reveal opinions from attorneys I talk to who are not members of this working group, I do think that's the correct reading of the current - what would happen in the current situation.

Of course, I emphasize again, this is a very rare scenario we're talking about. We do know of IGOs that have used the UDRP. We don't know a single instance of a UDRP decision adverse to a domain registrant brought by an IGO that was ever appealed by the domain registrant much less where the IGO asserted an immunity defense to the court's jurisdiction. So - and well George, you know, I see your comment. I would characterize it as discussions I've had with other people who are more well versed in UDRP practice than I am.

I'm not trying to keep a secret list but I don't feel free to say so and so told me this when they're not members of this list. But we can discuss that further as we go forward.

Getting back to the slides from Johannesburg, we went through, again a preliminary recommendations...

((Crosstalk))

George Kirikos: George Kirikos here.

Phil Corwin: Excuse me, George?

George Kirikos: I had a new hand up. I want to respond to that.

Phil Corwin: Oh I didn't realize it was a new hand.

George Kirikos: Yes, I just disagree that, you know, we should be considering, you know, secret reports or, you know, independent experts that have not been part of the working group providing advice to who knows what questions were asked. As I stated on the mailing list, you know, it would be like saying, you know, I talked to 10,000 people and those 10,000 people disagree. You know, it's the battle of the phantom advice, you know, that's, you know, it evolves into silliness if we do that. So I think, you know, such justification for a position should be ignored. Thanks.

Phil Corwin: Okay. Well that's fine, George. All I'll say is that on our call just prior to Johannesburg, there was a discussion, and in fact I'll - I found that transcript earlier today, I just haven't had a chance to circulate it to the list, in which Petter, our cochair, who's UDR panelist and very well respected trademark attorney, and Paul Keating, who is very well known and respected attorney who generally represents domain investment interest, agree that on the transcript, that if today, if an IGO brought a UDRP, won the UDRP, registrant appealed, and IGO successfully asserted an immunity defense, that the UDRP decision would be reinstated, not vitiated. And I'll circulate that transcript after the call.

Getting back to the slides, we just - we went through the preliminary recommendations in the initial report, no need to go through those in detail. You see on Number 2 we noted that we were looking toward dialing back the recommendation on import of a WIPO notification of Article 6ter rights. On - that on Number 3 we were looking to delete that because that related to kind

of instructions or to UDRP panelists on aligning the scope of 6ter protections with those of the UDRP protections to read them as essentially extremely similar to bad faith and there'd be no need to keep that recommendation in a final report if we're just making it evidence of common law trademark rights.

We discussed Options 1 and Option 2 in regard to preliminary recommendation Number 4. And we weren't looking at any change in Number 5 which was that the question of free or subsidized filings by IGO was an issue to be dealt with between IGOs and the ICANN Board, that we had no authority to commit ICANN funds for that purpose. And that was pretty much it. So did anyone else who was either at the 90-minute face to face in Johannesburg or who participated remotely have any further comments on what occurred during that session before we move onto the next item?

And while I'm waiting for any response, I just want to review the chat box and see if there's anything I want to comment on. Okay. I don't see anything other than the question of whether consenting to mutual jurisdiction would bar an immunity defense in a subsequent court proceeding. My view is - personal view is that'll be up to the court to decide whether the IGO had waived any or all defenses once they were in the court. But we're not talking about changing the consent to mutual jurisdiction at least for procedural purposes and initial appearance.

So I don't hear anything further to discuss the Johannesburg session or any hands up. So let's move onto Item 3 which is discussing the cochairs' arbitration elements paper in regard to Option 2 relating to Recommendation 4. And although Petter has endorsed this, I want to say that I did the initial report on this document. And this document is based on comments - some detailed comments that Paul Keating made again in that call prior to our Johannesburg meeting in which he - and it's too bad Paul's not with us today but he can review the transcript of this call.

He said, well if we're going to look at - he seemed to indicate he was open to considering an arbitration option where an immunity defense was successfully invoked in a judicial proceeding but that he wanted certain - he would want this working group to address certain elements to shape how that arbitration should proceed. And I took his list and I added two others that had come up in separate discussions I had had with other parties on this issue.

And so what this is, is - and keeping in mind that the work of this working group is to recommend specific policy to GNSO Council and so to the extent that we have to be very clear and definitive in what the policy should be, we should do that but every working group recommendation when and if it's adopted by Council, and then signed off on by the ICANN Board, there is of course a separate implementation stage so - which is even more detailed than an actual procedural implementation of recommendations. So we don't have to deal with every minute implementation detail relating to any part of our report that recommends anything in terms of policy, but we do have to be fairly specific to guide those who implement it at a detailed level.

So let's go through this briefly and then open it for discussion. And so this would address the elements of if there was to be an arbitration resulting from a successful assertion of an immunity defense in a de novo judicial review, after an adverse UDRP decision against the domain registrant, and registrant appeals, what should the arbitration look like?

First issue is substantive law, clearly when you bring a judicial appeal today in those jurisdictions that have relevant laws decided not under UDRP rules but under the law of that jurisdiction, and this would propose that that be the same, that the arbitration would be decided - the arbitrator would decide it under the national law on which the judicial appeal had been brought and not on the UDRP standards, or that both parties could mutually agree to proceed under another national law and that was a suggestion in the comments from Paul Keating where he asserted that was normal practice in arbitration is to permit the parties to choose a different national law.

But in any case, it will be decided under a national law, not under some UDRP rules or any other special arbitration substantive rules. The procedural rules should be, again, if the object of the arbitration is to be as close as possible within an arbitration forum, to a de novo judicial proceeding, the procedural rules should be the same as under the national law, you would adopt the rules of procedure of the court or you could agree to mutual - mutually to different rules.

Another option, I think for this working group might be to say well if it's not the national rules it could be some standard procedural rules such as the UNCITRAL rules, we can get into that. The venue, and again this is just a proposal to start discussion, nothing in here is locked down, and the arbitration forum would have to meet certain basic criteria to assure competence and neutrality and couldn't be an IGO that if we went that way that would exclude WIPO from being an arbitration forum.

And it couldn't be the same arbitration forum that decided the underlying UDRP because that would - could prejudice the de novo nature of what we're looking to assure here. So again, we're trying to - we'd want to assure lack of bias and true de novo review. And we could also require that the panelist must be a retired judge from that jurisdiction or the option to have a three member panel including one such retired judge. So again, you'd want someone from the jurisdiction from which the substantive and procedural rules stemmed because that person - the retired judge would have a much better - assumingly a better understanding than someone not familiar with the laws and procedures of that jurisdiction.

The language of the proceeding would be the same language that would be used in the national jurisdictional forum. And again, that could be altered by mutual agreement. So on a lot of this we're saying the default option is this, but the parties can mutually agree to change it which is my understanding is somewhat standard practice in arbitration forums. The discovery permitted

would be the same as permitted in a judicial case so whether you view discovery as substantive or procedural, we try to keep it the same to the extent either party wanted discovery.

The interim remedy, such as continued locking the domain, would be the same as if the court case had been continued and not dismissed. The remedies, and I think this is open for probably broad discussion because there's some (unintelligible) and some discussion of a different option that would eliminate all remedies other than transfer the domain or extinguishment of the domain, but the starting point for discussion would be the remedies would be the same including if there are monetary awards available.

But we're free to discuss a more narrow remedy than an ICANN sanctioned post dismissal arbitration forum. We'd seek to keep the costs to the parties to be the same or lower than in a judicial case. Enforcement of award, the decision to upload the UDRP - to basically affirm that the UDRP decision would result in domain transfer or extinguishment at the option of the prevailing party, we should consider enforcement of any available monetary awards but a minimum failure to pay might have some other adverse consequences or, again, we could look at a different option in which the only issue before the arbitration was the fate of the domain and eliminate considerations pertaining to additional benefits such as monetary awards.

And precedential value of the decision, and these last two factors are ones I added to Paul's original list because they've come up in our own internal discussions. While there's no way to really replicate the precedential value of a court decision, particularly if it's appealed beyond the district court, at least for US decisions, we could have a policy that stated that any case shifted to arbitration should consider and seek to file judicial precedent on similar cases brought under the same law and be consistent with any prior arbitrations that occurred under that law.

So that's it, it's just, in my mind, nothing here is in any way set in stone or meant to be set in stone. Again, my starting point was the issues that Paul Keating identified in that call several weeks ago as things he would want to see addressed in terms of any Option 2 arbitration. I added the enforcement and precedent to that. And the floor is open for discussion of this. And George is first to raise his hand.

George Kirikos: Okay...

Phil Corwin: Followed by Petter. Go ahead, George.

George Kirikos: George Kirikos for the transcript. Yes, I want to put - I want to ask people to put yourself in the shoes of an IGO or the shoes of a domain name registrant and take a look at what Option 2 - or at least what this document represents and then imagine that there's another piece of paper which says, you know, here's what the court is and you would look at this document that's in front of us right now and say that it's trying to basically duplicate and replicate the court. Everything says same as, same as, you know, same national court so it's like a facsimile of the court.

And so what real difference from an IGO's point of view, is there from - other than, you know, religious belief that they don't want to give up their immunity, compared to the court? And so the only logical reason that you would want to use arbitration from an IGO's point of view, other than that, you know, religious belief, is that you expect to get a better result. And we know that forum-shopping is a huge issue in arbitration generally, you know, that's why there's so many protections against arbitration.

And so, you know, what problem is this trying to solve? You know, what are IGOs buying, you know, is this some protect - some theoretical protection of immunity that has no substantial difference, you know, on principle, we don't give up our immunity? If it's just that principle, I can live with them giving it away because we know of all the abuses that take place from arbitration from

forum shopping, and from a registrant's point of view, you know, if they knew that the two were identical, that they would get the identical results, arbitration, you know, I'd be indifferent to which one was taken.

But we know - we know for a fact that forum shopping, you know, back to when (unintelligible)-based e-resolution went out of business because they didn't give enough UDRPs in favor of complainants and so they went out of business because WIPO and NAF got all the business. So there's a huge concern that arbitrations in general skew the results because they're in the business of arbitration, they want more arbitrations. And so we expect that the results are going to be different.

And so from a registrant's point of view, they could obviously already choose arbitration if they want to, you know, if they're indifferent, you know, I don't care, say, sure we'll go arbitration. But there's a reason why people want to use the court system, and so this attempt, you know, you can't explain it on the basis of law that we actually have to do anything. I posted a link earlier in the chat room on an article last year, I'll repost the link, it's actually almost exactly a year from today, 2016, July 12 that talks about fraud, you know, known cases of fraud in the United Nations.

And there was a very good quote that says, "...and follow up often just end, the UN bureaucracy is reluctant to prosecute fraudsters even when discovered. The reason, it may involve lifting the immunity of witnesses and related United Nations documents and may expose the United Nations organizations to counter claims."

So there the issues are, you know, clear fraud that they know about that they fail to go against - sorry, they fail to file the charges in connection with the courts because of the immunity issue and so my question is, what's so special about a domain name? You know, here we have, you know, why should we be changing our policies when national governments aren't

creating any special procedures for known cases of fraud or other criminal behavior, what is so special about domain names?

And so you know, I haven't heard a good answer to that. There's nothing in the law that can tell us creation of Option 2, the only natural you know, thing would be to Option Number 1. Thanks.

Phil Corwin: Okay, thank you, George. I have some response to that but I'm going to call on Petter and then Mary before I say anything. Petter, go ahead.

Petter Rindforth: Thanks. Petter here. Well I have to say that I have a lot of good personal experience of both mediation and arbitration compared to taking - and now we're talking about IP disputes to a court. And I would say actually the best cases where I represented the minor client in the dispute and had some more neutral person to actually explain and decide from the major party that they had - they were wrong in their conclusion of infringement. So I like arbitration as a way to solve a dispute.

I have one just one suggestion when it comes to the venue part. I think it would be better to split it up in two parts because the venue as such it deals with in the first sentence that ends "to assure lack of bias and de novo review." And then it comes that the panelist must be - and what kind of panelist we should have. I think it's better to clarify that in another separate part talking about the panelist.

And also again, from what I've seen in this kind of disputes before, I would rather - as it is already the possibility when it comes to the UDRP, to have as the first and only option to have a three member panel that decides on these disputes. And where as it is, when you choose three members in the UDRP, you had a possibility - both parties has the possibility to look for one panel, one judge that they think can better understand their specific issue.

And of course, panelists are all neutrals, they don't decide on what the parties involved want them to decide upon. But it's always good opportunity, especially when one of the parties are - perhaps an SME or what we call a weak party in a court action, it's a very good possibility for those parties to have a list of panelists that they can choose from and feel that they will actually be - their voice will be understand.

So I would like to have as a main rule here that it's - these disputes are (sold) by three member panel and then the one retired judge is automatically a chair, that none of the parties can decide upon. Thanks.

Phil Corwin: Okay. So, Petter, and I hope staff is taking notes so they can update the document. You're suggesting that we - in the venue section - we break out anything relating to panelists, make that a separate point and specify that all these arbitrations should be - have a three member panel with a retired judge from the jurisdiction...

Petter Rindforth: Yes.

Phil Corwin: ...as the chair of the panel.

Petter Rindforth: Yes.

Phil Corwin: Okay. Good suggestion. Mary, go ahead.

Mary Wong: Thanks, Phil. And first just to note that we have taken some notes on Petter's suggestion and I hope that we captured them accurately. So, Petter, if you want to take a look at the right hand side notes pod please let us know if we need to add or edit anything. But I raised my hand to follow up on George's comments, not respond, because it would be highly inappropriate for staff to comment or speculate on reasons.

But just to state two things. One is that from our limited research into the immunity question around the time that the group began to speak with Professor Swaine, our understanding is that the immunity issue is not only a complex topic, as we all know, but is also something that is very important aspect of IGO and state existence and hence, for example, in some of the multilateral discussions over a treaty for IGO immunities, that's something that really created a lot of controversy at the time. So I wanted to just put that down as a bit of context and background.

Secondly, I wanted to note also that although we speak a lot about dispute resolution in the domain name context, say with WIPO or the Forum, or other providers, as arbitration, I think this point has been made before, but technically they really are not arbitration in the sense that Petter has just described or in the sense that this particular paper we're looking at really tries to do. They're really mandatory administrative proceedings. So to the extent that that makes a difference I just wanted to have that on the record. Thanks, Phil.

Phil Corwin: Okay. Thank you, Mary, for that input. And before I call on George again just to respond to his initial comments, you know, I don't see the forum shopping issue because this is not - to me forum shopping is where a complainant in a UDRP case - and the issue of uniformity of assuring better uniformity of result is an issue that the RPM Review Working Group is going to look and particularly when it gets to the UDRP. But that's where a trademark complainant says, well do I want to file this complaint with WIPO or NAF or the Czech Arbitration Court or the Asian Domain Name Dispute Resolution people, where they might be a perception that one is more favorable than another.

This would be an arbitration that would result solely from a successful assertion of an immunity defense in a judicial proceeding, and there's no choice for where it goes, we're talking about setting the rules for how it's

going to be - how it's going to proceed. So it's always going to be the same rules if we go this way. So I don't see a forum shopping issue.

As for, you know, why there's special rules for domains, we're dealing with the reality that since ICANN's inception, there's been required access to the UDRP for all top level domains, generic top level domains, and now the URS for all the new TLDs. And I've taken note of George's statements in the other forum, the RPM Review, but I don't see personally any realistic possibility that ICANN's going to do away with the UDRP or similar proceedings. I think they're baked into the model at this point. And the idea of revoking them and telling every trademark owner that they must go to court and have no non judicial option is not going to happen.

But go ahead, George.

George Kirikos: George Kirikos for the transcript. A few points were raised so I wanted to go through them one by one. First the issue was that the UDRP is not an arbitration, and actually I do agree with that, that's 100% true; UDRP is not an arbitration. You know, adjudication-lite as described by one court. And so this is a step to, you know, improve due process and I agree with that but it's not at the same level of the court - as courts.

Second, with regards to, you know, the importance that IGOs hold with regards to their desire for immunity, that's debatable, but one thing that should be kept in mind is that we've actually identified the various workarounds that could be used for those that are on the most extreme levels of wanting to protect immunity. We've said you can use an assignee, you can use an agent, you can have a licensee so there's - there are the workarounds. And so the fact that these people don't want to use the workarounds raise questions about, you know, the gaming because you know, you expect different results depending on the strategy. There's a game theory aspect to it - to things.

Phil just raised the point about the forum shopping, that is actually the very essence of forum shopping. Let me give you an example, you know, OJ Simpson trial, you know, it happened in California. Obviously handled by California law. The question is, you know, are you going to get a different result if you hold it in Los Angeles or if you hold it in the suburbs, you know, jury composition, (unintelligible) kind of disputes, you know, patent disputes that are held in Texas, they're all under US law versus, you know, a case that's held in Delaware. And there was a recent Supreme Court case ruling about, you know, where those - where the appropriate forum for those kinds of cases should be.

Going back - so here the forum shopping is between the courts itself or the arbitration provider, you know, the different levels of justice are going to be delivered in each forum, you know, with each decision maker. Now actually I want to go back to the actual - the full document because last week or a couple weeks ago, I guess three weeks ago now, when we were talking about Option Number 4, which I'll post the link to on the chat room, I actually looked at this document and said, you know, if, for the sake of argument, even though I pulled this document, we are going to try to improve it. You know, you have to go a far distance to actually do so.

And so there were a couple points I wanted to mention. Who should be the providers? I think those necessarily - those shouldn't necessarily be ones that are accredited by ICANN because there's talk about, you know, how folks that are, you know, like National Arbitration Forum or WIPO, you know, once they're certified, you know, they're never removed. So it should perhaps be open to any, you know, established arbitration provider, you know, regardless of whether or not they're accredited by ICANN because, you know, what we have is a handful of ones get accredited and then they have an incentive to encourage disputes to them. It's kind of, you know, becomes a little business for them.

Whereas if it's a - one of the many, many commercial arbitration providers that exist out there, you know, domain names aren't special for them so they would be more inclined to be neutral because they have no vested interest in, you know, in generating you know, a substantial domain name related business. So that was one point I wanted to make.

The second point I wanted to make was with regards to procedural rules. You know, in real courts you do have, you know, multiple levels of appeal. You know, you can go to the Ontario Provincial Court and you'd appeal to the Ontario Court of Appeal and if need be there's the Supreme Court of Canada. So there's actually three levels of appeal.

And how would that be handled under the rules to give the equivalent level of access to the courts, equivalent level of due process relative to the courts. And there was actually a court case that I found when I was looking at domain name disputes concerning Moobietalk, I'll just send a link to the decision with Moobietalk, M-O-O-B-I-T-A-L-K, where it went through multiple levels of appeal in the French courts. And so, you know, several people, you know, the UDRP provider, first level of appeal, second level of appeal, after multiple levels of appeal the domain name went back to the domain name registrant. Isn't that a surprise? You know, multiple adjudicators got the decision wrong.

And so that's the essence of why you have due process because people make mistakes. And it's only at the highest level of appeals, you know, where you get the most experienced judicial providers that you ultimately actually get to the correct decision. You know, something that's finally non-appealable, that's why you actually have levels of - multiple levels. So I don't know if that's reflected in those - in that document.

And the last point I wanted to make is regarding the - what's called the open court principle in Canada. And the same exists in the United States and perhaps under a different name, where all court filings, including the

evidence, the documents, the cross examination etcetera, are all public. Anybody can go to the court (unintelligible) and request copies of the documents. And most arbitrations, you know, most UDRPs, only the decision is public under arbitrations usually the decision itself isn't public.

And so in that link I said, you know, we should definitely ensure that if there is, you know, any Option 2, perhaps, you know, under my Option 4 where it would only apply to new domain names, not and old domain names would be grandfathered and switched to option Number 1, if there is any arbitration then it should be held, you know, in the most public and transparent manner possible so that all the documents are open to the public and can be examined and criticized and you know, that accountability occurs when the documents are public. Thank you.

Phil Corwin: Yes, let me briefly comment, George, and then see if others have comments on this general approach. In regard to, again, my personal view is that we're talking about a scenario that's going to be very, very rare. It's not going to be like UDRPs where there's several thousand filings a year among the various providers. This is going to be one possible case every few years maybe. It's only going to happen where a domain registrant and a UDRP brought by an IGO decides that on balance they're going to spend the money and think they have sufficient chances of prevailing on appeal to bring a judicial appeal after an initial adverse decision.

So I would agree that we don't need - we could set standards for an acceptable arbitrator and perhaps leave it to the mutual agreement of the party. We can get into that if the group wants to get into fleshing out these issues under the venue thing. But, you know, in my own mind one organization that's used very - to a very great extent in the United States for arbitrations is the American Arbitration Association. They're in the business of providing neutrals under standard rules for all kinds of different types of arbitration including very complex commercial disputes.

And it seems to work for the most parts and parties seem to view it as an acceptable alternative to a more expensive and more time consuming judicial process. So we can flesh any of that out in terms of who - what type of entity could be an acceptable arbitration forum. And on - so far as I don't think we can duplicate the latest precedent that may be or appeal that may be available in a national court system. But on the scope of the decision, we've already noted in initial discussion we can decide whether this arbitration should be limited to merely deciding the disposition of the domain or should be able to look at other things such as monetary awards so all that's within our purview in terms of making a policy recommendation.

What I would - I still don't get your insistence that somehow this is forum shopping because the note from Professor Swaine's memo, and just from logic, that if this scenario arose today before anything is - any final report comes from our working group and is or isn't adopted by GNSO Council and the Board, that it's an open question as to whether in the rare scenario we're talking about, whether an IGO would succeed on its - if it asserted immunity. And it would assert immunity today not to get to arbitration but to get rid of the case.

And if Petter and Paul Keating were correct about the result of that today, that would be the end of the story; the UDRP decision would be reinstated. So I'm proceeding from that basis. And in this instance while an arbitration resulting from successful assertion of immunity by an IGO would not be the exact duplicate, just a close substitute for judicial proceeding, I've always been of the mind that we should never let the perfect be the enemy of the good and at least it would accomplish the simultaneous goals of respecting the IGO's immunity while providing some forum for a meaningful appeal for the domain registrant after the court has said we're not going to hear this case.

And that's the only instance we're talking about this. We're not letting IGO - we're not talking about letting IGOs always have a choice of seeking dismissal. You know, going to arbitration it depends on a judge's decision in a

specific case under a specific national law. So I see Jay's question, "Could a domain registrant appeal to a higher court?" Yes, that's true, Jay. And I guess there's nothing we're discussing that would foreclose that if a domain registrant wanted to appeal a - you know, in the US the District Court if a District Court judge said the IGO has immunity under US law and I can't hear this case, I don't see anything in what we're discussing that would - we could allow in our recommendation for that possibility and for staying the UDRP decision until the judicial appeals on the immunity issue are exhausted. So I think that's a good point you raised.

Yes, and your other comment, Jay, yes, I don't think we're trying to - we're trying to restrict a domain registrant from seeking judicial appeal. Again, the only thing I think we're discussing here is what happens when they've made that choice and the judge has said I have no authority to hear this case because of IGO immunity. And we're not changing anything to influence the judge one way or the other on how to decide that immunity question. George, you just spoke, I don't know if that's a new hand or not but I'm going to let Petter speak before you go again. Go ahead, Petter.

Petter Rindforth: Thanks. Just wanted to, as you said, point out that whatever we decide and whatever other regulations or - we come up with both parties always have the possibility to go to a court. We're not taking away that possibility from any of the parties. They can go to a court in any time they want and then it's up to the court. I mean, even if we talk about domain disputes in court as per today they are very rare, and now we're talking about IGOs, that will be even more rare.

But in these court actions it's also, I mean, some have been rejected by the court not because of neutrality but because of the court in some countries have decided that it's not in their jurisdiction to handle the domain dispute, etcetera, etcetera. So I mean, it's going - taking a domain case to a court is definitely not a very clear and efficient way to deal with it. But, I mean, we

can't take any of the parties' possibilities away to do that and that's not what we have decided.

And we have our expert pointed that out and also comments we have got from IGOs and WIPO, it's - each party have the possibility to take the case to a court. I think the - what we need to remind us about is that the registration - the domain name registration and the disputes handled based on that, it's based on a contractual base that those parties have agreed upon when they register the domain name or when they started the dispute.

And giving one of the parties - and here we're not talking about the winning organization in a domain dispute, we're talking about the few cases where the domain holder actually had lost it and want to have the case properly decided upon. And as I see it, the only final possibility for that is actually to have it contractual base for taking that case to panelists. That's not in national court in a specific country but dealing - that is written in the agreement and actually to have it dealt with by people that knows about Internet and domain names and what can be handled there. And that some words in fact can be seen as something offline but if they are used online can be something completely different that is not automatically an infringement. Thanks.

Phil Corwin: Okay. Thanks, Petter. Yes, George.

George Kirikos: George Kirikos for the transcript. There are multiple issues that were raised. The first one I wanted to discuss was Jay's mentioning the topic that there could be multiple levels of appeal of the IGO's immunity question. And that was a very important point that I agree actually I was going to raise it and I'm glad that Jay raised it first because you could have it go to the say, Supreme Court of Canada to decide it after multiple levels of appeal just on that immunity issue and that was the subject of multiple court actions here in Canada.

And so anything related to Option 2 should specify that it's a final determination of immunity, not just initial court's determination of immunity in terms of timing of any arbitration.

Second point I wanted to reiterate was the one that Jay also mentioned about the value of the domain name dispute, while these are rare cases, they are the ones that are the most important because they involve the most valuable domain names, that only makes economic sense to go to court. If you believe that it's a domain name that's, you know, perhaps worth millions of dollars, we don't - cars.com, for example, \$872 million. We know Lasvegas.com, \$90 million.

The shortest domain names tend to be populating the top domain name lists. You know, many domains are worth millions of dollars. I've personally turned down millions of dollars' worth of domain name offers for my domain names and I know that I've checked the Article 6ter list and none of them conflict with IGOs so I don't have a personal stake necessarily. But I know that many other domain name registrants feel the same way that on principle the courts should decide.

Third point is that Phil raised the question of the perfect being the enemy of the good. I wonder though why that argument doesn't fly when we talked about the assignee, the licensee, and the agent approach, which is the perfect workaround if, you know, why is that not good enough to satisfy the IGOs and that, you know, we require an option Number 2? Why is the assignee, licensee, agent approach not good enough?

Third, there was the contractual basis that Petter just mentioned before me which is not just applying to registrants, and arguably the contract might be, you know, determined to be a contract of adhesion because, you know, it's a take it or leave it contract and there's a court ruling in Canada to that respect. So it might be that it's not even enforceable, you know, the court might say

this is such an egregious contract that says that a third party can take away your rights and not allow this court action to proceed.

Even if they have immunity we're going to set it aside on a different basis that the UDRP requirement itself is unacceptable or unconscionable. But there's none in the contract, there's a contract when an IGO goes to WIPO or NAF and says we're initiating a UDRP, what are their obligations? One of their important undertakings is that they know full well that a registrant as the price of, you know, of allowing the UDRP retain the right to go to court at any time even before the UDRP is decided. You know, it could happen you know, before the 20 day limit when the court - the UDRP responses are filed, it could be, you know, while the arbitrators or the panelists rather, are making their decisions, it could happen at any time.

And so, you know, they know that they have the undertaking to respect the jurisdiction of the courts. And they're kind of violating that contract when they later say oh, we have immunity, we're not going to respect this court's authority over us. Why is that not seen as improper? You know, and why is it somehow improper for a registrant to just simply want to follow the national laws of their own jurisdiction? You know, it's kind of like, you know, apple pie, I respect the laws, I respect them so much I want to see them applied in court. So that's all I have to say. Thank you.

Phil Corwin: Okay, thank you, George. My only comment on that is that we've have a UDRP for 20 years and I don't know of any case in which a domain registrant asserted much less got a successful judicial result that having to agree to the UDRP as an alternative - not a full substitute, there's always retained judicial right, but even after going through it in the first place with some violation of their rights. So if I'm incorrect on that I'd be delighted to hear the case in which that was asserted. But I do know of other arbitration clauses in agreements by other entities where that's been challenged by the folks.

And that's usually been where binding arbitration was the only option and judicial process was foreclosed but I've never - I don't know if any UDRP case in which a registrant argued that.

We are - we have 14 minutes left in today's session. We've only heard from - we haven't heard from at least verbally from a number of folks on the call. But I think what I'd like to propose is that - and also George, it was always my intent that this arbitration would only be contemplated if there was a final result from the judicial system. Obviously if there's an initial dismissal on immunity grounds, and if the domain registrant decides to appeal that higher up in the court system, that should stay the effect of the UDRP decision. This would only kick in when basically the judicial appeal is gone, that possibility has been foreclosed either through final action or by the lack of the registrant seeking to appeal within the required time limits.

So I would suggest that staff would take this document and amend it somewhat based on Petter's suggestions to clarify that this would only apply in the - in a scenario where there's a final judicial judgment either from the highest level of the court or because appeals options have not been followed. And that we keep this around to look at.

But I think we're getting close to the point where we need to decide whether we're going to try to flesh out some type of arbitration option to be used only in the scenario where the domain registrant has filed a judicial appeal and it's been dismissed with finality based on successful assertion of an immunity defense or whether we're going to be silent on the issue and simply say it's up to the courts.

But I do think that our initial Option 1 recommendation in our initial report, one, it's my personal view, and I've conveyed this before, that that's a nonstarter within ICANN given the sensitivity of IGO issues. And I would hate to see us labor three years on a report and have it rejected at Council and/or

the Board level simply over an issue relating to an extremely rare, though nonetheless important scenario.

And also if it is correct that if that occurred today that the initial UDRP decision would be reinstated then a recommendation that the original decision be vitiated would be a substantial change in policy and would thus be probably more - even more unlikely to get approval beyond this working group.

So I'll stop there. I think we've had a good discussion based on this initial document. I'm hoping that Paul Keating will be on our next call because this was based so much on elements that he had raised. But I'd ask staff to amend the document and circulate it prior to our next call.

But we're going to have to make a decision too on how we're going to - what we're going to recommend in the final report in regard to this scenario where domain registrant appeals to the judiciary IGO asserts immunity defense, judicial system buys the immunity defense, and dismisses the case with finality. What happens then? That's the final issue we're dealing with before we discuss the elements of our final report.

George, did you have something else brief on this?

George Kirikos: Yes, briefly. Yes, I was looking at the agenda and I noticed that there wasn't anything with regards to consideration of Paul Keating's Option Number 3, namely the ability to have a limited waiver of immunity with respect to the domain name only as opposed to a general waiver of immunity, which could help ameliorate the risk to IGOs from utilizing the UDRP procedure. So that was one point.

And also my Option Number 4, which is posted to the mailing list and which I'll link to again, which is hybrid in some sense of Number 1 and Number 2, and in particular it had the very key insight that, you know, Option Number 1

would apply to, you know, existing domain names, they'd be grandfathered, so no rights are taken away. Option 2 would apply to new domains. And so they'd know going in that they'd be giving up that possibility of judicial review if the IGOs asserted immunity.

But most importantly, it had a built in review system where the data would all be collected and there'd be a mandatory review of the policy once a certain number of disputes - because ICANN often makes policies and then never follows up on reviewing whether they worked or not, like Option Number 2 would be a, you know, potentially a big change for respondents - for domain name owners. You know, we could have, you know, while supposedly it's only a small number of disputes, what if the number of disputes, you know, increased by, you know, 100, 200? With my proposal of Option Number 4, you know, there's actually be a further review of the policy just to make sure it's working as intended.

So I think - what I'm asking is that we have a full consideration of Option Number 3 and my own Option Number 4 and that we don't limit ourselves to just Option Number 1 and Number 2, which depending on the agenda, you know, might be incomplete. Thank you.

Phil Corwin: Okay. So, George, your Option 3, I get the numbers - that the waiver - that you would want to change the IGO policy which we're not doing so far, so that an IGO's agreement to mutual jurisdiction would only pertain to resolution of - disposition of the domain whether it's transferred or extinguished and not to anything else.

George Kirikos: George Kirikos here. Yes...

Phil Corwin: That correct?

George Kirikos: ...that was Paul Keating's proposal. But I, you know, I agree that it might be helpful so I don't want to say that I was the one that originated it. But basically

it says that right now the UDRP is somewhat ambiguous and it scares IGOs in the sense that they might feel themselves open to some counter claim on an unrelated matter, like it could be an employment matter, it could be anything else. That was actually one of the concerns in the Fox News article in fraud, you know, they might file a court case, you know, in fraud, but then they subject themselves to the potential of a counter claim, which is involving something entirely different like employment.

And so if the language of the UDRP was constructed so that if it's an IGO it's only a limited waiver, only for the domain name and even only to the domain name without any legal costs, you know, no ACPA \$100,000 damages, that was something that Paul said, you know, he might find - Paul Keating said he might find acceptable as a way to allay those concerns. And it was actually raised in the - by the IGOs in this comment period as well that it might be...

((Crosstalk))

Phil Corwin: Yes.

George Kirikos: ...and Option Number 4 is the hybrid proposal that I made which could actually even work in conjunction with Option Number 3 because Option Number 3 could be an add on to either options, it's not necessarily a distinct option, it's kind of like a side option. But I would hope that we would have full consideration of all these options before - instead of just focusing...

((Crosstalk))

Phil Corwin: Yes, well we have six minutes left today but let's say we'll you know, we'll commit to get into those in more discussion on our next call. Let me give two personal - strictly personal reactions. On an IGO agreeing that any appeal would only deal with domain disposition and not with things like monetary damages, I have a couple of concerns about it.

Number one, we decided early on we weren't going to say that we were going to deny a domain registrant their right of judicial appeal not that we thought it was the wrong policy but because we doubt it could be effective that a judge would not really be likely to bow to the fact that a nonprofit corporation in California was trying to deny a - someone subject to their national jurisdiction or their rights under national law.

I think you'd always need to get the domain registrant to agree to that up front. And again, let's say in the US once a domain registrant brought an ACPA appeal, with possibly a monetary damages, I don't know that you would get a judge to respect any prior agreement that his jurisdiction was limited to only certain parts of the statute and no other parts of a statute. So I have real concerns about the effectiveness of doing that.

I have to say on the one about differentiating between existing domains and future domains, my personal reaction is it's overly complex and that we ought to grab the bull by the horns and make a decision about domains period, that trying to say this is the rule for those before this date and a different rules for one after this date and then we get into what happens when a domain is transferred, does the new rule apply to the transferee? What happens if it's dropped and then re-registered? I think we just need a rule for all domains and I tend to be suspicious of things that are overly complex. But that's a personal view and open to full discussion by the group.

So yes, and we'll have it on the agenda. So with three minutes left, I think what I would say is that staff should update this document to reflect points raised in today's discussions on finality of judicial decision, and on the composition of the - on whether or not the - and probably not whether the arbitration forum has to be ICANN-certified or simply has to meet certain basic criteria and be acceptable to the two parties.

Breaking out the panel composition as Petter suggested, and suggesting it always be a three member panel with a retired judge as the head and

circulate that. Other folk, George included, circulate your ideas for what you'd like to discuss on the next call. And - but I think this group has to decide whether we want to continue to flesh out this document as to what might be an acceptable arbitration proceeding in the rare case of a judicial dismissal based on immunity defense or want to cease and desist from that effort.

And I have no further comments today. Does anyone else have final thoughts before we adjourn for the day?

Petter Rindforth: Petter here. I just noted that Mary had her hand up for a while but it's down...

((Crosstalk))

Phil Corwin: Oh I'm sorry. I didn't see that. I was so engrossed in the discussion I missed that. Go ahead, Mary, if it's still relevant.

Mary Wong: Thanks, Phil. Well I think it's really just to maybe note as you said, for suggestions to come forward. One is that Paul Tattersfield had earlier put a suggestion in the chat about looking at arbitration more broadly if it's an improved - not just for IGOs so just noting that for everyone.

Another is that the staff had been looking at trying to take a step back and looking at where we are with things and where we're likely to go with the recommendations, and with the discussion of this Option 2 paper, one thought that we had for possible discussion is to look at arbitration for the IGOs that are actually on the GAC list because that really was what the request was in the first place.

And so that would be a much more limited universe and it might minimize the chance of fake IGOs or other risks like that. The caveat to that obviously is that we haven't really looked at it legally. It may tie into the point that we may discuss next week about possibly putting out a draft recommendation for

public comment before we actually complete the report. But as a suggestion I just thought I'd put it out there for today so it's on the record. Thanks, Phil.

Phil Corwin: Okay well I think that's a good issue, you know, the IGO - the GAC continues to want any special rules to only be for the IGOs on their list. So it becomes a question of whether we limit this to those, which would leave any other IGOs - any other organizations who think they're IGOs but aren't on the list to be treated the same as any other domain registrant would be.

Again, there's no way we could - I do want to point out we couldn't - we could not prevent in the case of a appealed case to a judicial forum, I don't think there's any way we could prevent an organization that believed it was an IGO but that wasn't on the GAC list, from asserting judicial immunity and having, you know, the opponent in that case could say well it's not a real IGO, it's not on the GAC list. But that would be a question of fact for the judge to decide on a jurisdictional immunity question.

So I think we just have to be mindful that there's only so much we can do as an ICANN working group vis-à-vis final ICANN policy to in any way limit what private parties do in terms of accessing judicial forums or what they're going to say in judicial forums or what judges are going to do in response to their assertion. So we have limited power in all those regards.

The one other thing I want to mention in the final minute here or actually we're a minute over, is that the only item of GAC advice - and I believe this was circulated on our mailing list from the Johannesburg meeting - related to the IGO issue basically said they had gotten a report that our working group - and I'm shocked to learn this - was not going to follow the IGO small group proposal and that they wanted to make sure we were taking that advice fully into account.

And there's going to be - there's a draft response from the GNSO Council which is going to be discussed later this afternoon - as in 3.5 hours from now

the GNSO Council is holding its July meeting in which Council is going to discuss a response to that GAC advice, which basically responds by saying, hey that working group has taken all that input into account, they just haven't agreed with it. So I'll leave it at there and thank you for your participation. When is our next call, staff? I believe it's same time one week from today.

Mary Wong: Hi, Phil. This is Mary from staff. You're correct, unless anyone has any objections, it's same time next week, same duration.

Phil Corwin: Okay. So thank you. And we'll look for staff to circulate that revised outline for elements of a potential arbitration proceeding and we'll look to other members to circulate ideas they want to see discussed during our next call. And talk to you all next week. Thank you.

Petter Rindforth: Thanks.

Phil Corwin: Bye.

Terri Agnew: Thank you. Once again, the meeting has been...

Mary Wong: Thanks, Phil, Petter, everybody. Bye.

Terri Agnew: ...adjourned. Thank you very much for joining. Operator, (Darrin), if you could please stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END