

**ICANN
Transcription
IGO-INGO Access to Curative Rights Protection Mechanisms
Thursday, 19 April 2018 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: <https://audio.icann.org/gnso/gnso-igo-ingo-crp-pdp-19apr18-en.mp3>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/wAEFBQ>
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 Mechanisms Working Group call taking place on the 19th of April 2018.

On the call today we have Susan Kawaguchi, George Kirikos, David Maher, Petter Rindforth, Zak Muscovitch, Jay Chapman and Phil Corwin. We have listed apologies from (Asphaldo Nuava) and Paul Tattersfield.

From staff we have Mary Wong, Dennis Chang, (Barry Cog) and myself, Terri Agnew.

I would like to remind all to please state your name before speaking for transcription purpose. And to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will turn it back over to our co-chair Petter Rindforth. Please begin.

Petter Rindforth: Thank you and we (unintelligible) be so (unintelligible) today because we have Susan Kawaguchi on the meeting. Welcome. And I leave it over to you to start within a second just to start with the traditional question if there are any updates of statement of interest.

And yes you have to click on view all attendees. I see no hands up there. Then I will turn over to Susan and thank you for your work with this and having personal meetings and then set up meetings with the possibility for people also call in and email comments.

And for your summarized report on what people have thought about or different possible solutions. So over to you Susan.

Susan Kawaguchi: Thank you very much Petter. I appreciate that. And thank you all for joining today. You know I know this is – it has sort of been a difficult time to figure out what the next step with this PDP was going to be.

And so I am just going to go through a little bit of background of the report. Not read it to you since it has all been – everybody has had that opportunity, received the report at least three or four days ago I think.

And if I using my notes that are online here I may not be able to tell if somebody has raised their hand. But let me get through a little bit of a review of this and then we can take questions.

So as everyone knows George filed a 3.7 an appeal concerning the Curative Rights Working Group and how it related to the consensus designation process.

And once he filed that, you know, (Heather) notified me and Mary did and we all started to try and figure out exactly how to respond and what the process was to respond.

We worked through that. It took a couple of months. And then decided that the next step was to allow each of the working group members who wanted to, to provide their input to (Heather) and I to find a liaison to the PDP.

I was the one that sat with you or, you know, where we did a phone call and did, you know, usually it was 10 minutes just listening to the viewpoint of an experience of working on this PDP.

Prior to that, each person received a copy of the Strawman that was drafted by (Heather) and I. And we used that and sort of worked through – there were six different options or categories that, you know, could be solutions to the problem that this PDP was addressing.

So I won't go through all of this but if you, you know, we had less than 10 members respond. Two of which were by email and 8 actually spoke to us. And I appreciate everybody's candor. I think everybody truly has – they have their own opinion of what needs to be done in this PDP. But I do think they – everybody had balancing reasoning coming from their viewpoint.

And so we had those discussions and then realized – then we created a report from that and reported back to (Heather), Dr. (unintelligible). And Mary and (unintelligible) had a conversation reviewing that report with (Heather). And then came to the conclusion that there probably was never going to be consensus on this. On these issues.

The working group early on had come to a few consensus recommendations. But the core that they were working on lately it just seemed like there was not going to be a consensus point that we could then recommend to be policy.

And since the GNSO Council is responsible for managing the policy development process at this point it seems that the next step would be to take that report and send it to the GNSO Council for review and decision to be made.

So that will help happen excuse me on April 26. And so there will be a discussion there which as you all (unintelligible) are open for observation and

listening to. And so you know we came to several observations and conclusions.

It is unlikely that continuing with the work further working group deliberation at this stage in order to either reduce the number of options to six to fewer. Or to attempt to reach consensus on one of the current options (unintelligible) clear consensus.

The number of active participants at this point is extremely low and there is an obvious division of strongly held opinions. And none of the options currently under consideration align with the most recent GAC advice on the topic of curative protections for IGOs.

Although Option 3 includes an arbitration as a possibility of different instruction process from the GAC advice.

While it is not an objective of the PDP to exceed to GAC advice. The likelihood that any consensus on the issue of IGO jurisdictional immunity will be based only on a small number of participants' views.

And the fact that the recommendation on the topic will likely conflict with GAC advice means the GNSO Council and the ICANN board will each ultimately have to consider whether and how to reconcile the outcome of the GAC advice.

So the last reason for bringing this to the Council at this point is that the option preferred that those members opposed to an arbitration option is to refer the matter to the PDP working group, the RPM working group.

That would require a charter amendment, the other PDP and charter revisions require both of the GNSO Council. So it will be appropriate for the working group to discuss a report sooner rather than later and to the council

and possibly with the RPM working group as they are already reviewing the URS. And they plan to wrap up that work within the next few months.

So, you know, once again we took a deep look at this. Took this serious, the 3.7 is a serious matter. And although I think this was the first 3.7 that had been filed, you know, we are very careful in figuring exactly what that meant and exactly what the council's responsibilities were.

So at this point the next step for this PDP is for council to discuss on April 26. So that is my quick review of the report. And I will switch back over here to – and yes Mary we are going to discuss this at April 26 council meeting. We will not have a decision there.

So WebEx is a little funny. I am trying to look for hands. Not quite to use to WebEx. But that is the basic. You know we – as liaison I can't make a unilateral decision. (Heather) can't make a unilateral decision as the chair. And so this is as a group decision the leadership came to this point.

Okay so I am looking – it looks like Mary is saying George has his hand up. I only see Petter's but George why don't you go first.

George Kirikos: George Kirikos here for the record. Yes I have some very grave concerns about this three page document and I have prepared some notes, some detailed notes going through almost paragraph by paragraph an analysis of the document.

I figure it would probably take me about 10 minutes without interruptions to go through my analysis perhaps less. But what I was thinking was whether anybody had anybody had any (unintelligible) points before that or whether I should just go with my point and then people could take notes by talking and then go through it.

Petter Rindforth: George sorry. Petter here if I can just get in a practical question before you go on.

George Kirikos: George here sure.

Susan Kawaguchi: Sure Petter. Why don't you go ahead?

Petter Rindforth: Yes so you are saying that the next step will be to for the GNSO Council to discuss this. And I presume that this means that until then we will not have any further questions or meetings with our working group.

But could there be a possibility that when you have discussed it in the council that there are some feedback or questions or suggestions to put back to our working group? To discuss or at least to give our input on it?

Susan Kawaguchi: Yes.

Petter Rindforth: I mean if they would be – I feel sorry about shutting this completely down when we have worked on this topic for so long time even if there is this specific question that we have not reached a consensus on.

But it would – I mean we are – even if we are a small group and we are still people that have discussed this for a long time and if you have any specific questions or suggestions could be good to put it back to our working group to get our feedback on it. Thanks.

Susan Kawaguchi: Yes (Heather) this is Susan for the record. I would definitely agree with you. This, you know, no decision will be made on April 26. I would assume it would probably not be a working group meeting on that same day. But once we have put this to the whole council and a little bit of brainstorming and then I would imagine that would follow on the email thread from the council list.

And then you know I wouldn't be surprised. I can't predict, you know, what the rest of the council members – what ideas they might come up with or solutions. But I wouldn't be surprised if there wasn't a request to answer some questions or get feedback from the working group.

So you know we will have to figure that out next week after the council meeting. But it is reassuring that you would be available to and hopefully the rest of the working group to provide that feedback.

Petter Rindforth: Thanks.

Susan Kawaguchi: Okay. You're welcome. Okay so it looks like we have some other hands up but let's go over to George. Let's try to keep it to 10 minutes. That is, you know, quite a big chunk of time and we do have others in the queue but let's start with George.

George Kirikos: George Kirikos for the transcript. My first point is I did send an email yesterday to the mailing list regarding the claim that there is low participation and that there is a required charter amendment for the RPM PDP. I am going to rely on that email later. But it basically documented that those points are not necessarily correct.

Second point is and this isn't in the emails that everybody has. But there was an email sent to me by (Heather) on March 7, 2017. It wasn't sent to the mailing list but Susan has it, Mary and (Steve) also got it. And then the presumption of privacy on that since it is dealing with this issue. So I will quote from the relevant sections.

And this is after the call I had with (Heather) and after the call she had with Phil and Petter as well. And so she said, what this process allows for is a more detailed articulation of the level of consensus after an opportunity for all of these to be recorded and deliberated upon in a transparent manner.

And, and then describing the process of what would happen after the 10 minute calls with Susan. “She will then compile all input received and presented to the PDP as a revised Strawman.” That is emphasis there. Revised Strawman of possible articulations of the working group’s recommendations.

All possible conclusions will be – will then be recorded and presented by Susan. And then here is the important part. For the group’s subsequent deliberation. So this is the March 7 email I got from (Heather).

So I would like to believe that we would be deliberating on the revised Strawman at this point in an open and transparent manner in line with the working group guidelines.

But then this changed in Susan’s March 9 email to the list. There is a subtle difference here. It says, following these office hour sessions, this is sent to the mailing list on March 9. Following these office hour sessions I will with ICANN staff assistance prepare a report for the working group on the discussions that took place.

That report should form the basis for an initial designation of the consensus levels for each of the six options by Phil and Petter. Notice that that email on March 9 didn’t anticipate any further deliberations. It says we are going to straight to the initial definition of the consensus.

And so in my mind this change on March 9th amounts to a de facto anonymous poll which, you know, as per the Section 3.7 appeal documents is not allowed.

And I did privately object to Susan and (Heather) and copied Mary and (Steve) in an email of March 14 hoping that there is a miscommunication or something with regards to what the proper procedure. I never got a reply to that March 14th email.

Anyhow, going back to the March 9 – my fourth point is the March 9 email which had the Strawman poll, the Strawman – the brief analysis of the six options section after the six options themselves there is the brief analysis.

That wasn't very neutral analysis and it is basically based on the document that Phil and Petter prepared in advance of the October anonymous poll that I already objected to.

In my view that document should have been more neutral. You know if anything is going to be sent to the council it should be neutral and not a one sided document. For example, Option 1 it says things like potentially places the IGO in a worse position that is pointed out.

But the exact same analysis is a political to Option Number 3 but it is not stated. And Option 3's analysis is very misleading and similarly Option 4 is criticized but Option 3 isn't.

So that is a problem I had with the March 9 document that on the basis of the 10 minute calls. And so my expectation was that we had provided more neutral emails – sorry more neutral analysis prior to that – those calls. Prior to anything being sent to council.

And now going back to now the latest April 12 document. Page 1, Paragraph 2. It actually says that there are 10 responses, 8 working groups responded to the invitation to meet with me and 2 other members sent input by email. That is $8+2=10$. I do all the math for (unintelligible).

But if you go later on that page there is actually only 9 responses that are documented. There is like 5 of the 9 members responded and then – or the remaining 4 members provided feedback, (unintelligible) Option 3. The support of the Paul Tattersfield. So that is up to 9 not 10 so somebody's input is missing or there is some other error in the document.

Next slide. Point Number 6 is Page 1, Paragraph 3. There is a key point and precision is very important saying that it is not about preserving the rights of our registry to take the case to court. That is what it says in the document.

That is very imprecise though. The real issue is about having a right for the registrant to have a court decide the case on the merits. This is regardless of whether it is the IGO or the registrant who initiates the case, i.e. under Option 1 it is (unintelligible) decision gets initiated. The IGO can file a case in court to have the matter decided on the merits by the court.

This is also distinguishing between simply taking a case to court which is then summarily dismissed due to immunity or this IGO quick process or for the lack of cause of action issue related in the (unintelligible) email case in the U.K. These are dismissals on technicalities versus a de novo case being decided in the court on the merits.

Now my next point, my seventh point is in relation to the feedback section at the bottom of Page 1. It is presenting all the options as mutually exclusive of one another which is just not the case.

You know Option Number 6 which is the nominate model of mediation favored by Paul Tattersfield is something I support and I know Paul Tattersfield also supports Option Number 1. Even Option Number 4.

So these pluralities that are declared in a document don't reflect the real matrix of views if you solicited the – either their ranked proposals – sort of the ranked support of all the options or just, you know, tabulated do you support Option Number 1? You know I support Option Number 1 but I also support Option Number 4 before that (unintelligible) should be in the RPM PDP.

I also support Option Number 5 because the stuff about keeping the domain name locked in the event of an interim challenge as opposed to in personam

challenge. So these are all things that can be combined as options and solutions.

The way it is presented in this summary document it is making everything appear as though they are mutually exclusive which is something that is kind of working against consensus making.

My next point, eighth point is summary for Option Number 3 claiming that arbitration has been requested by the IGOs is very misleading and based on entirely false premise. The IGOs want binding arbitration as a complete replacement for the UDRP or URS.

And adding arbitration is an additional step after UDRP or URS and successful assertion of immunity in the court actually makes the IGOs worse off than status quo. And so all these arguments for Option Number 3 fail to probably disclose that this process quirk of process in law in the UDRP URS that is the detriment of the registrants and people have openly said.

This thing that we are working on is something not for the IGOs but it is for registrants. And so Option Number 3 doesn't eliminate that court process, i.e. the loss of the right to have a court decide things on the merits.

But instead preserve it and then tries to add a weak solution on top of things mainly arbitration. Rather than actually eliminating the court process like an Option Number 1 does putting the parties back into their positions prior to the domain dispute being initiated.

My next point is not in this document but I want to just raise the issue that all this ICANN policy making was supposed to be "without prejudice" and when I am defining without prejudice I mean without detriment to any existing right or claim.

We are – even in our own document ICANN doesn't have the right to create – ICANN shouldn't be creating new rights for anybody or causing, you know, rights of other people to be trampled upon.

And so that was kind of the bargain that was made when the UDRP was adopted and some of the URS as well. And so from the courts we discovered though this idea that these policies are being created without detriment turned out to be wrong.

As we know from this, you know, IGO immunity issue quirk and the cause of action issue exposed in the U.K. in the yo-yo dot email lawsuits. So we need to fix those policies rather than just add additional complex layers that preserve the bugs and try to, you know, add weak facsimiles of court like arbitration to potentially replace the court with an inferior procedure.

Now if you go to the top of the Page 2 this has suggested topics for further deliberation. And I think that we should deliberate them. Like the first one is very simple. If the thing isn't in scope then Option 4 is the only solution.

And so if we had that deliberation I am pretty sure that Option 4 would win over the remaining people that don't support Option 4 because that is clearly a scope issue. And if we actually do have the scope then some of the criticisms of the other options like Option 6 which Paul T supports.

People were saying that is utter scope. That it is too broad and it is better to be handled in the RPM PDP. So you can't have it both ways. You have to, you know, pick one. Either it is in scope or it is not in scope. So if some things are in scope and other things aren't in scope.

You know that could be debated productively I think by the working group and that could possibly lead to consensus. So I think we should have done these things or we should do these things.

And that was kind of what we were promised or I was promised by (Heather) that we would be deliberating these things further. The second option on that table which is the IGOs being able to (unintelligible) yes that is all possible now. We have talked about that in our report.

So we can either expand on that like have an independent objector for UG CLDs. We can give standing to national governments to follow actions on behalf of IGOs, you know, if they are in the same jurisdiction as a registrant. They obviously can't claim immunity if they are the government of that country.

My next point, my other point is this claim about the dominance and the current discussions by "a few members" who largely belong to one specific set of industry interests which parrots the claims that were made by Phil and Petter in the response to my Section 3.7 appeal.

I have already refuted that in my reply to their response document. And so here a one sided representation of that claim is being made anonymously. You know because these were "anonymous" inputs. But we know who made them.

But note that in particular that they don't identify these members. You know who is this group of members? And it ignores the fact that the expected standards of behavior will require us to set aside our personal interests.

So it is essentially claiming this unnamed group as violating the rules. But it is not allowing them to defend themselves or have that decided by an appropriate ICANN authority whether they are breaking the expected standards of behavior. So I consider this is a very cowardly attack and it is made anonymously in the report. And I reject that attack.

Furthermore, if what they claim is actually true that there has been capture of the working group. This doesn't just affect this recommendation that we have wasted a year on.

This actually affects all the PDP's recommendations. Because how can you claim this capture on just one recommendation when, you know, it essentially means that the entire working group has been captured.

So which one is it? Are all the working groups' recommendations going to be, you know, knocked out because we can't form a consensus because of capture? That is like a very serious concern of mine.

That people are using that claim of capture only for this one recommendation and not looking at the other three recommendations because we have four recommendations. This is the Recommendation Number 3 that we have been debating with regards to this court process.

The Page 2 proposal section that is highlighted under the proposed section of the document I think it needs – this current report needs to be severely amended or in the alternate this should be an opportunity for a reply document to also be sent to council.

So that council has the benefit of alternate views because I have severe reservations about this document which I already talked about last 11 points. So I don't think that those views should necessarily be filtered by the liaison. It should be presenting those alternate views directly.

Furthermore, the proposal in my view is essentially violating the working group guidelines because where is the consensus call as required by the rules? I.e. the first line of the proposal says, differentiating those in which consensus was reached from those presented in the form of options in which consensus has not been reached.

Who is deciding whether the consensus has been reached or not? I.e. that is basically a consensus call. And there hasn't been a consensus call because this Section 3.7 appeal stopped that.

And all the anonymous feedback on the Strawman proposal cannot be considered to be the basis for the determination because the working group guidelines themselves say, you know, you can't have the anonymous input. So basically those numbers on the first page are amounting to a de facto anonymous vote which is expressly disallowed by the rules.

So it was supposed to be used as a basis for (unintelligible) all that 10 minute calls were supposed to be in my mind and from what I was being told was it was the basis to further open and transparent deliberations which is in keeping with the rules. And then a consensus call...

Susan Kawaguchi: George I am going to give you one more minute to wrap it up okay.

George Kirikos: Yes I am near the end.

Susan Kawaguchi: You have gone over your 10. Okay good thanks.

George Kirikos: And then a consensus call would be based on those open and transparent deliberations. They are concerned about the rules not being followed here.

Furthermore, even for the other recommendations there has not been a consensus call. So like Recommendations 1, 2, and 4. I am opposed to having ICANN pay for the UDRP URS (unintelligible) and I know others have expressed the same. There has not been enough debate to see the view of others transparently on that.

Though Susan intends to brief council on April 26 there should be a minority brief allowing for other views to be shared. And remember my Section 3.7

appeal never got to the GNSO Council. They never got to see my request for a replacement chair or request for the (unintelligible) be declared null or void, et cetera and the detail basis for those requests.

Next one is with regards to the draft report prepared by ICANN staff for a May GNSO Council meeting. That should be a report that the working group itself approves not just staff.

And it currently seems to be amounting to de facto final report based for the entire working group based on anonymous poll, i.e. the anonymous feedback to Susan rather than an open and transparent process required by the working group guidelines.

In particular, a minority report should be expressly permitted so if anything goes to council and needs to wait, you know, in preparation for a minority report that could be submitted at the same time or even multiple minority reports that respond to the deficiencies in the process and the lack of documented consensus levels.

Bottom of Page 2 I have noted it takes things out of the PDP's hand by making conclusions that there will be no consensus without actually preparing that revised Strawman proposal and seeing what happens.

Furthermore, the goal post keep moving. We see that Option 3 is losing support and Option 4 is gaining momentum as a top choice. But we are not being told what the standard is to qualify as clear consensus.

Now Option 4 obviously has a majority. So, you know, just because Phil and Petter don't support option – sorry support only Option 3 and refuse to budge from that.

That actually reinforces the call for their removal as co-chairs so that a more utile chair or facilitator can actually attempt to reach consensus through open

and transparent deliberations amongst the remaining members of us who are open to other alternatives.

I have addressed the low participation and one thing on (unintelligible) small number of participants (unintelligible) entire report. And last point I want to go to that last paragraph. That shows how clearly the (unintelligible) creation of this document.

Look at how Option 4 is presented. Rather than calling it Option 4 it is called, the option preferred by those members opposed to an arbitration option. That really shows the perspective of the document's creation is non-neutral. It is saying that someone who supports Option 3 whatever label supports Option 4 like that.

So it is like saying Pepsi drinkers as the drink preferred by those who don't drink Coca-Cola or saying that, you know, one is from the anti-abortion faction rather than the pro-life faction. So look at how that was really phrased.

And my last point is the point claimed that our charter amendment is required and the RPM PDP is incorrect. I discussed that by email. And that is it. Thanks.

Susan Kawaguchi: Thanks George. That was quite lengthy but I can understand you are passionate about this document and this issue. I can't address everything right now because we need to make sure we get the other participants their time to speak.

But a couple of things. You are right. How we started out with this process evolved somewhat not radically but we did. It definitely evolved as we learned and we spoke with people so that is true. We will check on a number of people that provided input and correct that in the report.

And I do not see this as an attack on anyone. We took a fresh look at a hard problem. A difficult PDP and (Heather) made some decisions based on what is best for the GNSO and nothing has made – there has not been an anonymous poll, there has not been a consensus of those issues.

We are simply, after the 3.7 was filed following what we believe is the best process and taking it to the full GNSO Council.

So the next person I have in my list I think is Jay Chapman. So Jay if you would like to go ahead.

Jay Chapman: Thanks Susan. This is Jay Chapman. I mostly just have some questions. So Susan could you expand just a little bit more on where, you know, at what point you decided that this was necessary to take to the GNSO as opposed to just calling for a consensus call?

I mean from my perspective, you know, we have – I don't know that it is even consensus. I think we pretty much have, you know, just a straight vote on everything that is going on here in this working group short of this one small issue.

And so I guess I am just wondering what the basis was to take the whole baby to the GNSO as opposed to just this one specific, you know, as opposed to this one specific matter with regard to all the options that we are considering around an appeal.

And as opposed to that just go straight to a consensus call and it seems to me that it is perfectly okay that we get to a point where – okay great we don't have consensus but we do have results and we can't share those.

And everything else is, you know, is set. On this one particular sub-matter of a sub-point, you know, we have some disagreement. Here is how that lies out. I am just curious can you describe what the reasoning was?

Maybe dig a little deeper into that beyond the report as to, you know, what the basis, you know, I mean just some of those facts. I am just kind of curious. Thank you.

Susan Kawaguchi: Thank you Jay that is a good question. For the most part as we heard from members and really, you know, working through that Strawman document. It definitely came to mind that it would be very difficult to move forward in, you know, would more deliberations and more work by the working group really result in a different – have a different result at the end of the day than what the status is right now?

You know we are trying to, you know, this is a difficult matter. The IGO did not participate. And actually the registries who are calling for the domain names to be released are not participating either.

So even though, you know, a lot of good people from different parts of the community spend a lot of time and hard work on this which is really appreciated by the council. There was definitely areas that were not represented by their own choice, you know, you have to show up sometimes.

But the council is in a hard spot here because of, you know, there is GAC advice, the board and none of these six options would really satisfy the IGOs. So it seems to me that we can take – I don't see taking this to the council as a matter of not providing a full assessment of what has gone on and all of the work that you did agree upon.

But if we, you know, and it could be that the GNSO Council will come to an option here or decision or recommendation I guess is the best way to put it. That, you know, (Heather) and I hadn't thought of.

But we just felt like once the 3.7 was filed that put this PDP on a different status and we wanted to look to our colleagues for their, you know, sort of out of the box thinking.

And so, you know, after we had done additional homework to find out what was going on, you know, it just made sense that it would go to the full GNSO Council so that all the communities can weigh in.

I don't – this does not discount the other recommendations and you know Mary could correct me if I am wrong. I still see a report coming out of the working group on the other issues that you have agreed upon.

And you know finished the work on that. And, you know, it could be that we just say, these are the options. These were not agreed upon. And you know if we don't figure out a different mechanism here then, you know, this may – just send this all back to the working group and keep going around and around and around about it may not be the best solution either.

So (Heather) was trying to think out of the box and come to a resolution that worked for the whole GNSO Council.

And I think the next person I have is Zak. I have Zak and Phil after. Zak would you like to speak?

Zak Muscovitch: Thank you I just had a little delay in unmuting myself. But first of all, thank you Susan for putting together the report and thank you for holding those office hours as well (unintelligible). It is not often that someone listens to me graciously while I speak for 10 minutes sharing my views. So I appreciate that.

In terms of the exercise of consensus building it seems to me that the policy development process expressly contemplates that not every working group will come to a clear consensus and there are various levels of consensus.

And the absence of a clear consensus is sometimes a very important report to the council.

Because it highlights the different firmly held viewpoints and various options. And so it seems to me that there is still opportunity for this working group to reach consensus even unanimous consensus that the options at least should be provided to the council and preferably by way of a consensus call.

So for example, in terms of Option 3 versus Option 4 versus other options I would be perfectly satisfied for the options that I propose to be the minority if that turned out to be the case following the consensus call.

Likewise I would be equally pleased if it was a majority view or a tertiary view. But I think that the working group can probably agree that there should be a consensus call. There is no reason for not to be and the appeal was solely on the procedure for reaching consensus.

Secondly, another thing that I imagine the working group can reach consensus. In fact clear consensus is that nobody apparently agrees with what the IGOs have requested or the GAC advice. That is another aspect that this clear consensus on in my view.

And so between those two potential here consensus'. I think that there is a report that this working group can prepare without having to seek the kind of interim guidance from council about how to proceed. There is a clear way to proceed. Thank you.

Susan Kawaguchi: All right I was having trouble getting off mute there. Sorry about that. You know there is a very good point and we are definitely a report will need to be done and – but, you know, just one of the reasons we came to this sort of solution was that the cost community working group on the use of country and territory (unintelligible) sort of came to the same standstill.

And a report from this working group could be modeled on what they did and I don't have that in front of me so I can't give you details on that. And literally we don't have the time.

But I don't think what we are proposing and going to the GNSO Council rules out all that work and all the other consensus that you, you know, recommendations you came to in the working group.

And it could be that, you know, once the GNSO Council talks about – discusses this in depth, you know, and I would not expect, you know, an answer out of the April 26 meeting. Is you know then we will come back to the working group again after that.

But what we are trying to do and George was sort of alluded to that we may not be doing this is trying to make sure that all voices in the community are heard, all are represented.

And that is, you know, the GNSO Council, you know, there are contracted parties and non-contracted and, you know, constituencies with stakeholder groups and constituencies within that. So everybody has a home.

And so you know for – it just seems that as we took a look at this, (Heather) and I that, you know, you had been stuck for nine months on basically the same issue and we really are trying not to hinder but to assist in, you know, wrapping up this working group with a good solution and recommendations out of it.

So I think I – the next person is Phil. Please go ahead Phil. And then I have Petter.

Philip Corwin: Thank you Susan. Can you hear me okay?

Susan Kawaguchi: I can.

Philip Corwin: Oh good, good. I will make this short. First I wanted to thank you Susan and of course (Heather) as well and support staff who have provided excellent support throughout this entire working group process.

In particular thank you Susan for the very hard work that is reflected in this report and the time you spent engaging with members of the working group. I do personally in an individual capacity agree with the recommendation in your report and the observations and conclusions that support it.

I wanted to speak briefly to the last point where you note in the report that the – referring the matter that is the matter of IGO access to Curative Rights process to the RPM review working group of which I am also a co-chair.

I just wanted to say a few things on that for members of this working group who will also participate there and support that avenue. Number 1, personal view I think would be premature to try to initiate a charter revision process to address that point for the RPM working group until the council has acted with some finality on this report which based on what you said would be at its May meeting.

Depending on what happens then if there is still a desire to seek a charter change. Members have seen how the co-chairs have handled a current request for a charter change where the person – the RPM working group member who made that point was asked to prepare a report to the working group justifying that position that working group members could consider.

We then incurred working group discussion pro or con on that proposal to gauge the level of interest and support. And now that there has been some substantial support as well as some opposition to that particular proposal which is to move all or some of the URS considerations to Phase 2 of the work we are going to schedule working group call.

So as a process matter I would anticipate that the process would be exactly the same. The last thing I wanted to say on that is that I can't speak for the members with that point of view to the extent it is based on the adequacy of the current appeal process for both the URS and UDRP.

No charter change is required to address the adequacy of the appeals process. There is already – I reviewed the charter recently once again and there is a specific charter question relating to the appeal process.

But if there is support for going beyond that and directing the RPM working group to specifically address IGO access to URS and UDRP that would take a charter change and we would probably follow the process that I just described.

So I will leave it at that and thank you again Susan and thanks of course to staff for their steadfast work throughout this process. Thank you.

Susan Kawaguchi: Thank you very much Phil and just thank you for thanking me. I appreciate that this is my role as a counselor and I, you know, take that responsibility very strong and so I was happy to try to participate in a positive way in this.

So let me see. Petter you are next on the list and then we have only got about six minutes left after that. So I have a couple of suggestions.

Petter Rindforth: Thanks. Petter here and I just wanted to make a quick so to speak personal summary.

First of all, I hope that even if we only make informal conclusions on the other topics I hope they will be taken into consideration also because we made those conclusions very early stage and it was – I don't remember that we had anyone that voted against our finalization of that.

Then just a quick note I tend to agree with Zak because before the 3.7 we indeed had a time schedule to first have a call in order to get this six options hopefully see if we could cut them down to three or even two as we had some from the start.

And then discuss those remaining more limited number of options and have a final vote. So we could in fact have without this break on work we could have by this date come up with our final report to the GNSO Council.

But the thing is that as they are and I will leave it over to you to decide and take into consideration what we have already done. And also the different kind of options to see what fits best to solve the original problem we had for working group and the original topic. Thanks.

Susan Kawaguchi: Okay thank you very much Petter and I do think that the other recommendations that you all agreed upon is part of the hard work that you did. And we want to make sure that that is noted. So we will not forget those.

Just as a wrap up. So once again we are going to take this to the whole GNSO Council, you know, and we will see where that discussion ends up with hopefully some sort of resolution in May.

But and definitely to George, you know, I took quite a few notes as you were talking. And I have been on business travel actually review team so I am in Europe right now instead of in California. So I did not have the time to really – I glanced over your email but I will read those thoroughly.

If you have other topics or concerns any of you have concerns about this process you are more than free to send me your emails and I will read those so that I understand everybody's perspective though I think we have already gotten that.

And to start our discussion with the council next week. And I know that as the liaison I have a very important role to make sure that I am representing the viewpoint of all of the working group and I take that seriously.

So like I said if you want to send emails I will promise them. I may respond to you on those but I will read them and take them into consideration.

Anything else? And of course I will have to consult with (Heather) on all of this. But as soon as we, you know, I would urge you to also listen into the council call next week and then you will have a sense of where the discussion is going.

And as soon as we have something to report back to you once the discussions through the call, the council meeting and the email thread then we will get back to the full working group.

And George is that a new hand?

George Kirikos: George yes I have been waiting the last 15 minutes. May I speak?

Susan Kawaguchi: Yes.

George Kirikos: Yes first small point. You said there was no representative from the registries. That is not correct. Both Phil Corwin and Dave Maher are from the registry constituency. But basically if you want to guarantee that there is...

Susan Kawaguchi: You know what? You are absolutely right. And I apologize for that.

George Kirikos: Thanks. George again. If you want to guarantee that there is no consensus the way to do that is stop talking and that is what seems to be happening.

You are proposing that we have no further deliberations which is counter to what I was being told in March.

So this process to me seems to be entirely hijacked now that, you know, I disagree with the premise of many of those statements in the three page document that was sent out as a summary report. And it doesn't appear that that's going to be amended before it goes to council.

You know I would like the opportunity to address council myself if it is not going to be addressed. And the alternative, you know, there should be an amended version of this document that actually reflects today's call and any further input from people.

And also same goes for the draft report that would be sent in May. It seems, you know, we are stopping the process without allowing the people the opportunity to reach a consensus which would just counter to what this was all about. This was about trying to do the defensive building.

(Heather) and you have made this conclusion which is based on I think faulty analysis because the options were presented as mutually exclusive. We know for a fact that Option 4 has the support of at least 6 of the 10 people. How hard would it be to get the other 2 via some, you know, additional discussions?

To me that seems entirely feasible and we should be exploring that. It doesn't hurt to hold meetings. And so I don't know why we are not being allowed to have that opportunity to form that consensus. It just doesn't make any sense to me whatsoever.

Susan Kawaguchi: And thank you George. I definitely noted all those comments and we will look it over your email. Unfortunately we are now out of time. We are two minutes over the meeting. What was that?

George Kirikos: I would like the opportunity to talk to (Heather) as well. Like my Section 3 appeal is never really finalized. You have had multiple calls with Phil and Petter. I haven't had the opportunity for that one call.

Susan Kawaguchi: I will note that and I am not sure on process whether that is possible or not but, you know, (Heather) is easy to get a hold of too.

So okay I thank everybody for, you know, hanging in there with this difficult situation and hopefully the GNSO Council will come to in all our discussions and evaluations, you know, a solution that is reasonable to all in the working group. That is what we are aiming at.

So thank you very much and have a good evening or day or whatever it is for you. Goodbye.

END