

**ICANN
Transcription
IGO-INGO Access to Curative Rights Protection Mechanisms
Thursday, 21 June 2018 at 16:00 UTC**

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Coordinator: Excuse me, your recordings have started. You may now proceed.

Michelle DeSmyter: Great. Thank you so much, (Tony). Well welcome, everyone. Good morning, good afternoon and good evening and welcome to the IGO INGO Access to Curative Rights on Protection Mechanisms meeting on Thursday the 21st of June, 2018.

On the call today we currently have George Kirikos, Petter Rindforth, Poncelet, Susan Kawaguchi, Reg Levy, Zak Muscovitch, Paul Tattersfield, Jay Chapman, David Maher and Philip Corwin. If anyone has joined only on the audio bridge would you please let yourself be known now? Hearing no names, we also have no apologies. From staff we have Steve Chan, Mary Wong, and myself, Michelle DeSmyter.

As a reminder to everyone, if you would please remember to state your name so it appears clearly on the transcription. Thank you ever so much and over – back to Petter Rindforth. You may begin.

Petter Rindforth: Thanks. Petter here. And welcome, everyone. We start as traditionally with request if there is any new statements of interest. And I see no hands up, so

let's go directly to our main topic today. And if we can have that document that was sent out to the mailing list on the screen. And initially I want to say that I'm glad to see the positive energy on this final stage. We have got a lot of inputs and suggestions and especially the proposals with some suggested amendments that was written in – as I saw it in a way that could fit both the interest of George, also for your documents there. And I also noted I think it was this early today Paul suggested addition to Recommendation 2 and we come up with that when we reached that.

So what we have on the screen is our preliminary notes. And see if I got it down here. I don't think the first points here are anything that we need to further discuss or note upon. And then we have the recommendation Number 1 that is now suggested to be split up in an A and a B. And as we briefly discussed last time, we – the Recommendation 1 was specifically related to INGOs, and as you remember we decided on an early stage to conclude that there was no necessity to create something or even to work further with any changes on the UDRP or URS when it comes for INGOs.

As we also had an early input from INGOs and representatives of INGOs that have dealt with cases and obviously the current dispute resolution systems are working fairly well. So and that we also discussed if we could include or if we should include INGOs in Option 1 or Recommendation 1, sorry. And here's just a suggestion to split it up in 1A and 1B. And I presume that this is an acceptable formality acceptable way to do it also. As you know 1, again, was specified question related to INGOs and we put that suggestion over to the Council to accept that we shouldn't work any further with the INGO topics.

But if there is no formal problems in putting in a note on the IGOs in Recommendation 1, but in the way that we see on the screen as 1B, I'm fine with that. I don't know if the staff or others that can make any notes or comments on the formalities here but I think – yes, as George said, it was friendly amendment so hopefully folks find it acceptable.

Well, I have no problems with it as it is even if it's included in Recommendation 1 on IGOs. It's an A and a B so we have at least clearly split it up one specific comment and part related to INGOs and one – and then the B for IGOs.

So I see no – yes, I see two hands up. I'm not sure if I give it to Phil first.

Phil Corwin: Well, Petter, Mary's was up first. I'm glad to defer to her.

Petter Rindforth: Okay yes. Mary. Sorry.

Mary Wong: Oh no problem, Petter. And thank you, Phil. This is Mary from staff. We just wanted to make clear and it's in the comment on the side that George had suggested that this particular new language of IGOs could be Part 1B, as you see it on this document; it could also fit into Recommendation 3. So we just wanted to highlight that for the group and to see if you can make a decision as to whether the group prefers that it stays as Recommendation 1B or if it should belong in Recommendation 3. No substantive change, it's just a question of where it sits.

Petter Rindforth: Thanks, Mary. Phil.

Phil Corwin: Yes, Petter, on the point Mary just made I hadn't – wasn't aware of that but I would – my initial reaction is, one, I have no objection to 1B as written, and I'll explain that in a minute, I'm going to suggest an addition. I think since it's a broadly – a point on which the working group is broadly agreed it would be better kept in Recommendation 1 in which there's strong consensus rather than putting it in – well are you talking about Option 3 or Recommendation 3, Mary, just point of clarification. All right well I'll defer any opinion on that.

I was just going to suggest that we might put in a brief extend the sentence in 1B, with a brief explanation of why we reached that conclusion, something along the line – and this is just off the top of my head, it doesn't have to be

final, because the working group was unable to identify any broadly recognized rights for IGO names and acronyms other than trademark rights. So I'm suggesting an addition to the sentence along those lines. If people like that, fine, if they don't like it, I can live with the sentence as it exists. Thank you.

Petter Rindforth: Thanks, Phil. And so Phil, what you suggested was that you could live with having it in 1B but with that further specification?

Phil Corwin: Yes, I can live with the language, I just thought it would be useful to explain – to put in a reason since we're making that statement. It's a new statement and adding half a sentence to explain it might be useful. But I see George's hand up, since he suggested this language why don't we let him speak to that? Thank you.

Petter Rindforth: Thanks. George.

George Kirikos: George Kirikos for the transcript. Yes, we don't have any explanation for Section 1A, we just have the actual recommendation so I would tend to be not in favor of adding additional language to 1B. I wouldn't necessarily be against it but I'm just saying that we don't have an explanation for 1A or 1B at present.

We actually do have explanatory text below the recommendations in the full document so this was actually just taking what we had already concluded from the explanatory text that's already in the document and just making sure that it also appears in the recommendation because you know, the GNSO Council are people that are going to look at this in an executive summary, they're only going to look at maybe the recommendations and then glance down to the main body of the text for the explanations and so on so they might have missed the fact that we actually did come to a conclusion on whether IGOs should have a brand new procedure created especially for them that's separate and distinct from the UDRP or URS.

But if we want to add additional text to 1A as well, you know, perhaps maybe complicate things but I would just leave it the way it is now. That would be my suggestion but maybe others have opinions on this. Thanks.

Petter Rindforth: Thanks, George. And just an additional question to you, as you proposed it to be included in 1 – Recommendation 1 and 1B, as you see can it be instead included in Recommendation 3 or shall we keep it to 1B?

George Kirikos: George Kirikos again. Either or, I'm relatively indifferent if people prefer it in 3 that's fine with me. We would have to obviously move the explanatory text that's currently below Recommendation Number 1 into the explanatory text for Recommendation Number 3, so there'd have to be some movement in the final report to communicate that explanation accordingly. Thanks.

Petter Rindforth: Okay. Thanks, both of you and good to know. Well as said last meeting, I was more of in favor of keeping Recommendation 1 clean as it was related to INGOs referring to the fact that it was a specific question. But it's good to know that we have the possibility to either have the IGO notes on 1B or to have it in Option 3. And then as you said, I presume you're right, that the more explanatory text is in the full document. These are more of summarized – summarizing of our results of the recommendations.

So we – I presume we have a little bit more time after this meeting and we can have a second thought on what's the best place to put this text to keep it as we see it today in 1B or to add it to Recommendation 3.

And then we go to Recommendation 2 and we have some – making my screen a little bit bigger – we have some suggested – I wouldn't say amendments, rather clarifications that we discussed also last week, registered trademark or serve mark which as we said was actually cited from how it's described today in the UDRP and the URS when it comes to the rights that a complainant refer to.

And then it's – in this case when it comes to IGOs either they have registered trademarks that they can refer to or they have rights that they may refer to as unregistered trademark or service marks so that's – that will be the way they can use this. And I see no other – that's only amendments or clarifications to Option 2. And – or Recommendation 2.

Okay, yes, we have confirmation also from George that it looks good as it is now. So then we have Recommendation 3 and there is no amendments made there. George.

George Kirikos: Yes, George Kirikos here. I sent some notes about this on the mailing list. I actually went back to the original text that was in January 2017...

Petter Rindforth: Oh yes.

George Kirikos: And some of the text in the – in Recommendation Number 3 actually doesn't make any sense. It actually used to appear after a semicolon as a separate thought and somehow it got merged into the prior thought and if you actually read it, it doesn't make sense compared to what it was back in January 2017. Back in January 2017 there was like a Recommendation 3 and a Recommendation Number 4 and those kind of gotten merged into one recommendation. So was that part where it says – example, they have the ability to elect to have a complaint filed under the UDRP and/or URS on behalf of assignee, agent or licensee, and so that as a complete thought, semicolon.

And then that part where it says, "Such that any claim of jurisdictional immunity made by an IGO in respect of a particular jurisdiction, will be determined by the applicable laws of that jurisdiction. That was like a totally separate thought that somehow still appears in there. So I don't know how that is meaningful with regards to a policy guidance document. So I can't remember how we got to this recommendation with those words still in there

but folks might want to go back to the original text from January and see if, you know, that should be removed or clarified because it was actually a totally separate point and now it's kind of merged into one point. Thanks.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thanks, Petter. And thanks, George, for pointing this out. As George notes, there has been some changes to this recommendation in terms of the text. And that was occasioned by a couple of things; one is that this recommendation originally flowed from Recommendation 2, which while we still deal with 6ter in its original form as published in January 2017, we did have a – I guess somewhat stronger recommendation for the usage of 6ter.

So some of that language went away with the new Rec 2 but some of the remaining recommendation-related language like, you know, the policy guidance document, that was to be retained and moved to Recommendation 3 here. The intent being that this Recommendation 3 would cover essentially the issuance of a policy guidance document and what should go in that policy guidance document.

The other two things I'd say about this from the staff perspective is that, you know, at the time it was also not clear where the group would come out on the immunity question and whether or not additional guidance might be needed to that, is something that was still open. But to George's last point, in terms of that phrase, "Such that any claim of jurisdictional immunity," etcetera, we think that that should also be deleted. And I think, George, that's what you suggested.

So in other words, Recommendation 3 deals only with the issuance of a policy guidance document, what it should cover, the procedural options for example, and who should be – whose attention should be drawn to it. That's the intent and that's what it should say so we can take out that last phrase that George noted.

Petter Rindforth: Thanks. And Petter here. And I see Paul's hand up. And actually I was just going to give you the voice because I realized that you sent a proposal on some addition that you noticed on Recommendation 2 and going through 2 and 3 I'm not sure if it maybe more advisable to have that in Recommendation 3. But, Paul. Go ahead. Sorry, Paul, we can't hear you.

Paul Tattersfield: Hello? Can you hear me now?

Petter Rindforth: Yes.

Paul Tattersfield: Oh right. Yes, I think 3 would be a logical place to put it because it is part of policy guidance and it was just – it was something like ICANN policy guidance should advise the IGOs and INGOs in the first instance to contact the registrar of record for any domains involved in the harms they're seeking to address. The overwhelming majority of registrars are willing to deal with such behavior at no cost and in a timely manner. In the unlikely event that a registrar would not wish to help ICANN, has contractual provisions in place to investigate the reasons for such a decision.

Petter Rindforth: Thanks. Yes, so you agree that it fits right into Number 3?

Paul Tattersfield: I do. Thank you.

Petter Rindforth: Yes. And I really – and I see no obstacles to add that as a further clarification or recommendation as it also actually reminds the registrars that they have these contractual provisions and that they also have to have a guidance to quickly take down some specific domain names or also related websites that have some topics and comments that are breaking any – well national legislation. So and I see no specific hands up or notes to that so I suggest we add that to Recommendation 3.

Paul Tattersfield: Thank you.

Petter Rindforth: Good. Yes. And then we go further to Recommendation 4 and I see here, before it leave it over to you, George, yes, okay George.

George Kirikos: George Kirikos for the transcript. I just posted a link to the spreadsheet that I created with regards to this recommendation and all the recommendations. I actually believe that – I'm against Recommendation Number 4 personally but I actually do believe that depending on Zak, Nat and Jay's input, that you can actually achieve consensus like it has been downgraded from consensus to instead be strong support with significant opposition. But if Jay, Nat and Zak agree to language that's acceptable to them, I think you actually do have consensus so Jay, Zak and Nat might want to weigh in on what language would be acceptable to them and I would sit down. Thanks.

Petter Rindforth: Thanks, George. Well Zak, do you have any comments on that? George, is that a new hand or?

George Kirikos: George. It's a new hand. I'm just trying to help Zak. This was the issue of subsidies where Zak had proposed that, you know, if additional text was added to talk about means testing and so on in the recommendation that he could support it. But the way it is now I'm not sure whether they support it because it talks about things like many working group members believe the respondent should also be eligible to receive financial support.

But if it's perhaps strengthened in their view that, you know, that it's a recommendation of the group that, you know, if IGOs get subsidies then the same should be given for respondents then they might find it acceptable. I'm kind of trying to speak on their behalf but I'm personally against this proposal, but if they find language acceptable then I think you could elevate it to a consensus. Zak has his hand up so I'll defer to him. Thanks.

Petter Rindforth: Thanks, George. Yes, we also discussed this briefly last week and again, as this is not – not a recommendation where we actually recommend to do any

specific, we leave it over to the Board but just stating in some generally words what we think about it and I have no problems in adding something in the same general way when it comes to the domain holders. But, Zak, please.

Zak Muscovitch: Yes, last week I was – I didn't have the document in front of me so (unintelligible). I'm looking at it now. And I'm generally satisfied with it so, you know, if I was marked down as not supporting it, you know, I'm happy to – sorry, Reg has just asked me to speak up. I hope she can hear me better now. What I was saying is that I've taken a look at the wording and I'm happy to support it.

Petter Rindforth: Good. Thanks. Which means that we have a consensus. And – yes, Phil.

Phil Corwin: Yes, Petter, I have to intervene. I'm looking at the deleted list of support and opposition to – which is this? Number – sorry, keeping track of my – yes, this Recommendation 4 on the possible subsidy by ICANN for either IGOs or IGOs and registrants, if the list that was deleted is correct, there are, one, two, three, four, five in support, Zak has just reasserted his support, and two in opposition. I want to inquire whether that's the final list. I think five to two is not consensus, I think it's strong support but significant opposition. I don't think it changes the evaluation.

Petter Rindforth: Thanks, Phil. And Mary is an expert on this topic, I see your hand's up. Thanks. Go ahead.

Mary Wong: Thank you, Petter. We just put a hand up on the staff side because this list with the names was produced some time ago and as George has put in the chat, there was some disagreement over what – who's what and interpreting various members' messages to the mailing list. So in terms of where we are, there's also been some additional discussion on the last call as well as on the mailing list. So we think that in terms of the numbers, what might be more critical here is for working group members, and I believe that most if not all of

the more active members on the call today, to come to agreement on which is the appropriate level.

It could be very close but whether it's consensus or strong support but significant opposition, rather than counting numbers because otherwise we'll have to go back through all the message again, which we can do if we don't have an agreement but that would be our suggestion from the staff side.

Petter Rindforth: Okay...

Phil Corwin: Yes, Mary just let me quickly respond. You know, if either George or Reg has changed their mind and now support it or if additional members have spoken up in support then it might be consensus. I'm just really seeking clarification on where – I know we're not voting but I think we have to look at ratios of support to opposition among the members who have expressed views on any of these recommendations or options and based on what's in the deleted box, 5 to 2, I would view 5 to 2 as strong support but significant opposition but if there's additional supporters or if the folks listed as do not – not supporting have changed their mind then it could be consensus. I'm just basing my opinion and it's only my opinion on what I'm seeing on the document. Thank you.

Petter Rindforth: Thanks. I was – I'm not sure if – I think George was actually the hand's up after you. I see Zak's hands is still up but I think it's an old – yes, George.

George Kirikos: George Kirikos. Yes, I don't think the five to two is an accurate call for what the support is; there's actually four people against it mainly myself, Reg, Paul Keating and also Jim Bikoff who was against everything except for Recommendation Number 1. So there's four that were openly against this recommendation including myself. But looking at the spreadsheet that I linked to, the number of people that are for it once you now upgrade Jay, Nat and Zak to being support, I think more than outweighs the level of opposition to turn it into a consensus. You know, it's not in my interest to be calling this but

that's the way I would see it so I think they do have a consensus for this recommendation even though I'm personally against it. Thank you.

Petter Rindforth: Okay just see that Mary, were you going to say something or typing something? Otherwise, it may well be that we have reached a level of support at least for this. Zak, please.

Zak Muscovitch: Yes, was there anybody who was in support of subsidies? Like just absolutely in support of subsidies or was the – most people willing to say is this is something that should be discussed between GAC and ICANN etcetera, if someone can refresh my memory about that.

Petter Rindforth: Mary.

Mary Wong: Thanks, Zak, and thanks Petter. We can go back and check but the staff recollection is that when this came up, even prior to the initial report, the general sense of the working group was against recommending subsidies. So it was settled for purposes of the initial report was, well, since it is GAC Advice, on the no or nominal cost, what we can do is suggest that the question of feasibility be looked at. And I'll note here that there was also some discussion as to whether or not it was even within scope for this working group to be talking about subsidies.

So our recollection is that there was not support for subsidies per se, there was not support for a recommendation saying subsidies should be given, but there was agreement that at least investigating the feasibility may be something the group can coalesce around.

Zak Muscovitch: Thank you. This is Zak again. If I may? I'm just trying to explore what could lead to consensus or whatever stronger degree of support for this recommendation would be. And so for those that aren't supporting, such as George and Reg, would it bring you to support it if there was a sentence in there that said that no working group members recommended any subsidies

and then went on to the existing language? Is there something short of just before support that can be achieved here? Thank you.

Petter Rindforth: Go, George.

George Kirikos: Yes, George here. As I was trying to note in the chat room, my support or opposition isn't necessarily binary, so this is something that I'm, you know, not willing to live or die over in terms of, you know, ranking which recommendations are the most important and which are less important in terms of priority. The changes that Jay and Nat and Zak, you know, make it less objectionable than before so to that extent my no isn't – is a bit weaker than before.

You know, on principle you know, I don't think, you know, ICANN should be subsidizing anything so, you know, but, you know, to the extent that the registrants get an equal amount and, you know, it gets means tested, you know, that's, you know, a reasonable change that I'm not going to, you know, kill myself over. Thanks.

Petter Rindforth: Yes and...

((Crosstalk))

Zak Muscovitch: If I may...

Petter Rindforth: Yes, who was that?

Zak Muscovitch: If I may just interject once again? It's Zak Muscovitch.

Petter Rindforth: Okay good, yes.

Zak Muscovitch: George, I'm not in favor of the subsidies and the way I'm reading this section is that it doesn't commit it towards subsidies and so that's why I'm

comfortable supporting it. But I'm wondering if we can turn – and to Reg too, if there's something that we could put in to express more clearly that this is not a support for subsidies, this is just – in fact people were not in favor of subsidies and if there is any discussion subsidies, that's between you and the GAC kind of thing. Thank you.

Petter Rindforth: Okay, it seems that we – if we rephrase this just a little bit can at least support. Mary.

Mary Wong: Thanks, Petter. So just to follow up on Zak's suggestion, and this is off the cuff, without necessarily changing the text too much if we go back to the text of Recommendation 4 where we now say, "for a nominal cost is one that must be addressed directly through discussions between the ICANN Board with the GAC and IGOs." That's at the bottom of the page. If we added a phrase that said something like, "in consultation with the community" would that help? So that it's not simply a bilateral Board and GAC discussion or negotiation but the community must be consulted.

Petter Rindforth: Thanks, Mary. And before I give Phil the voice, just have a short comment on that from Zak.

Zak Muscovitch: Oh my apologies for jumping the queue. Please, go ahead, Phil.

Petter Rindforth: Okay, Phil.

Phil Corwin: Yes, let me say this, I think we need – I'm arguing a bit against interests because I support the current language but I think it's more important to have a consistent approach to determining consensus levels and if indeed seven members are against it – for it and four against it, I don't see how that could be viewed as consensus. If we were taking a straw poll it's basically – it's less than a 2 to 1 ratio and if we had 2/3 of the group for something and 1/3 against it, that could never be viewed as consensus, it would be viewed at best as, you know, strong support but significant opposition.

But we're trying to edit this thing on the fly. I'd like to suggest that we maybe take that discussion offline since we're halfway through the call and circulate revised language, if there's going to be revised language, and then ask members of the working group whether they support or oppose that revised language if we see it, and then we can have a good idea of what the actual levels of support and opposition are. But if it is at the current level with seven in favor and four against I don't see how that could possibly be listed as consensus, at best it's strong support but significant opposition in my view. Thank you.

Petter Rindforth: Thanks. Yes, well we have got some inputs today on this topic and we can – we have some more time to discuss it online before it's sent out again with the level of support conclusions. So it may be better to sit back a little bit and think about what we have heard today and the possible minor changes in the text what that could do on the level of support. Zak, just some quick notes before we proceed to the second part.

Zak Muscovitch: Yes...

((Crosstalk))

Zak Muscovitch: ...I'm perfectly happy – yes, I'm perfectly happy to leave this offline, I thought we were awfully close to getting some movement here because it seems that the equation of support versus no support can be changed if we just add one sentence and we have people who can express what to do with this or not right now and we could then move on with a better situation on this recommendation.

If we added, after the word "Note" where it starts, "A few working group members strongly oppose," we can say that no working group members were in favor of subsidies and a few working group members strongly opposed providing any subsidies at all," something like that. That I think should

eliminate the opposition at least I hope it would or change it significantly. So and I don't see the four oppositions to that because that's consistent with that Paul said, I don't believe Jim Bikoff made any direct comment on this particular issue, George Kirikos may be willing to hold his nose and go along with this, and Reg might as well, I don't know. Thank you.

Petter Rindforth: Thanks. And as you see in the notes as staff said they will circulate a proposed recommendation for language. And I think it's good for us to have some probably don't need any more than 48 hours or so to just read that and make our conclusions on what we can support. But from what I hear briefly today is that there is – there seems to be a possibility to at least limit the number of working group members that is supporting the text so good. Is it an old hand, Zak, or, do you want to make a further comment? No? Okay, good. George.

George Kirikos: George. This isn't actually a comment on the past, it's on the upcoming stuff. I would suggest for brevity that we skip over 1, 4 and 6 and do the easy ones, 2, 4 and 5 first and then do 1, 4 and 6 together. Thanks.

Petter Rindforth: Okay, yes and what I would like to also put out here is that some of these options are obviously we have noted that in our – with emails and on our meetings, some of the options are more or less alternatives to those that generally support Option 1 and as some kind of – if Option 1 does not get enough majority then the other options proposed by the same working group members could be a possibility. Then there is one option that is completely different and one option that could be more of a general recommendation to another working group and also one option that could actually be added separately in our final report.

But I'm fine with going into – well frankly, I think we can fairly quickly go through them as they are and go back then to some of the more major strong options. So if I just say that for Option 1 we have seen as it is today consensus or strong support but significant opposition, I rather think that we

have our consensus on that because as I said, when coming back to those that voted for other options like 2 or 4 they have also noted as we did on the last call that they preferred Option 1. But, Phil, over to you.

Phil Corwin: Thank you, Petter. Since I'm on the options for Recommendation 5, we're not discussing language pretty much, we're just discussing the proper consensus level. I wonder if I could ask that at the beginning of each option we just ask staff to inform us – we don't need the names but just the current number of members who've expressed support or opposition for the option since we're trying to determine if there's a consensus, the only way we can do that is to know how many are for and how many are against of those who've expressed an opinion. Thank you.

Petter Rindforth: Thanks. And Mary, do you have any notes on that?

Mary Wong: Petter, yes, this is Mary from staff. And thanks for the suggestion, Phil. I think we're hesitating on our end because we don't have an up to date matrix. I note that George has put in the chat the link to the document he analyzed the level of support or nonsupport at the time. So we can try and reconcile any differences between what we came to after preparing this initial document and where George came to but we can't quite do it at this very moment. Thank you.

Petter Rindforth: Okay thanks. So, yes, again, here we see two levels of consensus and reading through the number of working group members that supported this, my personal conclusion is that it's more of a consensus than a strong but significant opposition. I'm not – I'm not sure how many that are still in opposing this. Mary.

Mary Wong: Thanks, Petter. And your comment reminded me that I probably should have reminded everyone too that it is for you as the chair to make the consensus designation. What you had previously were what we believed to be your initial levels of consensus designation and what you can do and I think what you

seem to be doing is in your role as chair basically looking at the record, looking at all the discussions to date and making another designation. So that is something that you can then ask the group whether they agree or disagree. So for example, if you're saying that there's consensus for Option 1, then those that disagree would have to come out and say so. I hope that's helpful.

Petter Rindforth: Thanks. Okay, and then Option 2 where we have no consensus or divergence, my conclusion is that it's no consensus for that. That's also based on that it was some kind of suggestion to be something in between 1 or 3 but noting also on the further discussions we had. So I can't see that there is any level of consensus still on Option 2. Phil.

Phil Corwin: Yes, Phil for the record. Yes, I agree on Option 2, there's no consensus. I just want to say on the record I did look at George's document which is helpful and accurate so far as I can discern and it shows 11 for and 3 opposed on Option 1. I had made a case on the list why that might be considered strong support but significant opposition. I'm not going to press it. I'm not going to object to it being reported Option 1 as consensus and Council and the Board can deal with it as they see fit. Just want to go on the record on that. Thank you.

Petter Rindforth: Thanks. And now we come to Option 3 and we know that there is a minority view here and also counting on the inputs we have got from working group members. As it seems today and we count on it, there is – I think it's the right conclusion that there is a consensus against this option but as I said, a minority view. And last time I saw on the list I think there was – I don't know if it was three working group members that supporting Option 3.

And then we have Option 4, which is also one of these options that is – even if they are now separate options could be included in one of the other options. I'm not personally – I have not concluded if there is correct to say there is consensus or strong support but significant opposition. But I think that there is

– if we went out again with this it may be less support for this and not necessarily option. Phil.

Phil Corwin: Yes, Option 4, I want to note that I took note of George's subsequent emails and his analysis where he noted that several members initially counted as in support had stated that they support Option 4 only if Option 1 did not have consensus support and it appears that it does so I think that changes the analysis and at best it has strong support but significant opposition. So I wanted to get that on the record. I think – I agree with him on that point and when George and I agree substantively in this working group, that's the equivalent of the sun rising in the West, so I hope other members will take of it. Thank you.

Petter Rindforth: Thanks, Phil. Yes, and also actually seeing the latest result on that way that it's no longer on the consensus level as you say and I'm not sure even – well I'll take that later on in the discussion how we deal with these kind of options that are more or less alternatives to Option 1. George.

George Kirikos: Yes, George Kirikos here. Just wanted to, yes, reiterate what Phil Corwin just said and even North Korea and the United States made peace, so you never know.

We have to I guess decide whether all six of these recommendations are going to be listed in the final report so that's something that needs to be considered whether we just put one recommendation for Recommendation 5 in the end and then put historical context for what the alternatives were leading up to Recommendation Number 5, like Recommendation 5 might just end up being, you know, option Number 1 but then put into the explanatory text, you know, how we got there – well we might want to put in, you know, that we have consensus against Recommendation – sorry, option Number 3 because that actually is a consensus result.

The other ones there's no consensus, it's kind of like there were mostly alternatives to 1 and 3, so we might want to put those in somewhere else in the document but that's something we should probably discuss further. Thank you.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thank you, Petter. And to follow up on George's comments, the final report will contain all the options. Typically any proposal that has the working group discussing it for some time as well as the final decision of that proposal does get listed final report. As George noted, this would likely be in the form of explanatory text that we can highlight so that anyone looking purely just at the final Recommendation 5 will see that there is additional context.

And on that note, based on the various implementation review teams that have been formed recently, the text of the final report is an important reference document for them so it's not just that people will only look at the actual final recommendation that was adopted and ignore the rest, in implementation work, the information provided in the report is often referred to as well.

Petter Rindforth: Thanks. Okay, I lost my counting here. We are on Recommendation – we are on Option 5. Again, stated that no consensus or divergence. This is although this is in fact not a completely separate option even if it's provided I presume there's more of an addition to perhaps Option 1 and not a specific separate option. But counting on the votings – or rather say that is divergence here.

And if I may just – I have no problem in adding in some text in our report that mediation could be further perhaps provided by some registrars as a part even if it's not a specific recommendation or option from us. And then we have Option 6 stating strong support but significant opposition. Yes, and that – I think we have gone through the list.

And I think as said – just scrolling here – yes. So what we – the next step would be to send out with our comments today, I presume, and as we briefly said, I think it would be good if we could have in our final report realize or identify the option that has the main consensus. And everybody have the possibility the other options with the notes and then we also have – we also have minority statements on these.

And I think there will be – at least one minority view that will be on Option 3. I'm not sure if the option to put this issue over to the other working group dealing with the dispute resolution procedures in general, still has some kind of consensus level but it – what I suggest if I may just pass onto that is that we have some general in our report we have some general recommendation for that working group to consider our work and our documentation. There's no reason when it comes to some kind of topics generally related to the dispute resolution procedures to do all the work again.

So that's my suggestion just to have some general recommendations for that working group. I see Mary and George hands up but as we also have one of the chairs on that working group here so, Phil, what do you think about that?

Phil Corwin: Excuse me, Petter, are you asking me a question? I'm the third hand up here, I'm...

((Crosstalk))

Petter Rindforth: Yes, just what from what I just stated that if it could be – if we could have some kind of recommendation from our – in our report to your working group to consider what we have – the work we have done and the – and the documentation.

Phil Corwin: So I'm still – can you just restate the question you're asking me, Petter, I'm a little unsure. I don't want to give an answer when I'm not sure of the question.

Petter Rindforth: The – you know, we have had discussions if we should just pass on this work to your working group and not make any conclusions here. And it seems that if I read the statements we have got it's more that we actually will make a conclusion and a recommendation within our working group.

Phil Corwin: Well let me say this, Petter, I would not personally favor any – we've just determined that the option for Recommendation 5 which recommended that the issue of IGO immunity be taken up by the RPM Working Group because it involved change to the UDRP. It doesn't have consensus support and the one that appears to have consensus support would require a change to the UDRP language, so we're crossing that bridge. So I don't think there's any need for that.

And beyond that, the – when we get to UDRP reform the issue of appeal – there are already questions about appeal and pretty broad questions in the charter so any member can bring up the specific question of appeals that involve an IGO or even an agency of national government that might claim sovereign immunity. No, any member has the right to suggest that, you know, depending on what Council and the Board do with this – with that recommendation that it needs to be addressed or addressed further.

So we don't need a formal referral to have it brought up and considered within the working group. We recently had a member suggested that we needed a charter change and we talked it out and decided that our charter gave us sufficient flexibility to do things without going back and bothering Council. So I don't think we need it. Many of the members of this working group are members of the RPM Working Group and if they feel that this working group hasn't concluded the matter or that the subsequent treatment of Recommendation 5 if it doesn't get past Council or the Board requires the issue to be readdressed they're free to bring it up when we get to that which won't be until the second half of 2019 anyway.

So we should know by then what the ultimate results of this working group are in terms of resulting in any change in UDRP policy. So I'll stop there but I think if there's not consensus support for recommending that the RPM Working Group bring it up, we shouldn't be taking independent action to suggest they should look at it. We have members capable of raising the issue within the working group. Thank you.

I do still want to speak on other issues but...

Petter Rindforth: Okay, yes...

((Crosstalk))

Petter Rindforth: ...I'll give it to you later on.

Phil Corwin: ...direct question, I wanted to give a comprehensive answer. Thank you.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thanks, Petter. Staff actually had two points, one is a question. So if I may I'll ask the question of the group and come back to staff after George and Phil because our other point was more about next steps and procedural questions for the group. So if it's to me for the second point I'd be grateful.

But the first point that we wanted to raise was more of a question for this group. As Phil said, we don't need to make a recommendation to the RPM Working Group, that's more actually an Option 4 issue that seems to now have gone away. But we were wondering on the staff side whether this group has put any thought into the implementation of Option 1, which seems to be the remaining option and the one that is going to become a consensus recommendation.

And our question specifically is when – if and when this report get adopted and all our consensus recommendations approved, it moves into implementation. The timing of that is likely not to align with the RPM review of UDRP, so whether the group here doing this particular PDP believes that Option 1 if adopted should be implemented right away or if it should be implemented at the time when the RPM review is done. We think that's within scope for this group; it's not something that's come up but we thought for completeness seeing that that seems to be the consensus recommendation we should raise it.

Petter Rindforth: Thanks, Mary. And before I leave it over to George, frankly, we have been working on this topic for so long time and I think all parties of interest wants to see to be implemented right away so that they have something to further discuss and work upon depending on their view of the topic. But it's important that we come to a final conclusion and come up with our result and is also implemented. George.

George Kirikos: Yes, George Kirikos. Just to cover several points at once. In terms of implementation I don't think it'll be very hard to implement if option Number 1 is of Recommendation Number 5 is accepted by the Board and GNSO Council. For the UDRP it only requires modification to basically one section, which is the Paragraph 4K of the policy, it's not affecting the three-pronged test or any of that stuff, it's just affecting one section what to do when the parties go to court and so it would be very limited in terms of changes that are required, probably three or four sentences added to 4K and similar language to the URS as well.

In terms of the other issues that I was going to raise was Heather made a – Heather Forrest, the GNSO Council Chair made a motion on the GNSO Council list that our target date should be July for delivery of this final report.

And so I just wanted to talk to that timeline like we're making great progress and so I think if we can get a draft final report as soon as possible like say

Saturday, Sunday, Monday, I don't know when staff is working because some of them might be going to Panama, but if we can get it as soon as possible then we could start turning that around very quickly in terms of suggested changes so that if we have another call say next week and then another call the following week, like I think it usually takes around two phone calls to actually finalize everything, then we should be able to have a final report in very good shape well before the July 9 deadline.

And even if we don't meet the July 9 deadline I think we're allowed to have a placeholder report and so that was talked about earlier in this working group whether we want to have a placeholder report and then make modifications to it before the actual Council vote because we have that 10-day – 10 day before Council meeting a document deadline exists. So if we have a placeholder report at least by July 9 and say two more phone calls before then, we should be in a very strong position to be done and also have ample time for a minority report.

So I think, you know, if we have a call next week – I don't know if a call is already scheduled for next week under the – for the Panama meeting but even if it's not we might want to meet without staff just to go through and, you know, staff could obviously listen to the report afterwards, but, you know, we need to, you know, keep up the strong work ethic and move on towards the finish line. Thanks.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thanks, Petter. And thanks, George. And I note that Susan, who is our Council liaison, has just said in the chat that it would be difficult to have a call during the ICANN meeting. I think that's not just because staff will not be available but other members are likely not going to be available as well. And typically at ICANN meetings the only calls are – or meetings are the sessions that have already been scheduled. And we have not been scheduled for this group.

Similarly, the week after an ICANN meeting typically does not involve working group calls because of follow up from the ICANN meeting. So the staff suggestion is that we can do as much as we can to get an updated draft final report to the group and it's been done with other groups before, that unless there's something that seriously wrong with the substance of the report, primarily the recommendations themselves or the levels of consensus, that kind of errors, that typically you may not actually need other calls to finalize the report; if there are suggestions about language, edits, formatting and so forth, those can be done on the list.

In terms of the date, as George noted, 9th of July is the document deadline for the Council's July meeting. And the motion that Heather has submitted to the Council is to request that we wrap up our work in July, which means we should aim to meet that 9th July deadline.

So we think we can do our best to get you a report sometime, you know, definitely before 9th July as much as possible. I can't commit on our behalf right now because I haven't discussed this with Steve. But if we can get it to you say by the 2nd, our anticipation is that there's not a whole lot that will change from the draft you saw in May. There will be new text, certainly these recommendations will be updated. We can redline it. We did have some suggestions from George by the previous deadline of I think of May 20 or 23 and we can redline those too.

Then in respect of minority reports, those are never edited or reviewed by the group; it is the opinion of a member who wants to send a minority report so those can come in as late as say the 6th of July. And George, to your question in the text, next week, Monday is going to be pretty much impossible because Steve and I are both actually going to be traveling to Panama tomorrow and we have meetings that start on Saturday. So while I can say that we will do our best to get you something quickly, at this stage I'm very

reluctant to commit to anything other than say the 2nd, which will give us the weekend after the Panama meeting to put the final touches together.

I don't know, Petter, if Susan wants to say something. I see that she and Phil have their hand up so I'll just stop talking and try and respond if others have questions. Thank you.

Petter Rindforth: Thanks. Susan, please.

Susan Kawaguchi: Thanks, Petter. This is Susan Kawaguchi for the record. I agree with Mary. With the ICANN meeting and then the aftermath of an ICANN meeting, it would be very difficult to get calls scheduled. And you know, you've made a lot of headway today and I really appreciate that. And I think that if you all go back to the May report, review anything in that that you haven't already pointed out, I think that's a good place to start. And then staff will work, you know, as fast as they can but they have multiple duties here, you know, it's not just this PDP.

So they will redline that report with any changes that have been suggested over the – since the last – since the May report so that you can do most of your initial work in that last report and then – and then do – hopefully just do a quick review of the changes, you know, that between this call and the last call and then we can get that out to Council. And I agree, George, we shouldn't stall so we should try to keep working on it via email as much as possible.

Petter Rindforth: Thanks, Susan. Yes, I definitely agree that although it may be difficult to schedule our next call, definitely not next week and perhaps not even the week after that but as said, we pretty much know by now on the last – from the last two meetings where we will end up and we also have recognized which of the options that have the majority and is the main option also for those working group members that voted and suggested for other options if not Option 1 got the majority. So I think we are pretty close to some final document – hooray for that.

And we should definitely continue to discuss the details online. And I think we can make good work on that way. Phil?

Phil Corwin: Yes, thank you Petter. I just wanted to chime in on this and add one other consideration. I understand the – you know, I'm fully in favor of getting a – making the July 9 deadline if it's feasible. But I think every member of the working group deserves the same opportunity to review draft text of a final report and have an ability to comment both on it, on any suggested changes to it. We've been at this four years, I don't want to say another month doesn't matter, but that puts it in context.

Those of us going to ICANN 62 have very long days. I know my days at those meetings generally run 12 hours or longer working per day so my ability to focus in on a draft next week is limited at best. And I do plan to file a minority statement and while I'm not really going to be able to start drafting that until I get back from Panama and its final text depends on knowing what the final-final text of the report is.

So July 9 is a Monday, I think if we can have an agreed upon final text by, you know, it's very tough with July 4 that week too, which is a holiday, but at least by July 5 because we need also a deadline for filing minority statements. I don't want to ask for July 9 because that's the day it has to be submitted to Council. But at the earliest really would be Friday July 6 to give those who are going to Panama and wish to include additional statements to have the following week to draft and edit those. So I think we need maybe some follow up clarification on the email list as to how we're going to handle the logistics of this.

Again, I'm fully in favor of meeting the July 9 deadline, if it realistically lets all members of the working group have full input into the final text of the report as well as ability to draft a minority statement, which reflects that final text. And we're going to need to work out a timeline for that. So I'll stop there but I

don't think we need additional calls unless some burning debate pops up but we do need time and time to consider this when we're not running from one meeting to another in Panama. Thank you.

Petter Rindforth: Thanks. Yes, Phil, that a second hand? I know that the upcoming week, at least week and a half, is full of work with other topics and so but it would be of course nice to have a summarize and amended report out as soon as possible so that we can at least discuss it on email and then have our next meeting as soon as possible after that.

I'm just thinking aloud now that perhaps I mean, normally we have our working group meetings on Thursdays, I haven't checked my own schedule yet but maybe there could be some practical solution to have in the last week one meeting that Monday and then the meeting on Thursday so that we at least have two meetings to make that way the two meetings to make our final conclusions and report. Just something to think about and see if it may work.
George.

George Kirikos: Yes, George Kirikos here. Yes, yes, that makes a lot of sense because I think we do need like probably two meetings to finalize things. The other alternative is if we don't necessarily have to finalize things by July 9, i.e. if we have a placeholder report, that doesn't have everything necessarily polished, that would still give us time that – later that week to get it out because we would still have 10 days before the Council votes on it. So I don't know if maybe Susan might want to speak to that, how the placeholder or maybe Mary or staff, how the placeholder report works in practice, how it's been done in the past because that would still – that would maybe buy us another few more days to meet to finally polish it. Thank you.

Petter Rindforth: Thanks. Mary's hand is up, please.

Mary Wong: Thank you, Petter, George and everyone. So to the point about the placeholder motion, just a couple of observations from the staff end, one is

that we don't recall that it's been used for a PDP report, possibly given the serious significant PDP that has consensus policy recommendations. That said, as George has noted, it's been used before for other types of documents so subject to Susan's or Heather's or the Council's concern, we haven't consulted with them obviously, what we will say is that we think we should have as full a final report ready as possible and submit it for the July 9 deadline.

To the extent that any further revisions need to be made, we strongly suggest and hope that those are not necessarily substantive. Certainly it should not be to the text of the recommendations, or definitely not the consensus levels. So it may depend on what kind of corrections or revisions members feel need to be made. But we certainly should have as full a report as possible submission vote for the 9th, and we should not be changing it – I think we must not be changing anything about the consensus designations or the text of the recommendations after that. I hope that's helpful.

Petter Rindforth: Thanks, Mary. And I noted we had some helpful – Phil's comments in the chat that Council may also be through the post-Panama issues at the July meeting that they may defer consideration of a report to August anyway. And well if it could be practically put to the August meeting that doesn't mean that we need to be less active. I think that the last two weeks we have really proceeded very actively and made some good conclusions and there are more or less some minor clarifications further needed and rewritten of the text. So it's more that, I mean, if we don't – if we didn't have a full ICANN meeting next week we would definitely be ready within two weeks from now.

And yes, then I think we are concluded, we are done with the topics of today. And also looking at the chat list, the Section 3 point call that will be some time at the first part of next week, we haven't set up a specific date or time yet. And I haven't seen the proposed schedule, but George and I have discussed initially about it and we said it was better to have it after this meeting and after we have seen the proposal and the changes that were sent out for today's

meeting. So I presume it will be sometime maybe Monday, Tuesday, Wednesday.

And having said that, we have – oh yes, Phil.

Phil Corwin: Yes, Petter, I know it's very late and I don't expect an answer now but George mentioned his 3.7 – his second 3.7 appeal which is still pending and George, thank you for the offer but I – you can handle that on your own. I don't want to be associated with it. How does that affect our timing? I'm just curious can we deliver a final report before that 3.7 appeal is resolved? I'm just asking – and maybe staff has to look into it and consult with the liaison on Council, but it was – as I recall it's an appeal over the procedure for delivering a final report and it's still active. So can we deliver the report while the – if the 3.7 has not been withdrawn and is still pending? Thank you.

Petter Rindforth: Thanks. And that's a good practical question, at least when it comes to our meeting and so as George has stated we should conclude our work and finalize it. But of course there could be – there are probably some regulations stating on how this should be dealt with, sorry, when it comes to our final report. And I turn it over to Mary if you have a reply on that.

Mary Wong: So just on Phil's specific question, and this is Mary from staff, because it is George's appeal and we would not want to in any way make an incursion on his rights. But in terms of your specific question, Phil, there is nothing in the Working Group Guidelines of the GNSO Procedures that require a pause, suspension or cessation of the work while an appeal is going on. So from the staff perspective it really would be very much up to George and the working group that if it is something that can run in parallel it should not stop us from trying to meet the July 9 deadline.

Petter Rindforth: Thanks, Mary, for that. Sounds good. And as I said, and I also can see from the chat and George and I have emailed about this topic before this meeting, it seems that George accept that actually support that we continue our work

in our working group separately. So that's good. And then it's one minute past and I think we have again made a very good job today, went through all the options and topics and those of you that are going to travel, have a safe travel and we'll meet in due time online at least on our topic and then we'll see when we can have our next efficient working group call. So thanks for today.

Reg Levy: Thanks, everyone.

Michelle DeSmyter: Thank you so much. Meeting has been adjourned. Operator, (Steve), stop the recordings at this time. Have a great day, everyone.

END