

**IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT**

Wednesday 24 September 2014 at 19:00 UTC

Note: The following is the output of transcribing from an audio recording. 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. <http://audio.icann.org/gnso/gnso-igo-ingo-crp-access-20140924-en.mp3>

Attendees:

Imran Ahmed Shah – NCUC
George Kirikos - Individual
Jay Chapman – Individual
Jim Bikoff – IPC
Osvaldo Novoa – ISPCP
Paul Tattersfield – Individual
Petter Rindforth – IPC
Val Sherman – IPC
Griffin Barnett – IPC
Reg Levy – RySG
Kristine Dorrain – Individual
David Heasley – IPC
David Maher – RySG
Mason Cole – RySG
Kathy Kleiman - NCUC
Phil Corwin – BC
Nat Cohen – BC
Gary Campbell - GAC

Apologies:

John McGrann – RrSG
Paul Keating - NCUC

ICANN staff:

Mary Wong
Steve Chan
Nathalie Peregrine

Coordinator: The recordings have been started, you may begin.

Nathalie Peregrine: Thank you ever so much, (Karen). Good morning, good afternoon, good evening everybody, and welcome to the IGO INGO Curative Rights Protection PDP Working Group call on the 24th of September, 2014.

On the call today we have Petter Rindforth, Val Sherman, George Kirikos, Imran Ahmed Shah, Paul Tattersfield, Mason Cole, Kristine Dorrain, Reg Levy, Jay Chapman, Jim Bikoff, Kathy Kleiman and Griffin Barnett. We have an apology from John Mcgrann.

From staff we have Mary Wong, Steve Chan and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you ever so much and over to you, Petter.

Petter Rindforth: Thank you and welcome, everyone, to this meeting. Any new Statements of Interest? I see no hands up. So then we go to number two, an update on the sub groups' work plans. And I hand over to the staff.

Mary Wong: Thank you, Petter. Hello, everybody. This is Mary Wong from ICANN staff. And hopefully everyone on the phone bridge is also in Adobe Connect or at least has otherwise looked at the documents we sent out yesterday. What you see on the screen in one of those documents is something that should look largely familiar and that is the extract of the more detailed work plan which we posted to the working group wiki space.

The reason we have this up here is because we wanted to update everybody on a number of matters. First, the status of volunteering for the sub groups and you see the names of those members who have volunteered for each sub group both on the chart as well as in the right hand side part of the Adobe Connect chat room.

And thanks, Kathy, I have just unsynced the document so you can definitely scroll through it. And as we discussed last week, the work plan has divided

the various charter questions and tasks into different phases that hopefully will facilitate the work of this group which we know is driven by certain timelines as well.

So where are now is in Phase 1. And we agreed last week to use three sub groups. And in this document the change from the last version you saw, besides the names of folks who have signed up for the groups, is a set of bullet points that staff has put together as a means to help facilitate each sub group in its work. And if you scroll through a document you see that we do have a few suggestions for all Sub Groups A, B through C.

And clearly if you look at all the different tasks each is covering different ground. And the nature of the work amongst each might be a little bit different as well.

So at this point, Petter, I don't know if you need me or you'd like me to go through each of the bullet points say for Sub Group A, B or C or perhaps take some questions or perhaps you or Phil might have additional comments? Petter? Are you on mute?

Petter Rindforth: Oh hi, I had it in silent mode. Takes about 15 minutes to come back. I think it's - this could be a good point where we just quickly go through by the sub groups to see how far we have come and also it might be to check on the end dates if we need to change that in one way or another and also to see if we can connect more volunteers.

And if I start with Sub Group A I could say - I could state that we have done enormous work as we will have the first presentation today as Kristine Dorrain is a member of our group. But frankly, to be honest, that is outside the work within the group. So we haven't done so much real work yet. We have discussed the topics a bit and still checking out how many of the cases we need to go through to get a general view, so to speak, on the problems if there are any.

And I guess that after - after Kristine's presentation today and our further discussion (unintelligible) and specific on how to continue to work. Yes, Kathy.

Kathy Kleiman: Actually my question - this is Kathy Kleiman. My question didn't have to do with - I raised my hand before so let me take it down and I'll ask the question later.

Petter Rindforth: Okay.

Kathy Kleiman: Thanks.

Petter Rindforth: Thanks. So that's, for the moment, so far on Group A, unless there is anything - specific questions we have for that? I presume that there will be follow up questions after the main presentation today. So let's pass on to Group B. Yes, Mary.

Mary Wong: Thanks, Petter. And I don't know if Phil has joined us because, as everyone can see, you know, Petter is one of the co chairs; he's just spoken about Sub Group A. Phil is the other co chair; he's in Sub Group B. As the staff were discussing with the chairs it doesn't mean that Petter and Phil will therefore lead each group. But we did have a brief discussion about the work.

And as Petter says, we do wish each sub group to proceed with its work and then come back to the main group. Petter, I guess my comment is not necessarily specific to Sub Group B but more of a general observation following on an earlier point that I made that with regards to the sub groups, Sub Group A and B the tasks seem to be more largely focused at this stage, certainly, on obtaining data.

And so for example, if we focus on Sub Group B at the moment we are looking at perhaps doing a search of IGOs and INGOs of registered

trademarks. And, Reg, I noticed your comment in the Adobe chat about the IOC whose counsel is on this working group and his colleagues so they probably can provide us with more information on that.

So whereas if you look at Sub Group C a lot of those documents that are the materials for the prior work have been compiled by staff, and we can certainly supply them to the group but it does seem that that work there is a little bit different.

Kathy, I see you've got your hand up so I'll stop for a moment.

Kathy Kleiman: Yeah. Kathy again. I had a question to you, Mary, to the chair, about some of the actions and analysis of - and whether - and about the scopes. So - and maybe I'm missing it but from the charter there's supposed to be research on applicable international laws regarding kind of what special privileges and immunities are actually accorded to IGOs.

Is that part of it? Regarding some of the free speech and freedom of expression issues, regarding alternatives other than the UDRP and the URS that might solve some of the problems that are being addressed, I was wondering how these fit into these sub groups and who'll be doing this kind of analysis.

Petter Rindforth: Mary has a reply to that.

Mary Wong: Yes, Petter, may I? So, Kathy, I think that's an excellent question. And so I guess two parts of the answer, first in trying to break down the charter into manageable chunks of work at every stage I think one assumption that the staff and the chairs had was that while much of the research to inform the work of the group would be done at this initial early Phase 1 that doesn't preclude further research from being done down the road.

And so for example on this specific question, going by the fact that the list of IGOs and INGOs that we're working with have been identified it would seem to us from the prior work that was done by the original PDP working group that the international treaties that we're talking about largely are the Paris Convention or Article 6ter there are for the IGOs and for the INGOs the only treaties at the moment would be the ones applicable to the Red Cross and the IOC namely, the Geneva Conventions and the Nairobi Treaty.

And you're absolutely right that in terms of say free expression there are other treaties that would protect those, for example, the European Convention on Human Rights and other similar instruments. It seemed to us that that may be something that would come up either in the course of conversation and deliberations or perhaps later.

And here's the second part to my response at the moment...

Kathy Kleiman: Wait, may I respond to that for a second? This is Kathy.

Mary Wong: Sure, go ahead.

Kathy Kleiman: I think unless we designate a place for it to come up nothing comes up coincidentally or simultaneously unless we call for it because people are so busy.

Mary Wong: Sure, Kathy. And so actually on that point I was just about to say that in terms of where we are now Sub Group B was, you know, basically created to deal with the existing protections. And you might want to insert it here or perhaps further down when we talk about Phase 2 and treatment of the protected groups.

And so, you know, as staff we would leave it to the chairs and the working group to determine whether that specific type of research should be done. But given the time and the resource issues we would also suggest that very

specific questions or specific treaty or set of list of treaties be determined rather than a general research task.

And I know that's not what you're saying so I'm saying this for the benefit of the whole group that the more specific this group can be with regard to the task it wants to be done the easier it will be for us to sort of put it into the timeline as well as allocate working group and staff resources to it. I hope this helps.

Jim Bikoff: Mary, could I say something? It's Jim Bikoff.

Petter Rindforth: Kathy, are you fine with that?

Kathy Kleiman: I was on mute. Good, Jim, how are you?

Jim Bikoff: Good, thanks. I was going to say that the title or the name for this PDP is Access to Curative Rights Protections. So I think we're focused on whether any of these IGOs and INGOs have or don't have access. And it seems to me the first step is to determine who are we dealing with.

We're certainly not dealing with all of the different entities that are set out on the list because we know that the IOC and the Red Cross both have access to curative remedies and we've given samples of those. And I have Red Cross filings also here.

So, I mean, these two entities clearly have access and they should not be, you know, part of the - I mean, I think it complicates the work plan. I also believe that most INGOs, if not all of them, have access because they don't have the jurisdictional issue that IGOs have.

But of course we don't have any representatives from INGOs other than the Red Cross IOC on the call so I'm wondering how we can determine - are we supposed to go out and determine these things for the INGOs without having

somebody from that group weigh in on what the problems are? I mean, we did have on the last...

((Crosstalk))

Jim Bikoff: ...PDP on this subject we had a representative of the International Standards Organization and as far as I can tell her main problem with the curative rights provisions was a monetary one and not an access one. She had access but there were problems in funding these things for certain INGOs.

Kathy Kleiman: So - this is Kathy, Jim. So my response to the idea of solving a problem that may not exist or focusing on the problem that does exist may save us a lot of time, which would be great.

And I just wanted to point out that in the charter they talk about the distinction between IGOs and INGOs and that's something I think we should be paying attention to as well because I'm not sure - and I tried to access the documents, I'm the one who couldn't get through to access them.

But knowing the difference - knowing if there are different needs - I see we're kind of lumping them together but they may not need to be treated together so...

Jim Bikoff: I agree with that. I think that probably should be treated separately.

Kathy Kleiman: Agreed.

Petter Rindforth: Mary.

Mary Wong: Thanks, Petter. And just real quick because I realize that Phil is in the queue as well and we do want to get to Kristine's presentation. Jim, so Claudia McMaster-Tamarit is a member of this group but as you noted, unfortunately she's not on the call today.

I think where we are is that if we start back with the charter and the issue report I think the distinction is made quite clear that for the INGOs the sort of jurisdictional question that arises for the IGOs as well as treaty protections for most of them either don't exist or are very, very different.

So in this work plan we've tried to break that out as well. So, for example, if you look at Sub Group B when we talk about legal protection we're talking really about IGOs. When we're talking about registered trademarks that's where we bring in the INGOs.

And then later on in Phase 2 we do talk about, you know, review research to identify differences between the IGOs and the INGOs at least for purposes of this PDP. So it may well be that as we go along we may find that some specific additional research might be needed.

And, Jim, I take your point very well about focusing on the scope of this charter for that reason. And second, we might also need to amend the work plan not just in terms of dates but perhaps in terms of either moving around, refining or adding some of the tasks that we have here. So again hopefully that helps and I will cede to Phil.

Phil Corwin: Yeah, thank you, Mary and apologies to the group for joining a few minutes late. Yeah, just want to say on Jim's point, yeah, we're already cognizant of the particular protections that Red Cross and IOC have and of course they're INGOs, they don't have the jurisdiction issue.

On Sub Group B I think - well it's titled existing IGO INGO protections, what we're really going to be looking for there is to determine not just protections but, you know, are there rights to be protected because we have to - we're not going to have a rights protection process without established rights. So we'll be looking at that.

And I just wanted to make an appeal as co chair for some more folks to join these working groups which is going to be where a lot of this action is. We've got four volunteers, including Petter, the other co chair on A; I'm of course on B with three volunteers. And Mike Rodenbaugh is the only one on C right now and Mike's not on the call today.

So if we can get more volunteers for the sub groups that would be excellent. And I'll turn it back now and look forward to Kristine's presentation.

Petter Rindforth: Thanks. And Petter here. Just final comments on this. I agree and we have discussed it before that at least Sub Groups A and B the conclusions we got will also identify if there is a need for this work to continue or if we actually have some kind of solution that works already. So it's important to come up with the summarizing and the statements from both our groups.

And that's what I wanted to just make a note on is that we have quite different but rather close end dates. And I see that Sub Group A has an end date of October 7 but I presume that it would be okay if we try to get some final report on the upcoming LA meeting.

Mary Wong: Petter, I'm sorry...

((Crosstalk))

Petter Rindforth: Yes, Mary.

Mary Wong: That's correct, yes. Thanks.

Petter Rindforth: Thanks. Thanks for that. And now what we have - look for I turn to Kristine Dorrain from National Arbitration Forum to make your presentation. Welcome and thanks.

Kristine Dorrain: Okay, thank you. This is Kristine from National Arbitration Forum. Thanks for asking me to share some of our findings with you. So originally I was asked to talk generally about the UDRP and URS and then it came about that pretty much everybody knows all about those rights protection mechanisms so I'm going to assume a basic and fundamental knowledge of the UDRP and the URS.

And I was specifically asked to address three specific questions. So can we go to Slide Number 2 then? The three questions that I was - I think - because I think we all have our own controls so switch to Slide Number 2.

So the questions that I'm addressing today are some general experience with URS, what experience we've had with IGO and INGO filings, and then sort of all our thoughts as a provider with respect to whether the - amending the UDRP or URS will solve the jurisdictional problems we talked about or the need to own a trademark. So hopefully I can throw some thoughts out into the mix that will get a discussion going.

The purpose of this presentation isn't particularly to advocate for any particular set of findings at this point but just to throw some considerations out there for discussion.

So moving on to talk about our experience with the URS, if you want to switch to this specific slide, as of I think Friday we've had 130 URS cases involving 153 domain names. Now when you total up the number of sort of decisions we've had you're going to have probably more determinations than cases because there have been a handful of cases that have gone to the panel multiple times.

So those of you familiar with the URS will know that if the respondent doesn't respond that the - if the respondent doesn't respond then the case goes to a default determination which still has to be substantively reviewed by an examiner but it's called a default because the respondent hasn't responded.

The respondent gets a chance to respond late if it wants. It might respond late. And then even after that either the losing party can file an appeal. So ultimately at the end of the day there's one particular URS case could have as many as three different determinations associated with it. So that's why the number doesn't quite add up.

So we've 101 cases that went to determination so far - or 111, I'm sorry, out of the 130. You can see that there are, you know, as with the UDRP there are more cases that go in favor of the complainant. Sixteen of the cases have been denials and one was considered to be a split.

Now the panelists in these cases have to self identify how the cases end up. And the panel in this particular case of the split actually flagged it wrong so I have to go in and fix it.

The split is supposed to mean that there's a case involving multiple domain names; some of the domain names went for complainant, some of the domain names went for respondent. In this case this was a three-member panel appeal and the panel itself was split as to whether or not the complainant or the respondent should prevail on a single domain name case. So I need to go in and manually do an adjustment. But that's why the data shows split on that particular case.

So ultimately at the end of the day we'll find that the findings for complainant and respondent map generally with the UDRP. So approximately 75% of cases go for the complainant in a UDRP case and approximately 25% would go for the respondent. And that's including the fact that there's about a 70% default rate.

So - and you would presume that when the respondent doesn't show up the complainant is, you know, going to have a greater likelihood of winning in those cases.

So the numbers are mapping as far as the outcomes go. What's unusual and different between the URS and the UDRP is that the URS has had a much higher response rate than the UDRP does. The UDRP, like I said, typically has about 70% of the cases with no response.

And about half of URS cases have had some form of response which is interesting and it's probably good in that it indicates that we're getting good service and good participation from the parties - the responding parties.

I'm not sure how to advance the slides so I'm not sure, Mary, if you could advance the next slide. I'm not sure if we unlocked them or not.

Mary Wong: Actually, Kristine, sorry, we've made you a presenter so you can advance the slides yourself if you'd like.

Kristine Dorrain: Fabulous. Great, I just did that so excellent. So for some of the observations, just for background information, the URS does replicate much of the UDRP. So whether it replicates the UDRP verbatim which it does substantially, or it replicates the UDRP just by what we call codification of what panels have been saying on UDRP cases all along.

So specifically in relation to this conversation if we're talking about the rights of complainants the UDRP requires that the complainant established that the domain name or issue is identical or confusingly similar to a trademark or service mark (unintelligible).

Over the 15 years of UDRP jurisprudence panels have interpreted that to mean if the jurisdiction allows common law rights or unregistered rights that that will be permissible. If the rights are protected by statute or treaty it's also going to be permissible under the UDRP.

So what the URS did was it changed this section to codify the UDRP practice to say that the registered domain name is identical or confusingly similar to a word mark; the UDRP is different, it has to be a word mark, for which the complainant holds a valid national or regional registration and that is in current use or; 2, that has been validated through court proceedings; or, 3, that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

So the URS does take the - take the protection one step further of codifying what is currently done in UDRP. Kathy notes in the chat the URS only applies to new gTLDs, that is correct. It does apply only to new gTLDs. But like I said, this wording is basically adopting what the UDRP already does. So in practice this has already been what - how the panels interpret for a one under UDRP for existing TLDs.

A note about the types of examiners, so the examiners we use for URS are generally really experienced UDRP panelists. We've had to add a couple of new people and get them trained up to accommodate some of our language needs. But we are using a sub group of the people that we have for UDRP doing our URS cases.

We specifically did a targeted mailing, so we targeted - tried to get some of our best UDRP panelists to be UDRP - or URS examiners. So - and we're finding that we haven't had any decisions where I would read them and late (unintelligible) say oh my goodness, this is completely wrong decision, the panel got it completely wrong. So fortunately in 111 decisions there have been none that I've, you know, just completely had a fit over.

They are relying on their UDRP knowledge and experience so I think that's a good thing. And they're serious about the clear and convincing evidence standard. And that's important because that was a substantial change between the UDRP and the URS. And that leads into the next slide - two

slides from now where we talk about why complainants lose in this case and it typically revolves around that clear and convincing evidence standard.

We've not had any findings of abuse or material falsehood to date. And like I said, I haven't seen any decisions that are just completely outside the bounds of the policy yet. Although there are some, you know, legitimate, you know, reasonable minds can differ opinions as well.

I'm not going to go through the attached document in great detail. I just brought it here to show you and you can certainly - you can certainly review it at your leisure. But it looks like I can't click on it. So the attached Word document is a summary table of all of the URS cases to date that had something different about them, so they weren't just a straight up obvious, you know, famous brand owner applying for a URS, the case defaults, the complainant wins, the domain name gets suspended.

The attached document is basically a list of URS decisions where the complaint - the claim was denied and so the respondent prevailed and/or there may have been appeal and/or there may have been a late response come in. So something sort of out of the ordinary, something was a little bit different with that URS case so I summarized those there.

What you'll find is that typically well known brands are filing URS cases. The names that are a little bit less known or the brands that are also descriptive terms are losing URS cases and so that's sort of a trend that I'm seeing generally speaking.

So that was just a recap of the URS. I think because that's the policy that we're least familiar with going into this discussion and whether or not it applies to NGOs and INGOs.

Specifically related to parties that have relied on something other than a trademark - and I want to be really clear that this list is not just IGOs or

INGOs; this list is just cases where somebody has had at their disposal the option to say, "We have a trademark or we don't have a trademark but we may also have or we're relying on statutory protection or treaty protection."

So the parties that have relied on protections other than a trademark include the Red Cross; out of 15 cases and 31 domain names only one was lost; International Olympic Committee, 18 cases 31 domain names; National Rifle Association, 2 cases 4 domain names. The last three relied on United States statutory rights, the American Veterans, the United States Postal Service and the Civic Nonpartisan Association.

We are talking pretty close to 100% success rate even for parties that rely on protections other than a trademark. Some of these - some of these cases have, like I said, multiple domain names and some of these cases like the United States Postal Service lost a couple cases early on but we've had pretty good success rate with respect to successes for - even names of organizations that aren't protected with other sorts of trademarks.

I wanted to throw out there - I know George posted in the chat and you can view all of our decisions online and that's very, very true. The table that I presented only summarizes those specific cases I'm telling you about so there's only about 20 or so on that table that I attached. So it's those specific unique cases.

So yes you can view every single decision on our Website and I encourage you to do that and I encourage studying but definitely feel free to go to our Website - or definitely feel free to look at the attachment and figure out sort of where some of the differences are.

So with respect to other observations, and this isn't data this is observations, panels treat UDRP 4a1 as a standing issue. So a lot of them really use their common sense. They're not requiring federal trademark registrations of word marks, etcetera. They are requiring, you know, they're allowing statutes and

treaties to stand in for trademark rights. They're allowing common law rights to be accepted.

We have had a couple instances - and I'm going to withhold judgment on whether or not I think it's correct - but where ITU applications and articles of incorporation are accepted for complainants' rights because the panels say we want just to make sure the complainant has something that they're relying on to get in the door.

Now whether or not the respondent can come back and say well I have better rights, my rights are competing, I also have rights, I mean, having a bona fide business going on here, I registered the domain name innocently because, you know, I'm in someplace far far away from wherever this DBA is, predating, those issues are always discussed typically under 4a2 or 4a3.

And in large number of cases where there's going to be a loss as far as whether or not the respondent had a legitimate interest, it's going to fall under the 4a2, 4a3 discussion. The 4a1 discussion for the vast majority of cases is typically treated as a pretty low hurdle for complainants to get over.

So that is something to keep in mind as we're going through our discussions. That is the panels do not typically very strictly construe 4a1. They're going to be looking much more closely at 4a2 and 4a3 which is, you know, really ultimately at the end of the day is the respondent doing something they should or shouldn't do; 4a1 is just kind of a gate keeping requirement.

So that, I guess, segues into some of I guess the most opinion portion of the festivities today which is whether or not the jurisdictional problems are an issue. And all the gTLD registration agreements specify a jurisdiction. And they say the location of the registrar, location of the registrant.

They may, I think - I think - and there are people here much smarter than me on this - they may add to that, I think, and list other places like I think some say the location of the registry, I'm not sure.

But the UDRP and the URS specifically says the mutual jurisdiction is the location of the registrar, location of the registrant. The complainant gets to choose between those two. The respondent has already agreed to both, location of the registrar, location of the registrant, so therefore it's on complainant to choose one or both of those two.

And then so the providers - what happens is when a complaint gets filed we go through the policy and we look at the complaint and we make sure the complainant has done everything they're supposed to do. And we're pretty strict; we go through with a fine tooth comb at least for UDRP. And we go through and make sure that everything is there.

For URS that step is automated because every field has to be filled in, buttons have to be clicked, things have to be agreed to so you don't really have the chance to just not say I want to participate in mutual jurisdiction. But for UDRP we go through it and we look at it.

One thought that I present for the group's discussion is that if we amend the policies to say that certain groups do not need to comply with the mutual jurisdiction requirement and they get some sort of a waiver the question is is I've got people at the paralegal level or college graduate level reviewing these cases.

I don't think that we want to rely on parties to self select because you have a lot of unsophisticated complainants either do their - either due to (unintelligible) or due to just new or incompetent counsel who routinely either mess up or try to game the UDRP system and we stop that at this initial deficiency check stage.

So we would probably have a lot of people trying to say that they qualify for that waiver when they actually didn't. So that would really decrease the efficiency or case processing accurately and probably mean that the cases would have to be reviewed by me which is not something I want to do - or Brian Beckham in the case of WIPO. Not something that I think either one of us interested in doing.

So that's one thing to think about if we talk about just saying hey, let's take the UDRP requirement for jurisdiction out for certain groups. We need to be really clear about how we're going to go about that and what the requirements and the parameters are for that so that it's pretty black and white.

And then the last question that I was asked to opine on was the necessity of NGOs to own a trademark. And as I've shown the UDRP panelists are not really strict about what constitutes rights and so I don't think that that's a problem in this particular - in the case of the UDRP or the URS because the URS actually codifies it.

Questions that come to my mind for discussion include, you know, really the acronym cases. So World, you know, World Trade Organization or whatever, dot-com or dot-whatever, you know, that's exactly, you know, that's exactly - it's a long phrase, clearly when someone registered that they would be targeting World Trade Organization.

One could imagine any number of uses for WTO or, you know, any other two, three, four-letter acronym. And so that's really where the problem comes down. And if you review the UDRP case history panels are very reluctant to transfer acronym names to a complainant because acronyms stand for so many things.

I think specifically about the American Bar Association, of which I'm a member, and how it's impossible for me to find their Website because, you know, somebody else owns ABA. So I keep wanting to type ABA and it's not.

So I think that we need to think about acronyms and what would be the appropriate range as far as protection of marks in these curative rights mechanisms. And then the question is is kind of going back to the original when we were trying to do our deficiency check, are all the NGOs, IGOs, created equal.

What can we provide for panelists and for case coordinators who are just trying to determine who qualifies for the special rules, how do we know who gets in to the special rules and how can we definitively provide a list of people going forward.

So idle thoughts, again, related to just my opinions; amendments - amending the UDRP will cause significant hassle, as I said, because of the sophistication of parties and people not understanding where the exceptions are. It's much easier because the providers, all of us, manage multiple policies at once and so having something categorized as a totally different policy is a red flag in our system.

UDRP cases, you know, 98% of the cases we deal with those go down the happy merry path of, you know, the same thing every day all day. Any case that's not UDRP goes in kind of a special handling process. Maybe people who are better, you know, our more senior people are dealing with those cases.

So if we have something that's going to be an alternate or a different flow flagging it by having a completely different policy or rule or whatever that goes with that would be very helpful from a provider standpoint and just making sure that the cases are processed properly and efficiently along the way.

So anyway that was all I had. I'm open to questions or just thoughts.

Petter Rindforth: Well thanks, Kristine, for - that's very interesting presentation. I have one question when it comes to the jurisdictional problems. Have you got any specific statements or comments from the complainants - from the organizations as such - how they feel on this specific issue?

Kristine Dorrain: This is Kristine from NAF. I haven't had specific complaints from (unintelligible) that I don't see from everybody, right. So we have a lot of complaints. The mutual jurisdiction section is probably the most complained about section. Complainants that - that and the language of the proceedings.

Complainants they just do not want to agree to the location of the registrar, location of the registrant at all for any reason. And we find a lot of people trying to inter-wiggle words, alternate language to modify that section.

I mean, it's generally a - probably our biggest hot spot for deficiency checks. So I will say that we get a lot of complaints about the section. Not any more so from NGOs or INGOs, it's sort of an across the board problem.

Petter Rindforth: Okay. Phil.

Phil Corwin: Yeah, thank you for the presentation, Kristine. That was helpful. Just three quick thoughts. One on - it's the IGO jurisdictional one, sovereign immunity issue. One thing we're going to have to deal with in considering this is that, you know, registrants have rights to and they have a right of appeal. Certainly have the UDRP. They have one under URS too, don't they? Right to appeal...

((Crosstalk))

Kristine Dorrain: Yes, this is Kristine. So there's three chances for appeal under the URS actually.

Phil Corwin: Right.

Kristine Dorrain: They can appeal back to the URS itself, they can appeal to the UDRP if they're a complainant or - obviously you have to have a trademark so I guess a respondent could appeal to the UDRP if they have a trademark. And then they can appeal to courts as well.

Phil Corwin: Yeah...

((Crosstalk))

Phil Corwin: Right, that's what I thought. So we've got a - if we're going to do something you've got to make sure there's a meaningful right of appeal for registrants. And second is that - and this came up - I attended the INTA Internet meeting in San Francisco last week.

As panelists start to look at the new TLDs up to now we've had UDRP and URS cases mostly dealing with very generic terms, dot-com, dot-net, dot-org, you know, dot-biz; now we've got things much more vertical, dot-cars, dot-photography, dot-wine. So it will be easier in many cases for the - if the examiners - the panelists start looking at the right of the dot. If the acronym has something to do with trade like World Trade Organization and it's WTO.wine, you know, winetastingorganization.wine, it's clearly not going to be something that's spoofing the World Trade Organization, it's a very different type of thing.

And finally, in the realm of creating a new curative rights availability if we decide to go in that direction, that, I believe, would require amending all the RAAs because right now a registrant, when they sign a registrar agreement, any accredited registrar in that contract they're signing they're agreeing to be bound by the UDRP and the URS but for the new TLDs, under the 2013.

But now if we ever create a new curative rights I'm not - I'd have to look at the language but I'm not sure it'd be covered by what they're agreeing to and you'd have to create - amend all the RAAs to accommodate a new curative rights program if we're not talking about the traditional UDRP and the new URS.

So just trying to - throwing out some thoughts based on your presentation.

Kristine Dorrain: Phil, can I just answer that briefly?

Phil Corwin: Yes.

Kristine Dorrain: Yeah, okay so this is Kristine from NAF. So I just wanted to mention, we've always heard and relied upon is that, I thought, and maybe someone from ICANN staff can correct me, but I thought that there's something in the RAA about not only the UDRP and the URS but all ICANN consensus policies, right, which is the catch-all.

((Crosstalk))

Phil Corwin: As I said I'd have to look at the language in the contracts that - under the RAA. But that would still mean it would have to be created by consensus policy which requires going through the process, the PDP and getting that adopted by the Board. But we'll be looking at that as we continue. That's all I had.

Petter Rindforth: I think Mary had a comment for that.

Mary Wong: Yes, Petter, Phil and Kristine, I do. This is Mary Wong from ICANN staff. And I think Phil's last point captures it that it really depends on what is and is not a consensus policy. In the Registrar Accreditation Agreement, for example, it does have a definition as to what is a consensus policy and of course as noted already all registrars are bound by that.

So to some extent this also goes back to Kathy's original question about the URS that, you know, in terms of it not being a consensus policy as defined at the moment, not only is it a question of applicability just of the new gTLD program but obviously if one wants to make it binding contractually or otherwise the consensus policy route is probably the primary way to do that.

I should note also that the new gTLD registry agreements don't quite have the same language as the RAA but they strive for the same effect. In other words, if a policy is developed and is a consensus policy then generally one way or another it will be binding on registries and registrars. I hope that helps.

Petter Rindforth: Thanks. George.

George Kirikos: Hi. George Kirikos speaking. Two questions for Kristine. The first one has to do with the availability of mediation as a possible way to improve access for all parties. I was curious whether NAF has a position regarding to mediation how that exists in the - for example, the dot-UK nominate dispute resolution service, whether having a formal mediation as one step in the process might be a way to first lower costs for all parties and also perhaps improve the outcomes whether NAF has a position on that.

And the second has to do with the costs because I guess the GAC and the IGOs and NGOs were concerned about cost being an obstacle to their access to the process. I was curious, you know, how you set your costs, whether it's based on cost recovery or profit maximization or what exactly determines the cost and whether you've had any complaints from complainants and/or respondents as to the level of the costs and what could be done to perhaps improve efficiency and lower those costs. Those are my two questions.

Kristine Dorrain: Okay thanks. Yeah, this is Kristine from National Arbitration Forum. So with respect to formal mediation - and I guess it sort of ties in with the cost

question also. I think that from a mediation it's something that could absolutely work.

It would be - we're seeing that there's a fair number of, you know, complaints that get filed and the respondent just wants to, you know, concede and give the domain name away or whatever. And, you know, in some cases they ask for something nominal in return.

The biggest problem really does come down to paying somebody to do it. Now we could do something mediation-wise with like staff counsel that would possibly be able to reduce costs overall to everybody involved. And that's definitely something that could be considered.

You recall that the UDRP is not something that we have devised so we're just using, you know, administering it as written. So we're, you know, upon UDRP review where people want to add a separate mediation step or a mediation option certainly that's something that we would be, you know, obviously very open to considering just in the spirit of all dispute resolution.

With respect to cost that's a tough one because we've got a case where we've got, you know, 15 pages for the complainant, probably, you know, 10-15 for respondents, anywhere from 10-200 pages of exhibit information that the panelist, who is a trained (unintelligible) typically has a day job billing \$600 an hour, will be having to take time to review all of those documents.

Then have to take, you know, basically what amounts to a blank sheet of paper and write a decision and review the precedent that's cited, review the precedent that's available in the databases and write a reasoned decision which usually amounts to anywhere from, you know, 4-20 pages and have 14 days in which to do it.

So it makes it really hard to say we really need to cut down the costs because the bulk of the cost typically is associated with the arbitrator and the preparation of the decision.

And so, you know, we haven't really raised our fees since I think 2000 - I have to guess but I'm going to guess 2007. But what we have done to try to reduce costs for everybody involved is lobby heavily for no - you know, a paperless system, doing everything online.

The URS system is running at a pretty steep loss for us. But we are, you know, pretty committed to the all online process that that is and trying to take some of those efficiencies and move them into UDRP as well.

So rather than, you know, continually raising prices every year to try to adjust we're trying to really pass on savings to all of our users through the, you know, implementation of technology and more meaningful, you know, processes that will help reduce costs.

So, I mean, I think cost is obviously a huge issue. Everybody complains about it. And that's a problem. But ultimately at the end of the day the margins are pretty narrow. And I believe WIPO running their program at a loss entirely. And so I think that that does actually turn out to be kind of a problem for everybody across the board. I hope that kind of answers your question.

Petter Rindforth: Thanks. I think the next one is - yes, Nat.

Nat Cohen: Yes, hi. This is Nat Cohen. Did you indicate I'm up for a question?

Petter Rindforth: Yes.

Nat Cohen: Okay thanks. Kristine, I wanted to ask you a bit about how the panelists are selected for the URS. I think you - I wasn't quite clear what you indicated that

perhaps that you said more sophisticated or more senior or experienced panelists are selected for the URS.

I just wanted to ask you to comment somewhat on how panelists are selected because especially under the UDRP there's been some I guess studies showing that there's, you know, some panelists are selected way more often than others and given the cost constraints that you just outlined wondering if there's, you know, some panelists don't choose to do the work because of - it's just not, you know, not profitable enough for them and just some of the dynamics in terms of panelist selection if you could shed some light on that. Thank you.

Kristine Dorrain: Yeah, absolutely. Kristine from National Arbitration Forum for the record. So for URS our panelists are selected by computer rotation. Now there is some manual override when it comes to languages etcetera but we are doing our doing our absolute best to let the computer just do its job and select the panelists.

Because the low fees of the URS are so incredibly low the - what we try to do is send complaints to URS panelists in batches. So we are trying to send four cases to a single panelist so they can kind of work on them and block out some time to work on them.

And then move on to the next panelist and then four cases go to the next panelist. So we're working through a straight rotation, like I said, that the computer generates for us. We've had a few glitches in the system but we are working them out as we go.

UDRP we have several page coordinators and they all have a list of a rotation so panelists are typically selected on a rotation. We work with some panelists who, for the fact that they're, you know, retired judges or retired lawyers or they are in private practice they're able to take cases at a much higher

volume and have even far fewer conflicts. So we work with them and get them higher volume of cases.

With respect to, you know, the - sort of the others, you know, we just, you know, continually ask people can you take a case, can you take a case, can you take a case. And, you know, if they're busy they're busy. We have some really great panelists that haven't taken a case since November last year just because their law firm lives are so incredibly busy.

They'll eventually take one and that'll be great. But that's sort of their judgment call. And then of course some people take everything we send them. So that's a little bit, you know, sort of different as to how we handle those cases.

But the URS actually has a requirement that we rotate examiners and so we specifically are going out of our way to let the computer do it in that particular case.

Nat Cohen: Great. Thank you very much.

Petter Rindforth: Thanks. And we have just a few minutes left before we go on to the point five, next steps. But just saw that Imran and Phil have been on the speakers' list but turn on to the chat room. Are you satisfied with what you have got from that part or would any one of you like to make short comment?

Okay to finalize on the next steps, we have - the staff - the possibility to actually cancel the full meeting on Wednesday October 1 to give more time to the sub working groups. And then you can have either - you can have some assistance from ICANN to set up calls with your groups or if you can arrange it by yourself.

And then we propose to have still our October 8 meeting to have a full meeting to follow up and summarize and prepare for the upcoming ICANN

where we will meet, if I'm not wrong, on Wednesday October 15 between 10:00 and 11:30 in room - (Intino).

So anyone that - have any specific comments on that? I hope it will give all of you some more time to make more practical finalized work with your groups.
Yes, Mary.

Mary Wong: Thanks, Petter. And just to follow up on your point, staff will follow up with the working group on the mailing list about what you just said. If anyone in their groups require assistance either supporting the meetings that you might have or setting up calls and so forth so we'll send an email summarizing all that.
Thanks.

Petter Rindforth: Thanks. Thank you all for today and your continuous work. And it's on the second a perfect time to end. Thanks all.

Jim Bikoff: Thank you.

Mary Wong: Thanks, Petter. Thanks, Kristine. Thank you, everybody.

Nathalie Peregrine: Thank you very much. (Karen), you may now stop the recordings. Have a good day. Bye-bye.

END