

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

Wednesday 08 October 2014 at 16:00 UTC

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Attendees:

George Kirikos - Individual
Jay Chapman – Individual
Jim Bikoff – IPC
Paul Tattersfield – Individual
Petter Rindforth – IPC
Val Sherman – IPC
Griffin Barnett – IPC
Kristine Dorrain – Individual
David Heasley – IPC
David Maher – RySG
Phil Corwin – BC
Nat Cohen – BC

Apologies:

Oswaldo Novoa – ISPCP

ICANN staff:

Steve Chan
Berry Cobb
Terri Agnew

Coordinator: The conference is officially being recorded.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the New IGO INGO Access to Curative Rights Protection Mechanisms Working Group on the 8th of October, 2014.

On the call today we have Petter Rindforth, Paul Tattersfield, Jay Chapman, George Kirikos, Phil Corwin, David Maher, Jim Bikoff, Kristine Dorrain and Nat Cohen. We have apologies from Osvaldo Novoa.

From staff we have Steve Chan, Berry Cobb and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, Phil.

Phil Corwin: Yeah, thank you, Terri. And this is Phil. I'm co chair of the group and chairing today's meeting. And we're between - last week we didn't have a full working group meeting so we had three separate sub groups doing work and holding calls last week. And next week on Wednesday we'll be holding an open session at the ICANN meeting. And for those of you who are not heading to ICANN they can participate remotely in that session. One thing ICANN is very good at is remote participation in their meetings.

So we're going to start with a roll call and do you do that, Terri?

Terri Agnew: Yes, I just completed it.

Phil Corwin: Okay, we're done with that. Any changes to Statements of Interest? All right so let's proceed then right into the meat of the meeting which are the reports from the three sub groups from last week.

And I think Petter is going to start. He was leading Sub Group A so he can take us through what they did last week and then I'll be on Sub Group B. And

if Mike Rodenbaugh doesn't join the call by then I'll also review the report from Sub Group C. And then we can talk about the meeting next week in LA.

So, Petter.

Petter Rindforth: Thanks. Petter Rindforth here. I think I can be fairly quick to go through this because it seems that we have more questions and - than answers. What we did was we identified three main initial topics to identify differences between the UDRP and the URS. And that was already done with excellence with Kristine's presentation.

And there is also a chart from the - that Jim has prepared that was the main (unintelligible) to make a more - summarized presentation that I think could be good to have in our system, anyway our general presentation of the topics. So that is more or less done.

The hard issues are to - we had to other topics to collaborate with UDRP URS dispute resolution providers as well as experienced panelists for input and also to obtain representative sample of IGOs and INGOs who have filed UDRP and URS claims.

And we start with the collaboration, we discussed that it may not be proper to ask panelists to specify about why cases may have gone one way or another or even, you know, a theoretical line of questioning. So we decided to drop that part and instead actually which is also quite - where you can do some obvious conclusions to read the decisions as such.

And also to get some specific samples from both from (unintelligible) and from WIPO on the case that's - to see what we discussed was not just to go through cases in general but it identify specified limited good decisions. And what we found could be most interesting of course was the decisions that was - where the cancellation or transfer was denied.

However, so far we have only seen one such case. So it seems that the cases that have been filed and then we go to the third topic is actually INGOs. And from the cases we have started so far we can see that they refer to different kinds of name protection or trademark protections. And so far they have one - with one exception all cases.

What we haven't seen is one single IGO case. And the questions that remains to see for the full group is that - is it because the IGOs are not filing on jurisdictional issues or are there other problems or is it frankly so that they're no so many cases where these pure name protections are stolen by domain holders. Unfortunately I think it's not that simple.

So what we need to do is to reach out to GAC organizations where the - with IGO organizations with assistance from GAC to get input and participation because before we make any conclusions we need to have those inputs.

So, yeah, I stop there. This is so far that we come on our meeting. And I'll just (unintelligible) in the group.

Jim Bikoff: Can I make a couple of observations? It's Jim Bikoff for the record. Hello?

Petter Rindforth: I assume you can, yes.

Phil Corwin: Yeah that's fine, Jim.

Jim Bikoff: Okay.

Phil Corwin: You're not in the chat room. And then George has his hand up, we'll hear from George after you.

Jim Bikoff: Okay. Just expanding on Petter's remarks, I think - I've spoken with WIPO which is something I volunteered to do at our sub group meeting. And Brian Beckham who's active in the dispute resolution area at WIPO told me he's not

aware of any case that's ever been filed before WIPO for an IGO. And that's consistent with what Kristine said on our call that she's not aware of any case either.

So I think it's pretty clear that probably for jurisdictional reasons IGOs just don't file under the UDRP or the URS. On the other hand, for INGOs Petter said he know of one case where there was a loss but it's really not a question of a win or a loss; I don't think we care whether a case is won or lost, what we care about is whether a case is broad and accepted by the panel for resolution.

If it's - I mean, if somebody files and they don't have a good case that doesn't mean that they need access. If they're getting access but they have a bad case I don't think that's a problem that this PDP should be going into.

And I still believe that we can waste a lot of time going out and soliciting INGOs of which there are thousands if not hundreds of thousands around the world, to find out why they don't file. But the plain fact is that there were plenty of IGOs that are active in ICANN and they've chosen not to, except for one, join this PDP. I think they need to come to us or else we're going to spend a lot of time trying to figure out something that doesn't really seem to me to be a problem.

I don't think there is any access problem for any IGO on the basis of jurisdiction or anything else except possibly financial reasons. And that's my understanding. And I don't - I'm not sure why we should spin a lot of wheels trying to go to INGOs and find out things when they seem to have unfettered access to the system.

Phil Corwin: Thanks for those observations, those are very useful. George, let me call on you and then Petter also has his hand up.

George Kirikos: Yeah, just wanted to correct - actually...

((Crosstalk))

George Kirikos: ...that these organizations do have access. I was able to find an IGO that had filed a case, which I posted in the chat room mainly the World Food Program operated by the UN. And that case got terminated but it does appear if you use the UDRP search.com search engine - I just did a quick search for any complainant with the word United Nations and that popped up.

It's not clear from that decision whether the names got transferred but checking in the Whois would give some insight as to what the outcome of that case was. Presumably the names were just transferred over. Actually the names are deleted so perhaps, you know, people decided not to fight over the domain.

Phil Corwin: Okay. And Petter.

Petter Rindforth: Well just a note on - I don't think we can actually just sit and wait for them to come to us formal reasons. If we do so we will definitely get some negative inputs afterwards. Say, you didn't try to reach out and get replies from specific groups.

Another issue is of course if we reach out then we have no replies. Then it's up to them. But in some way we need to at least make some tries to get specific inputs on - in an active way. Thanks.

Phil Corwin: Okay. I'm going to launch into the - can we get the Sub Group B report up on the Adobe? And I'm going to get into that. And before I do so, as I get into - on our sub group we discussed INGO situation last week.

And based on the fact that there's over 3000 on the general list, that many are descriptive and couldn't even get a trademark probably if they wanted to, but many could, there's no jurisdiction (unintelligible) and the GAC has asked

us to focus on curative rights for IGOs but not for INGOs other than Red Cross and the Olympic Committee.

So it's up to the full group but we may well decide that INGOs have adequate access to the UDRP now. And of course the UDRP isn't low cost alternative to litigation; it's the same price for them as for any other complainant. And it's not a huge amount of money. So we may wind up in this working group focusing primarily on the IGOs.

Let me get into the - let me just okay. Sub Group B, we had a good call last week. We went about the full hour. We found that there were 192 IGOs on the list provided to ICANN by the GAC. And that's the universe of IGOs that the original working group recommended certain protections for last year.

On the INGOs we found that there was 140 on the general consultative ECOSOC list. I don't know if I'm pronouncing the acronym right but I'm doing my best but over 3000 more on the special consultative list. And that's - I just noted that. There's a very much larger universe of INGOs potentially to deal with. We haven't found any reason they can't use the UDRP so that is noted.

The - there's no sense my reading through all of this because you're seeing the same thing I'm seeing. For IGOs the issue of appropriate protection for their acronyms, other than through post-registration curative rights dispute resolution, remains unresolved but there's still some issues being worked out from the last working group.

And we won't know the full extent of protection until the GNSO GAC resolve the trademark clearinghouse question. And we can plug that in as it becomes available.

As noted the GAC hasn't issued any advice or requested any protection for any INGO except Red Cross and the International Olympic Committee. Very

well represented on this working group by Jim Bikoff and others from his law firm. And we're certainly continuing to look at those two organizations.

There's this jurisdictional issue. Some people on the call raised the issue of whether that really is an issue, in other words, the jurisdiction issue may protect an IGO from being used in national court but all these organizations, including the UN, enter into various types of contracts for services and other things all of which have a choice of law.

So they're not completely immune from being involved in the legal arrangements which can involve national court so we're going to continue to look at that. Some IGOs have trademarks but not all of them.

For the INGOs the main issue seems to be that using the UDRP or URS requires a trademark or similar rights and we're not sure if all of them do though probably the majority do or could have them if they wanted to have them but we don't have records on that.

We found some jurisdictions that provide protection for IGO identifiers. So the sub group noted that the working group should discuss whether or not INGOs should be dropped from consideration. I don't know if we should do that today given the limited participation on the call or maybe get into that next week at the open session where hopefully maybe we'll have some INGO representatives in the audience.

And we also noted that while the charter for the working group limited to us to the GAC list of IGOs we should bear in mind that those lists can change over time so we've got to make sure that anything we wind up recommending will work if there's additions or deletions to the list.

On future action items we need some trademark searching and staff is going to help facilitate this. To the extent possible we need some further review of

Article 6ter to see if all 192 IGOs on the GAC list have registered for protection under it.

And then there's staff suggestions. I'm not sure - Berry, what's the GCO? I'm not sure what that refers to. It says we will approach our colleagues in the GCO but I'm not clear on what GCO is.

Steve Chan: Hi, Phil. This is Steve. That stands for General Counsel's Office.

Phil Corwin: Okay. Okay. Sorry. Thought I knew every ICANN acronym there was. So staff - policy staff will seek some assistance from the General Counsel staff. We might do some other searches meanwhile. And then we can discuss looking at the full IGO list or perhaps a representative sample to do a compilation at each mission and geographic presence.

And that would be looking toward if we do decide that anything new in the way of a curative rights procedure is to be created it would have to be, in some ways analogous to the trademark system. In other words, you know, where is the entity located and where does the trademark exist? What goods and services are there trademarks for?

Similarly we might have to do something similar if we decide to go down the route of creating something in the way of a new DRP to figuring out how to decide when there is some infringement of whatever rights, quote unquote, the IGO has or not. So and that's where we are.

So you can see a great deal of work was done by Sub Group B last week but much work remains to be done and many questions are outstanding. Do we have any comments on that before we go to C? Well I see no hands raised so why don't we put the report from Sub Group C up and I believe that - let's just wait for that.

Okay, well it's unfortunate Mike Rodenbaugh is not on the call because I believe Mike was heading up this group and the rather dense legalistic report that I haven't full assimilated yet.

But it does address what did the second WIPO process recommend as a basis for legal protection in terms of the basis, the evidence of harm, options and recommendations. What did the WIPO General Assembly adopt; what did the joint working group recommend in 2004. And then there was another report in 2007.

You can see there's a long and legally dense report. And, good, we have an email from Mike. Let's go through that, that's toward the end to kind of summarize their work last week.

Their focus was identifying circumstances that may have changed the need for and the scope for protections for IGO and/or INGO identifiers since the GNSO last worked on this seven years ago. We now know the scale and scope of the new TLD program which might cause increased concern among IGOs and INGOs.

The GAC has requested additional protections for IGOs in the new TLD program. The GNSO has recommended - made recommendation for IGO acronyms that differ from the GAC advice and that's kind of why this group exists. And new RPMs in the form of the trademark clearinghouse and Uniform Rapid Suspension have been added for the new TLD program.

And so in the next phase of their work Sub Group C is going to suggest that the full working group consider these, identify (unintelligible) circumstances along with the data gathered by the other sub groups to discuss whether there's a demonstrated need to update the GNSO's 2007 work.

So we thank Mike and Sub Group C for that report. Are there any comments or questions about it? I hear none and I see no raised hands. So let's then go

into a discussion of the suggested framework for our open public meeting during ICANN next Wednesday on October 15 which I, as noted in the right hand column here, that face to face meeting will take place from 10:00 am to 11:15 am Pacific Time in the Encino Room at the conference center at the venue.

The suggested agenda from staff is to open with the usual roll call of working group members and seeing whether there's any SOI updates. I'm going to share those - the chairing of this with Petter. We're going to recap the working group objectives and the specific charter questions we're attempting to deal with and Petter is going to present the sub group research and findings to date to the assembled community there.

We're going to discuss those research and findings and then discuss next steps for the working group. I've also - Petter and I have been having discussions with staff about - and Petter is going to take the lead through the GNSO Council with the IGOs of reaching out to the GAC and through them to the IGOs to remind them that we are very seriously at work in response to their request.

We're somewhat disappointed that we have no IGO or GAC participation in this working group. We don't want a situation where we come out with a final report and recommendations and the GAC then or some IGOs then say well you didn't consider our point of view when in fact they took no steps to assert their point of view as we develop that report and recommendations.

So we're going to be proactive on that front. And if - we can't force them to participate but we are going to take proactive steps to encourage their active participation. And we want to be able to say we took those steps regardless of their reaction.

So does anyone have - and, George - George just put his hand up so, George, let's hear your comment.

George Kirikos: Hi. George Kirikos speaking. Do we have any access to the conversations between IGOs and the GAC? Because obviously the GAC has been reacting to words said to them by IGOs and INGOs. Like do we have any ability to say, you know, can you forward us that - the materials and input that you do have, like they're basically making position statements in the GAC and, you know, if we had the same access to data that they did that would perhaps help inform our working group.

Phil Corwin: Yeah, I don't know the answer to that question, George. I do know that many of the GAC sessions at ICANN are closed door meetings so the public is not allowed in so if they took place in those closed meetings or those discussions or if they took place through email correspondence that we don't have access to we wouldn't know. But I see Petter's hand up, perhaps he can enlighten us on this.

Petter Rindforth: Thanks. I'm not sure I can give a clear white answer but it may be easier to take that question through the GNSO Council that can - from the Council point ask GAC about that information. So I can do that during the weekend session.

Phil Corwin: Yes and that reminds me, Petter, for anyone who will be in LA on Saturday morning or who wants to remotely participate Petter and I will be giving a report on the activities of our working group to the full GNSO Council at 9:15 to 9:30 am Pacific Time on Saturday October 11.

So our first ability to ask for GNSO Council assistance in some of these matters and to get any reaction from them to our work which of course stems from a disagreement between the Council and the GAC on the last working group's work that will take place early Saturday morning in LA.

Okay, so are there any further comments? Anyone think that we need to add anything to that agenda for the public session next Wednesday or have any

other thoughts about what we've discussed today? Okay, I'm not hearing any I'm not seeing - oh, George again. Yes, George. I see your hand raised.

George Kirikos: Sorry, I was muted. George Kirikos speaking. There was a prior working group before this one which had some participation of IGOs and INGOs. If that email list is still active perhaps a note could be sent to them so that, you know, inviting them to participate in this one. Just to, you know, enhance the outreach that we've...

Phil Corwin: Yeah.

((Crosstalk))

Phil Corwin: That's a good suggestion, George. Can staff help us identify whether there was IGO or INGO participation on the last working group and at least - if that - if there was we could reach out to those entities and encourage them to get involved with our group.

Jim Bikoff: Phil, it's Jim Bikoff.

Phil Corwin: Yeah.

((Crosstalk))

Jim Bikoff: There was IGO participation. There were several IGOs that participated and in fact there was a letter from a whole group of them putting forth their case during the last session. From what I've heard, and I'm not going to mention any names, but there are IGOs that know that this group is meeting but they do not want to participate.

Phil Corwin: Do you have any...

((Crosstalk))

Phil Corwin: I would be asking you to speculate but do you have any notion of why they would actively boycott participation?

Jim Bikoff: I don't think it's a boycott, I think there's a general feeling that they stated their case and I think they're probably depending on the GAC to fight their case for them.

Phil Corwin: Okay. Staff, is that letter from the IGOs, is that available at our wiki? Or if not can it be circulated to members of this working group? I don't think I've seen it and I'd like to review what their case was to the last working group. Any response there? Or maybe - I know we're working without Mary on this call, she probably has a lot of this in her head but she's traveling to LA right now.

Yes, Berry. I see your hand up. Berry, did you have something to add here? I see your hand up and the mic symbol but I'm not hearing anything.

Berry Cobb: Sorry, Phil, I was on mute. Yeah, we'll take that action. I'm not sure that I've seen that letter either but we'll take it forward and if we figure it out we'll...

((Crosstalk))

Phil Corwin: All right, well maybe - and, you know, I think Mary is going to be in LA by this afternoon. Maybe ask her - and if you can get access to that letter I'd suggest just circulate it to the whole working group so we can see it by the time we get to LA.

Jim Bikoff: Phil, Jim Bikoff. I'll take a look - I may have a copy of it. I can't guarantee it but it came somewhere in the middle of our last PDP. I'll see if I still have a copy and then I can circulate it if I find it.

Phil Corwin: Yeah, that would be great, Jim. And while you may be correct that they've decided not to participate I still think this group needs to proactively reach out

and encourage them to participate. They're of course free to decide not to but I think we want to create a record.

You know, it seems to me foolish if we do decide to, in some way, create a new DRP to be used by IGOs, and we're a long way from that decision right now, I can't understand why they wouldn't want to have input into that unless they just...

Jim Bikoff: Yeah, no I agree with you. But even more interesting is the fact that we have one INGO who's participating in this group but has not been active except I think for the first formation meeting.

Phil Corwin: Yeah...

Jim Bikoff: The woman from the International Standards Organization.

Phil Corwin: Right. Right.

Jim Bikoff: So, I mean, I think there's - to me, I mean, that says there's sort of a lack of maybe interest, maybe participation, definitely participation, and, I mean, you know, if the folks that we're trying to solve the problem for don't want to tell us what the problem is I mean, this is a, you know, it could be we're spending an awful lot of time spinning wheels when nobody is going to come forward and try to help straighten out what the issues are.

Phil Corwin: I couldn't disagree with that viewpoint. But let's not make any final conclusions yet, let's see what kind of conversations we can have in LA. I think maybe we can clarify some things when we're all physically face to face in the same location.

Jim Bikoff: Sounds good.

Phil Corwin: Any further discussion? I don't see the need to prolong this call and go the full hour if we've accomplished our goal for today and we're basically setting the stage for a full meeting in LA next week. I'm not hearing anyone who believes we need to discuss anything else right now. We've reviewed the work of the sub groups, we've reviewed the draft agenda for the face to face meeting in Los Angeles one week for today.

We've reminded everyone that Petter and I will be presenting to the GNSO Council at 9:15 Pacific Time on Saturday. And unless there's anything else I'm going to draw the call to a close and wish everyone coming to ICANN safe travel. We look forward to seeing working group members there and to continuing our work in Los Angeles next week.

So I think we'll end the call at this point and stop the recording. Okay?

Jim Bikoff: Thank you.

((Crosstalk))

Petter Rindforth: Thanks.

Phil Corwin: Safe travel all. Bye-bye.

Terri Agnew: (Sori), if you can please stop the recording. Once again the meeting has been adjourned. Thank you very much for joining. Have a great rest of your day. Please remember to disconnect all remaining lines.

END