

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

Wednesday 29 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
Kristine Dorrain – Individual
David Maher – RySG
Phil Corwin – BC
Osvaldo Novoa – ISPCP
Mason Cole – RySG
David Cake – GNSO Vice Chair
Paul Raynor Keating – NCUC
Kathy Kleiman – NCUC
Lori Schulman - NPOC

Apologies:

none

ICANN staff:

Mary Wong
Steve Chan
Berry Cobb
Terri Agnew

Coordinator: Excuse me, the recordings have now started. Please proceed.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the New IGO INGO Access to Curative Rights Protection PDP Working Group call on the 29th of October, 2014.

On the call today we have Val Sherman, Petter Rindforth, George Kirikos, Jay Chapman, David Maher, Paul Tattersfield, Mason Cole, Jim Bikoff, Kristine Dorrain, Osvaldo Novoa and Philip Corwin. I show no apologies for today's conference.

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

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

Phil Corwin: Well, good morning, good afternoon or good evening to all, whatever time it might be for you. Let me just take a look at - we done the roll call. Any changes in statements of interest that need to be noted before we get into the meat of this discussion? I hear none.

The next item on the agenda is the recap of the LA face-to-face meeting. I thought the meeting went fairly well. We briefed the community on the remit of this working group and brought them up to date on our preliminary work, primarily going through the work of the different subgroups and their reports and took a few questions.

Does anyone have things about the LA meeting they want to bring up, discuss, raise questions about? And let me just see here, oh George Kirikos is raising - George, go ahead.

George Kirikos: Hi, George Kirikos here.

Phil Corwin: And Petter as well.

George Kirikos: Yeah, just a thought that you and Petter and the ICANN staff did a great job on holding the meeting so I just wanted to give kudos to you guys. And also I was curious whether we got any more IGOs or INGOs to participate in that working group's work?

Phil Corwin: I don't believe so. I believe through Mason Cole, who's now the GNSO liaison to the GAC, we're going to be trying to encourage the GAC and the IGOs that are in contact with to get more involved with the week to week a work of this working group rather than just sending in missives to us which we're going to get into in a minute discussed in the relevant portion of the LA GAC communiqué.

But Mary, I don't - Mary and Steve, do you know of any - anything on the IGO front? I'm not aware of any particular IGO saying they were going to join this working group.

Mary Wong: Steve - sorry, Phil, this is Mary. Just a note that I typed into Adobe chat as well, we've had a request from one IGO to join the working group as an observer. And we will be adding that group this week. It's WIPO.

Phil Corwin: Okay well WIPO is certainly welcome. They're kind of atypical to some extent but they certainly have expertise on the UDRP and on dispute resolution processes so I welcome their joining our group. Petter, I see your hand raised.

Petter Rindforth: Thanks. And Petter Rindforth here. And that's one of the points I was going to raise. I (unintelligible) it's Brian Beckham that will be the observer for WIPO, am I right?

Phil Corwin: Okay well good.

Petter Rindforth: We have any information about that? At least I spoke - plan wanted to have a quick chat with me during the meeting in LA on our working group. And he gave me some information on how the IGO - the problems they see in general to have their voice heard on not specifically this working group but at ICANN to participate and do it - they have - I think it's more ideological problems to join and participate officially.

Village very good to have Brian and WIPO as observers because then we can also not only from WIPO but from IGOs in general some quick unofficial inputs and feelings on how they may see some of the topics we are dealing with.

And I also wanted to add from are meeting that we shall of course when we have official questions and want to have official input we shall take the proper way through the Board, both to GAC and (unintelligible).

But I also got a chat with, as I said before, with Peter Nettlefold from Australia at the GAC. And he was open to also have in formal inputs whether it should be from our working groups or from the Council but to make it a little bit more easy to get more quick response on specific issues that we may raise.

Again, of course once we need something official and decisions we have to go to the more time consuming official way. But to summarize I think the meeting as such was very practical on the view to see how other people of interest would like to cooperate and deal with issues and the requests that we have. Thanks.

Phil Corwin: Good news. And we welcome WIPO's participation. And I think WIPO being a UN agency can hopefully facilitate outreach to other IGOs as well as, you know, conveying their views to us.

Okay and just bear with me one second. Well since we have - since we have to - let me get back to - we have the GAC communiqué on the screen so why

don't we get into discussion of that and the relevant item is Item 5. It begins on Page 6 and goes over to Page 7.

And the relevant portions here from my point of view and then we can open this up for discussion is that the GAC wants basically a trademark claims notice procedure for any registrations that are exact match of an IGO name or acronym to prospective registrants to apply in perpetuity, and into languages.

They don't specify what the two languages should be. I assume English will be one but we could debate what the other one should be. At no cost which would mean that there would be no cost to the IGOs to register in the trademark clearinghouse. I presume that would be the most appropriate entity to provide those notices since it's doing so now for the new TLD program, only for 90 days from when a TLD opens.

And they remind us that any curative rights protection we come up with should be at no or nominal cost. And then they further advise the Board - and again this is a communication to the Board from the GAC but we are taking notice of it because this group is trying to work out a problem resulting from the last working group on this subject which made recommendations that were counter to what the GAC wanted and the Board, after further consideration.

But the key one here is that the UDRP should not be amended. So let me - I'll speak one more minutes on this and then I'll open it up for discussion. On the cost issue that is in the GNSO resolution creating this group but it simply advises us to look at cost, it does not say that the - whatever we come up with should be at no or nominal cost.

The no-cost option raises the question of (unintelligible) pay any dispute resolution provider for their work if the IGOs have an option of not paying,

who is going to pay that? And I'm not - that's a difficult issue to get into. It's not a policy issue, it's a money issue.

And nominal cost, we don't know what the GAC considers to be a nominal cost. Both the URS and the UDRP - the URS starting at \$500 for filing, the UDRP at about \$1500 plus attorneys fees and UDRP is more expensive if one of the parties opts for a three-member panel.

But we don't know if the GAC considered - those are much lower costs than going to litigation at least in the United States. We don't know whether the GAC considers the current rates to be nominal or to be above nominal.

Turning to the directive that the UDRP should not be amended, our charge is to consider - from the GNSO is to consider whether the current UDRP or URS can work for IGOs and if not, whether they can be amended to provide a special for mother UDRP or URS to work for IGOs or any other event to consider a new curative rights program.

The implication of this GAC advice is that amendments using the UDRP or an amended form is not on the table. Well I guess the exact language would consider using the current UDRP okay but of course we know that many IGOs don't trademark their names or they don't want to use that UDRP because of the right of appeal and the sovereign immunity issue.

So I believe Mason is going to work to reach out to the GAC to get clarification on some of these points in particular based on a conversation we're having today. But what do others on the - let's open it up for discussion now. What do others on this call think about the GAC advice and what if anything we should do to respond to it or take it under advisement?

So I'm waiting for hands to go up. And I see Mary's hand going up. Yes Mary.

Mary Wong: Thanks Phil. And will actually I'll go after George. I'll defer to working group members.

Phil Corwin: Okay. George.

George Kirikos: Hi. George Kirikos speaking. Yeah, I was a bit puzzled by the GAC advice like probably everybody else in the working group. It wasn't clear to me whether they want the standard of proof in the UDRP respected and so in that sense that they UDRP should still be followed.

But that perhaps they were worried that the UDRP shouldn't be changed to affect other rights holders. It was very puzzling to me why they use that language; a kind of, you know, prejudged the work of the working group which is, you know, for somebody not participating in it as they should be it was very puzzling. I just wanted to note that.

Phil Corwin: As I said, I think we need to - it's going to be - and I see Mason - I was just saying I think we need to rely on Mason to get clarification for us and Mason's hand is up so let me turn to him and get his input on this.

Mason Cole: Thanks Phil. I think that GNSO is looking for issues to engage the GAC in an early way on. You know, the GAC understands really only one method of communication right now; it's not really their fault it's just what they know and that's the communiqué.

And it tends to leave questions open for working groups like this one. So what I would encourage is the working group put together a list of clarifying questions that can be funneled through the GNSO and I'll be happy to take those to the GAC for clarification.

Phil Corwin: Okay. So that sounds like a task we need to engage in which is to prepare a list of questions to the GAC.

Mason Cole: I think that would be helpful.

Phil Corwin: To clarify what they mean by this.

Mason Cole: I'm sorry, Phil, for interrupting. Mason speaking again. I think that would be helpful. I don't think the GAC knows what the GAC doesn't know. And it's very easy for them to, for example, say they should be undertaken at no cost when they don't necessarily understand the dynamics of what that truly involves implementation wise. So clarification questions on our part will also help clarify the GAC's thinking and help them engage in a constructive way on the issue.

Phil Corwin: Okay. And I assume, Mason, once we prepare those questions that you would be the one to convey them to the chair of the GAC and seek some feedback from them, would that be correct?

Mason Cole: I will yes.

Phil Corwin: Okay. Well thanks for that.

((Crosstalk))

Phil Corwin: And, you know, we can prepare knocking out those questions. Shouldn't be that difficult. Petter, I see your hand up.

Petter Rindforth: Yeah, Petter Rindforth here. Just coming back again to my speak with Brian Beckham. He stated again informally that from the IGOs' point of view they were not interested in an amending of the present dispute resolution policies; they wanted to see a specific ones created for IGOs. But again I...

Phil Corwin: Did he say why they...

Petter Rindforth: ...100% support that we try to get an official confirmation about that.

Phil Corwin: Yeah, Petter, did he indicate why they hold that position? Is it because the right of appeal and the sovereign immunity issue?

Petter Rindforth: Well we didn't went into details but as I understood, and then he maybe also been spoken with two hats on as a representative of WIPO but he was - he didn't see any - he said it was too much risk of (open up) and make changes on the present dispute resolution policies. It was much easier, as I understood it, to create something similar that was also clearly limited to IGOs. So that we didn't open up for questions on other similar organizations and for other kind of disputes.

I mean, we have also (unintelligible) of disputes in the current policies - in the current systems where the complainant does not have a clear and traditional registered trademark. And so far we have solved most of them by in fact (unintelligible) a possibility to use the systems.

But there is a gray zone there and of course if, as I understand Beckham, if we also try to so to speak squeeze in IGOs in the process we would expand the gray zone a little bit too much. There was more - to be more clear and easy to create a new separate dispute resolution policy. Thanks.

Phil Corwin: Well that's interesting. My personal reaction to that is that there is a lot more risk in creating - taking a clean sheet of paper and creating a new DRP then working off something with which we have more than a decade's experience. It's also a lot more work for us. Also, you know, raises the issue of if it's not based on trademark rights what is it based on and what are the categories of activities the IGOs are engaged in.

The last thing I'll say on that is our charge, why we have to take, I think we have to be responsible and we have to take note of this GAC advice to the Board, our charges from the GNSO Council and their resolution directs us to consider whether the president UDRP and URS can be utilized and if not

whether some modified amended version of them can be utilized or if that's not the case whether we need to create a new one.

And I think it's way too early in our process to drop exploration of a UDRP and URS simply because the GAC has said don't amended them which you seem to be saying Brian's interpreting it as don't even use them as a starting point.

Kathy, I see your hand raised. Let me call on you.

Kathy Kleiman: Hi all. Can you hear me Phil?

Phil Corwin: Yes I can.

Kathy Kleiman: Great. Apologies to everybody for coming in late. I wanted to share that I had a conversation with Brian Beckham as well in Los Angeles. And what he conveyed to me is that the UDRP sacred. And I find that a mistaken impression because I don't think it is sacred, it was created by people. I kind of remember being there. I'm not sure it's all perfect either.

But, he was worried that there is a coming review of the UDRP and there seems to be a sense that whatever we create for the IGOs might get changed. I think there's a real misunderstanding here. You know, again the UDRP is not sacred. And the fact that it is coming up for review I don't think will take away. If we add certain protections or reviews of IGOs I think they'll go into the UDRP and then any changes, modifications, improvements - sorry about the background noise here - will then be conveyed to the IGOs as well.

I mean, I actually think it's very important - like you Phil, I'm concerned about creating a whole new proceeding. I don't think we've been empowered to do that. And in this case I think there may be some misunderstandings.

I also wanted to share that - I've been looking up some of the trademarks in the US trademark office and CERN, for example, is listed - there are ways that IGOs can now be listed in in federal trademarks. And CERN is listed there, it's listed as CERN Organization, European (unintelligible), Nuclear European Organization for Nuclear Research. And it's right there and it's listed as an Article 6ter Paris Convention listing.

So it can be searched along with the trademark. So if somebody tries to apply for CERN, and there is a beer company that's tried to apply for CERN, this will come up and the examining attorney will see that there's a CERN organization.

So I think in the real world trademark examining attorneys, trademark offices are searching IGOs along with trademarks and I don't see any reason we shouldn't be kind of continuing on the path we were set by the GNSO Council to look at this in conjunction with a UDRP. I think this GAC advice how some maybe misunderstandings. Thanks.

Phil Corwin: Yeah, well we're going to engage - thank you, Kathy, and we're going to engage in a dialogue with them to try to clear up misunderstandings. Could I ask you, when you have a chance, to just shoot the group a short email about that procedure and the US (v) TO and the CERN example so we have that on a written record?

Kathy Kleiman: You bet. We've been researching it and so I've got some of that together. And thanks, for letting me make the long statement. Sorry about that.

Phil Corwin: As far as the UDRP being sacred, personally I'm not even sure what that statement means but of course...

Kathy Kleiman: Well he didn't say that; that's my interpretation of what he said.

Phil Corwin: Okay. Okay.

((Crosstalk))

Phil Corwin: But anyway let's take note of the fact that - and it's completely separate procedure ICANN under a current dually enforced GNSO resolution is probably going to take up both review of the efficacy of the new rights protection mechanisms for new TLDs as well as review of the UDRP starting in spring 2015. So the UDRP is hardly sacrosanct and we expect there will be a proceeding in which various parties proposed amendments to the UDRP as it currently stands.

Kristine Dorrain, I guess.

Kristine Dorrain: Hi. Thanks. This is Kristine from National Arbitration Forum. I just wanted to mention that I think one of the things that we (recited) when we think about should we amend the UDRP or should we create a new policy is that we don't necessarily have to start with a blank piece of paper.

We can take that UDRP, make a copy of it and change a few words or a few lines or whatever needs to be changed for the IGOs but call it a separate IGO policy. You can only use it if you're an IGO. Maybe there's a different fee structure. Maybe there's something else that happens with that policy.

But as soon as you take the UDRP document - and I think this is maybe what Brian was trying to say, and I don't think sacred is the right word, but as soon as you take that document and you make changes to that original - to that document now anybody who files a UDRP complaint after that is impacted by those changes or they think they're impacted by those changes or they're going to try to shoehorn themselves into those changes.

And they're going to try to make arguments for why those changes should apply to them. We've got over 50,000 UDRP cases as precedent. We have to

consider how making changes to the UDRP itself will affect all the precedential opinions.

Granted there's a lot of, you know, backlash and (unintelligible) activity when there is a UDRP decision that's sort of inconsistent with the rest. But over 50,000 UDRP decisions, very few are actually stridently disconnected from the rest of the UDRP opinions. There's a pretty good consensus going.

So my concern was with talking about starting over means we don't have to start over with a blank page, we can take the UDRP and make changes. But having to complete a separate actual documents even though they are very very (unintelligible) between the two I think is what I'm advocating for because I really hesitate to make changes that's going to affect every other UDRP case going forward. Thanks.

Phil Corwin: Right. I appreciate that input Kristine. Of course the working group has not yet decided whether the UDRP can be used by IGOs in our view or whether it can be used with minor amendments. But again I agree with you that the last thing we probably want to do, just in terms of the work that's required, would be to start with a blank piece of paper. But I think one of the clarifications we need is to ask the GAC if this group decides that sounds separate form of UDRP is to be - is the best thing - way to go for IGOs would they consider that to be an amendment of the UDRP?

Because it's, you know, gave advise the ICANN Board, quote, that the UDRP should not be amended, or does that encompass starting with the UDRP as a model and then modifying it as a separate procedure for IGOs?

Heather, I'm going to take you and then Mary. If anyone else wants to speak on the subject why don't you raise your hands. We are at 12:32...

((Crosstalk))

Jim Bikoff: This is Jim Bikoff. I'd like to speak also.

Phil Corwin: I'd like to kind of...

((Crosstalk))

Phil Corwin: Who's that?

Jim Bikoff: Jim Bikoff.

Phil Corwin: Okay Jim, you want to speak on this too? Why don't we hear from Petter again, then we'll hear from you, then from Mary, and then we party agreed we're going to draft some GAC to be conveyed to them by Mason Cole. We're going to circulate those among the group.

So Petter then Jim, then Mary and then we'll hopefully wrap upon this subject and move on. So Petter.

Petter Rindforth: Petter here. Can you hear me by the way?

Phil Corwin: Hear you fine.

Petter Rindforth: Thanks. Forgot if I have locked up the phone. Just a quick comment to Kristine. If I heard you correctly you think that one possible way would be to actually use the UDRP and make the changes in there and call it something different. And that seems what could be an easy way to solve it and then keep the pure, the traditional UDRP separated.

And my follow-up question, quick follow-up question on that is you see the same of the URS or would that cause more problems? Thanks.

Kristine Dorrain: This is Kristine from NAF. I think from a purely theoretical perspective that would...

((Crosstalk))

Phil Corwin: Yeah, who's speaking?

Kristine Dorrain: This is Kristine from NAF.

Phil Corwin: Okay. Go ahead.

Kristine Dorrain: To answer Petter's question - thanks. So to answer Petter's question. I mean, I think you absolutely could take that URS and just, you know, make a duplicate of it and make, you know, whatever changes you made to UDRP to URS. As a URS provider who's (unintelligible) a lot of things that could result in an awful lot of work, (unintelligible) our technology.

But, I mean, that doesn't mean we couldn't handle those cases on an exception basis or something. So it's not entirely outside the realm of possibility from a practical standpoint. And I think it certainly make a lot of sense from a, you know, purely legal or abstract standpoint.

Phil Corwin: Okay. Well thank you for that. All right so just to let you know where things stand, I'm going to call on Jim Bikoff now. Kathy has raised her hand again, I'm going to call on her for a quick comment. I'm going to call on Mary and then we're going to - I'm closing the queue at this point, as if we were in a (unintelligible).

I'm also going to note that in the chat room Paul Keating noted that if we're going to even think about creating a separate CRP it's got to be based on rights and existing international law and not on something we conjure up on our own. And I personally agree with that that ICANN is not in the business of creating rights just of helping to enforce existing rights.

So, Jim, let's hear from Jim Bikoff, then Kathy, then Mary, then we're going to move on. Jim.

Jim Bikoff: Thanks, Phil. I just want to support, I mean, Kristine's position is actually very close to our position. I spoke to Brian Beckham a couple of weeks ago and he said something to me that was similar to what I think he said to others and that - he didn't use the word sacred or anything like that, he basically just said that, you know, if we open up the UDRP two amendments at this point it will call into question a lot of the current rights that are being used in the UDRPs and who's going to be able to take advantage of them.

And he thought it would be simpler to have a new procedure. But Kristine pointed out that we are not starting with a blank piece of paper, as you suggested, Phil, we are starting with a structure that could be adapted very easily just to take care of the particular points that would make it - they could be IGOs have access to the systems, both URS and UDRP.

So I think while I'm not saying we have to do it that way, I think that that is at least something that we should give serious consideration to. And I'm hoping Brian will participate in the group and be able to explain his position in one of our coming sessions. Thank you.

Phil Corwin: Okay. Kathy, quick comment and then Mary.

Kathy Kleiman: Okay. The whole idea of creating new mechanisms, I've been involved in creating both the UDRP and the URS, procedural nightmare, guys. I don't see anything new or easy about it. And then once, if we create something separate, if the worry is that the UDRP is opening again that's exactly what we want that we may be adding a new wrinkle, a new view to the UDRP or the URS, a new semi-procedure.

And maybe we are all saying the same thing, that it's going in under the framework of the UDRP. But any changes we make to the UDRP, particularly

procedural in terms of rights, in terms of rights of the complainant, right to the respondent, should definitely be included here.

And if we create a whole separate proceeding syncing them up is going to be an absolute nightmare later on. Anyway you know my thoughts on this.

Thanks.

Phil Corwin: Yeah, I appreciate that warning and I hope I'll working group participants will keep that in mind. Mary.

Mary Wong: Thanks Phil. And hi everybody. This is Mary from ICANN staff. Just to go over a couple of the points that were raised by different working group members, first on the reversion to the GAC and going back to what Mason and Phil said earlier on the call, it would be - I confirmed it would be appropriate for this working group to compile a list of questions and send them back to the GNSO Council with a request that Mason, as the liaison, transmit them to the GAC.

That would, and staff's view, be a good response indicating that GNSO engaging with the GAC. Because as a Mason noted, that GAC's only tool at this point is the relatively clumsy one of the communiqué. So staff will be happy to work with this group to compile a list of questions sooner rather than later for that purpose.

Secondly, again with the GAC communiqué, I just wanted to put in an a reminder especially for members who are new to the ICANN or working group process that individual GAC members and individual GAC observers may have their views.

For example, Brian is obviously going to be the best resource for WIPO's views as one IGO. But the only way that we can get a GAC consensus view right now is through the communiqué. So I guess I'm cautioning against reading too much into specific side conversations.

Not that they can't continue but we should probably be asking the GAC for specific clarification as a primary action item based on the language in the communiqué

Then on the 6ter and trademark registrations, on Kathy's point, I just wanted to note that this is one of the research points for our subgroup B. And George and others have already done a lot of stellar work on that.

And in this respect I just wanted to remind folks that the general counsel for ICANN had for the previous working group noted several jurisdictions which offer national trademark protections for Article 6ter marks, and the United States is one of them. So part of that search that this subgroup is doing will probably uncover more of the results that Kathy spoke of.

And finally on the amendments to the UDRP or a new process, I agree with Phil, that is probably premature at this point. There's a couple of preliminary type questions that we probably still need to get through. This discussion has been really good so obviously we'll note it when the time comes.

So I'll just throw in an extra comment here that to the extent that a separate dispute resolution process may be contemplated this has been previously discussed including in the previous work that subgroup C look at, the WIPO 2 process, for example and the 2007 ICANN GNSO issue report.

And in that regard, and this is the last thing I'll say, in that regard there is a draft of a separate DRP that was circulated but obviously not acted on because that was not actually an action item taken up, hence our group today.

So again when the time comes this document may be something that our group might want to look at. And all these previous documents have already been uploaded to the working group wiki so I'd be happy to point anyone in

that specific direction if you'd like some assistance navigating through the burgeoning set of documents we have on our wiki. And that's it, Phil.

Phil Corwin: Thank you, Mary. All right we are at 42 minutes into the hour. The other task before us, I believe, was to review the subgroup reports. I don't think we're going to have time for all of them on this call. But I think the - I think one issue that we may be ready to take up is whether we want to focus solely on IGOs and not on INGOs. I forget which report looked at the INGOs. Was that B, Mary? If you could refresh my memory. I don't have the...

Mary Wong: Which specific question relating to the INGOs, Phil? I'm sorry, I missed it.

Phil Corwin: Well I think that from what I've seen on the email list, from what I recollect from the work of the subgroup and further conversations on the email list I believe we found that, you know, INGOs either had trademarks or could readily obtain trademarks for their names and acronyms if they wish for what the activities they were involved with that they don't have the sovereign immunity issue that arises with IGOs.

And there was several emails in the last week expressing the - seem to be expressing a growing consensus that given the considerable work we're going to have just dealing with the IGO issue and given that there doesn't appear to be any reason that INGOs need something other than the current UDRP and URS - plus that it could open up a can of worms and once we open it up to them then there's going to be nongovernmental organizations that are just national in character and not international that may want the same special access, that it'd be best to just not go further on down the INGO path but focus solely on IGOs.

And, again, I believe the GNSO Council resolution only asked us to look at IGOs plus the Red Cross and International Olympic Committee specifically so it's optional, not mandatory for us to look at INGOs.

So I hope you followed my - what I just said on that. But I think if we could take a - I don't know if we have the subgroup reports readily available but if we could get the one up that dealt with the INGO ability to get trademarks perhaps that would be the best use of the remaining quarter hour we have right now. Is there any objection to that or do people think that's a reasonable way to go?

Mary Wong: Phil, this is Mary. May I put in a comment?

Phil Corwin: Yes.

Mary Wong: So what we've put up here is the subgroup C report. I think George has pointed out in that chat that that may be what you have in mind. But the comment that I have in relation to this is that - well two comments. One is that even in the issue report scoping out this PDP for the GNSO Council the distinct problems faced by IGOs versus INGOs was already spelled out so that was one of the things that the Council considered in discussing the possibility of kicking us off as they did.

So basically that problem has been recognized and as in that issue report as well as Mike Rodenbaugh's subgroup report that's been acknowledged in the sort of historical documentation as well including some of the summaries that you see up here.

Then in terms of what our group is chartered to do, again, two comments. You know, one is that the GNSO Council did ask our group to look at both IGOs and INGOs based specifically on the recommendation from the previous working group.

So while it's clear, from that group as well as ours, that the Red Cross and the International Olympic Committee are a different type of INGO because of their international legal protections, the scope is not necessarily limited to

both these organizations but to all the INGOs that were identified as in the ECOSOC list.

I wanted to add here that in relation to the list discussion that we've been having on, you know, carving out IGOs and INGOs that is one of the preliminary questions I had in mind in my earlier comment as something that this group would probably wish to talk about more thoroughly.

And secondly, in addition to the on-list discussion staff wanted to encourage this group to have a further discussion both on the list as here, as I said, because this scope was based on the work of the prior working group and in that prior working group a number of constituencies and stakeholder groups were of the very specific view that protections given to IGOs should also be given to INGOs.

So before we, you know, proceed to drop INGOs I do think that the group may need to consider this a little bit more and especially with those groups that indicated the equivalent treatment in the earlier PDP.

Phil Corwin: Thank you for that input, Mary.

Jim Bikoff: Can I say something, Phil? Jim Bikoff.

Phil Corwin: Yes, Jim, please.

Jim Bikoff: First of all I fully support the view that we should focus on IGOs. As somebody has said, there's plenty of work to be done that'll keep us busy for the next oncoming months at least, six, seven months.

Secondly, it's clear that the Red Cross and the IOC as well as many other worthwhile groups that are doing humanitarian work, are INGOs. They're simply not IGOs. And if we include any INGO in our work then there are other

exceptions that probably need to be looked at too. I think we open the door to all INGOs if we include one.

Having represented the Red Cross in the past I can tell you that they have trademarks in many countries, registered trademarks. They filed many, many UDRPs. Have won most of them except for one that I think we had talked about. So they clearly have access.

This group I think is about access to these remedies, not about whether we should give different treatment to certain groups. So from an access standpoint there is absolutely no question. And we have - if I had to produce the 40 or 50 or 60 UDRPs for the IOC and the Red Cross you can see that their rights have been vindicated under the process so they clearly have access; there is no question about that.

And I think, again, to include any INGOs in our work would be, I think, you'd have to include them all. Thank you.

Phil Corwin: Yeah, and including them all is thousands and thousands and once that door is open others might want that. But what I hear you saying, Jim, based on your expertise in this field is that INGOs have no access problem in using the current dispute resolution processes. And also not being governmental organizations there's no sovereign immunity issue in regard to the appeals process.

So I guess following up you're saying there's no need to change anything in the current process to protect those organizations and the domain name.

Jim Bikoff: Well...

Phil Corwin: Is that a...

((Crosstalk))

Jim Bikoff: Yes, what I'm saying - what I'm saying - yes, what I'm saying is that this - the charter of this group is to consider access to the UDRP and the URS. These organizations that are INGOs have access. Maybe they do not have sufficient funds and they may be funding issues but I don't see any other issues here.

They have - many of them have registered trademarks, others have unregistered trademarks, others have treaties, others have national statutes, you have the World Wildlife Federation, you have the Better Business Bureau, you have organizations like the Cancer Societies around the world. I mean, all of these people are doing humanitarian work, they're not governmental organizations, they're international nongovernmental.

And they have access and that's simply as I can state it. And so I think if we exclude all of them we're going to have a lot of work left with IGOs. If we include one or more we have to include them all, that's my thought.

Phil Corwin: Okay. I see David Cake has his hand raised. David.

David Cake: Right. It's about the Red Cross specifically. So the - they definitely have access as an INGO but the question is do they have other rights were unrelated to their trademark rights, related to their, you know, use of what they - not their trademarks but their identifiers.

And that's in the Geneva Convention and national law. So the question really is do the Red Cross consider that they need curative rights for those? And if they do then they're, for us, a special case. I absolutely agree that we shouldn't - I actually think we shouldn't (unintelligible) INGOs but I'm disagreeing with Jim that letting one in means them all because if that one is the Red Cross. And I don't know whether or not they actually feel that they need curative rights. I think we could probably try and get an answer from them.

Jim Bikoff: Can I respond to that, Phil?

Phil Corwin: Sure, Jim.

Jim Bikoff: I just want to say that the Red Cross was a very very active participant in the past UDRP - I'm sorry, the past IGO INGO PDP. And I am not aware of any time during the year or year and a half of proceedings in that past PDP where anybody representing the Red Cross raised the issue of curative rights.

Their issues are different issues. Their issues are ones dealing with protection of additional names and acronyms that the past PDP decided were not, you know, were not granted for recommendation. So they want more rights in particular names and acronyms.

So - and then also the fact is that other INGOs have also national and international statutes and treaties protecting their mark. So, I mean, we get into sort of a web of confusion if we select one and not the others. And I think you're right, I think if you - everybody reads the past proceedings, you'll see that this was not a question in the last PDP.

Phil Corwin: Okay. I just want to note some comments in the chat room. Paul Keating noting that this seems to be a standing issue. What must be shown to have access to curative rights. Laurie Schulman - this is interesting, she said that - about 30% of civil society organizations have lost their officially registered domain, they just failed to renew it. That's - I'm not sure how we would deal with that problem.

And only about 35% maintain up to date contact information. I guess they're violating Whois policy by not maintaining current contact info. And that about 2/3 have moved their presence to social media sites such as Facebook Civil Society.

Of course abandoning maintaining - this is my personal comment - maintaining a - not maintaining a official Website on the Internet will not stop bad actors from establishing domains that may infringe on the - or may cause confusion in the public about who is operating the domain name. But that's getting - I think those comments from Laurie illustrate the complications we'd have if we go into the INGO sphere.

And, David, did you have a comment? Your hand is still up. It's down now.

And, Mary, with three minutes before the top of the hour, why don't we hear from Mary and then why don't I try to sum up and set the stage for the next call? Go ahead, Mary.

Mary Wong: Thanks, Phil. And I just put in the chat the GAC advice or one of the pieces of GAC advice on the Red Cross from the - I believe the London communiqué and there were other previous communiqués including the last one before the - in Buenos Aires about the Red Cross names and curative rights protection.

And I'll need to go back and check, there may be something specific on the International Red Cross acronym. So it may well be that, you know, that the Red Cross and perhaps the International Olympic Committee, as I mentioned earlier, are a different type of INGOs.

So the suggestion that staff would have at this time is it does look like the working group is tending towards the, you know, the recommendation that going forward we would focus on IGO but could we ask that anyone who is a member of the working group who is representing a constituency or stakeholder group check back with their groups on their views about this before we proceed.

Again this is just to be sure that we take it fully into account the prior deliberations so that we don't have to reopen something later on should there

be an objection or opposition. So that was going to be my suggestion. I can put that in an email to the list, Phil, and Petter.

And, Phil, I think Petter wanted me to say something about the face to face meeting but I will desist for now and hand it back to you unless you'd like me to.

Phil Corwin: Oh yeah, yeah, okay. I just want to follow up on what you just said. Reading that quote from the one in the communiqué the GAC said in London that the Red Cross and Red Crescent terms and names should not be equated with trademarks or trade names and their protection could not therefore be adequately treated or addressed under ICANN's curative mechanism of trademark protection.

That seems at odds with - I'll make two comments. One it seems at odds with what Jim just told us; and, two, even if they should not be equated with trademarks that doesn't establish that they are to be equated with internationally recognized rights without further information that would justify a separate - access to a separate CRP. We're going to have to deal with that.

All right, wrapping up this meeting, I think we're drifting toward or we're moving toward a decision on whether we should focus solely on IGOs as our work proceeds. We have agreed to prepare a draft clarifying questions to be run up to the GNSO Council and then transmitted to the GAC via Mason Cole.

Since I brought up the LA communiqué to the group I'll take the first stab at those clarifying questions, circulate them to everyone. So - and get comments back. And then we can finalize them.

And I think next week I think the two - I don't want to say right now I think the two co chairs need to confer with staff over the next few days and then prepare a suggested agenda to move us forward on our call next week.

I'll stop there. Mary, why don't you - you've sent an email around about the fact that this working group had been chosen to have a full day facilitated face to face meeting on the Friday following the last day of the next ICANN meeting which may or may not be in Marrakesh. That decision is under consideration by the Board and the executive staff.

What did you want to add to that, Mary?

Mary Wong: Actually that was really just what I wanted to say to remind folks to look at that email if they haven't already that the proposed day would be that Friday, as you noted. And just an update that we still don't have confirmation about, you know, the location of the February meeting. We are told that we will have confirmation by the end of this week.

We're told that, you know, the meeting will go on, I guess the question therefore is when. So we just wanted to put the date for our working group face to face meeting on everyone's radar as everyone makes travel plans and preparations and that's it.

Phil Corwin: Yeah, and I would add to that as described in that mail there'll be an allocation of paid nights to various stakeholder groups and others so if you're going to be in Marrakesh or wherever - if you're planning to be in Marrakesh or wherever the meeting will be held and if you're planning to stay over the extra time to participate in that face to face meeting and if you want to be considered for ICANN picking up one or two nights of your hotel for that you should let your particular constituency group know so that they can take that into consideration as the allocation of that support is considered by the various stakeholder groups.

Mary, your hand is still up, did you have anything else you wanted to say at this point?

Mary Wong: Sorry, old hand.

Phil Corwin: It's down now. So at three minutes after the hour I'm going to call this meeting to a close. We can stop the recording. I will circulate a draft of clarifying questions to the GAC by the end of the week for the consideration of the full working group.

And the two co chairs will confer with staff and then circulate a proposed agenda for the next call. So, goodbye everyone and have a good remainder of your day regardless of what time it is wherever you are. Bye bye.

Mary Wong: Thank you, Phil. Thank you, everybody.

Terri Agnew: Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines.

END