

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

Wednesday 5th November 2014 at 17:00 UTC

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Attendees:

George Kirikos - Individual
Jim Bikoff – IPC
Paul Tattersfield – Individual
Petter Rindforth – IPC
Val Sherman – IPC
Phil Corwin – BC
Osvaldo Novoa – ISPCP
Mason Cole – RySG
Lori Schulman – NPOC
Gary Campbell – GAC
Alexander Lerman – no SOI
David Healsley - IPC
Nat Cohen – BC
Paul Raynor Keating – NCUC
Imran Ahmed Shah – NCUC
Kathy Kleiman – NCUC

Apologies:

Jay Chapman – Individual
Kristine Dorrain- Individual

ICANN staff:

Mary Wong
Amy Bivins
Steve Chan
Berry Cobb
Terri Agnew

Coordinator: This call is now being recorded. You may begin.

Terri Agnew: Thank you. Good morning, good afternoon, and evening. This is the IGO INGO Access to Curative Rights Protection PDP Working Group call on 5 November 2014.

On the call today we have Val Sherman, Petter Rindforth, Mason Cole, George Kirikos, (unintelligible), Gary Campbell, Paul Tattersfield, Jim Bikoff, Alexander Lerman, Osvaldo Novoa, Laurie Schulman, David Heasley and Philip Corwin. We have apologies from Jay Chapman.

From staff we have Mary Wong, Amy Bivins, Berry Cobb, Steve Chan 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 Petter.

Petter Rindforth: Thank you. Petter Rindforth here. The next point, any updates of statements of interest? But I see no hands up for that. That we passed on directly to the main topic of today, Point 2, a discussion of questions to be sent to the GNSO Council GAC liaison for follow up on the GAC's Los Angeles communiqué.

As you may know the background of the GAC communiqué issued on October 16 in Los Angeles with direct relations to the tasks of this working group and where part of the communiqué states that concerning curative protection at the second level noting the ongoing GNSO PDP on access to curative rights protection mechanisms the GAC reminds the ICANN Board that any such mechanism should be at no or nominal cost to IGOs, and that the UDRP should not be amended.

And as you'll remember, we have originally been directed to consider, among other topics, the interplay between the topic under consideration in this PDP

and the forthcoming GNSO review, specifically the UDRP, the URS and other rights protection mechanisms and examine whether or not similar specifications and amendment should apply to both the UDRP and the URS or if each procedure should be treated independently and/or differently.

And also to seek input as to how the UDRP and or URS might be amended to accommodate considerations in particular to IGOs and also to consider whether or not there may be practical alternatives other than amending the current systems that can nonetheless provide adequate curative rights protections for IGOs and INGOs such as the development of a specific narrowly tailored dispute resolution procedure model after the UDRP and URS and applicable only to IGOs and or INGOs.

And, well, I hope what I've seen the draft, we have it on the screen. I'm not sure if we at this stage have to go through everything. But I want to say that although it will be signed by both of us it is in fact Phil that has done a great job on this so thanks.

And well you can see we do not propose any changes only to get further input and clarification in order to proceed efficiently. And for their proposed questions to you on GAC via the Council are to seek - first of all to seek the assistance of the Council and directing Mason Cole to engage in a dialogue with the GAC regarding this matter and to seek to have interest of GAC representatives and/or IGOs to engage cooperatively in this policy process.

It's very important to have their input and direct reply to our questions. And also that we hope that some questions could be directed to the GAC as to seek clarification so will assist the working group in this task and that to specific questions on the matter of no or nominal cost to IGOs, does the GAC consider their current fees charged by URS and UDRP providers to be nominal.

If the GAC considers those charges to be in excess of nominal then what source of funding or other support mechanisms would be the GAC's suggestion to fully pay or subsidize the fees charged by dispute resolution providers.

The GAC has raised the cost question and it's also important for us to know what kind of system they are looking for, if we should try to make amendments or to create something new.

And the other question is in regard to the issue of potential amendment of the UDRP, why has the GAC gone on record as opposing any UDRP amendments as the means of providing IGOs with access to curative rights.

If this is the GAC's position that an entirely new curative rights mechanism must be created then quite universally recognized legal rights of IGOs should be its paces apart from the traditional registered well-known trademark issue.

So I believe that the next GNSO Council meeting is still on Thursday next week so I'm not sure that we will have the time to get this on their table. But on the other hand if we can make a decision today we have the possibility to at least open up for an initial discussion at the Council.

So I have opened up the floor for comments. And I see Mason there, but just wanted to put it on to Phil to start, do you want to add anything?

Phil Corwin: Yeah thanks, Petter. That was a good review. As you noted I was the main draftsman on the letter. What we're dealing with here is the situation where the GAC as communicated to the Board, and not to us or the Council, but there certainly referencing our working group.

And to the extent that - to the extent that their communiqué can be viewed as trying to narrow the scope of our inquiry or direct us to a particular conclusion, I think Petter and I are both committed to comprehensively and

very objectively carrying out the directive we've been given by the GNSO Council in the resolution.

So there's a need to hear I think have Mason engage and it'll be a challenge for him and his first big issue in his liaison position between the Council and the GAC to raise some questions about, you know, hey GAC, what do you mean by nominal? Why have you - why do you feel that the UDRP shouldn't be amended? Does that mean you think the UDRP is just fine the way it is or that we need an entirely new DRP? And if that's your position, what's the rights basis for that?

So we're trying to diplomatically raise some questions and hopefully getting the GAC and IGOs to engage more constructively and directly with this working group rather than trying to communicate end goals through communications to the Board, which again is not going to limit the work of this group.

So I'll stop there. And I see Mason wants to talk. And then I hope others will weigh in if you think we need to change this text in any way or add to it or delete something. Let's hear it now because given a Council meeting next week if we can get this letter approved today we can get it off to the Council and hopefully get this on their discussion agenda next week. So I'll stop there. Thank you.

Petter Rindforth: Thanks. Mason, the floors yours.

Mason Cole: Thank you, Petter. Mason Cole speaking. First of all, thank you, Phil, for the work on the letter. It's very clear. I think on Question Number 2 regarding amendment of the UDRP, if I could suggest a text change that might be more helpful to get information from the GAC?

I would change the first part of the question from why has the GAC on record to what is that GAC's rationale for opposing the UDRP - excuse me - for

opposing any UDRP and amendments as a means of providing IGOs with access to curative rights.

I think if we ask why the GAC has gone on record, I have two thoughts on that. One is the GAC is extremely sensitive and they would probably take that question as unnecessarily aggressive, even though I agree with the tone personally.

And second, I think they could elucidate an answer of, just because we feel that way. I think if we ask them what their rationale is that's a better way to get them to articulate their feelings.

Then the question becomes what do we do with that information? And when I say we I mean the GNSO. So if they come back with a rationale of whatever kind then we need to have in mind how the Council would, or this working group would reply, if it is going to reply at all to the GAC or how it's going to address that issue in its work.

Petter Rindforth: Thanks Mason. I like your very diplomatic comments. Maybe we really need GAC to read this document. So it's good to have. Mary.

Mary Wong: Thanks, Petter. And I have some similar thoughts to Mason so I won't repeat what he said. And perhaps we can just add something to that particular part of the letter. And I note that George in the chat and several people agree with him that maybe we need a little bit more color but the tone, I agree with Mason, it's great. And thank you, Phil, for doing the draft.

My other point was that in relation to asking the GAC about that universally recognized legal rights of IGOs, and this does go back to something Mason said, but they might well just come back also and say well, you know, having to pay attention to the fact that the IGOs key pointing to Article 6ter of the Paris Convention.

So I wonder if our purpose there is to talk about the standing issue, right, for any sort of dispute resolution procedure. That in replacement for having a trademark that IGOs are protected by, in the GAC's words, you know, international law and multiple national laws.

If we wanted to finance that part little more so that we could try to elicit perhaps more specific type of response from the GAC other than look at what our communiqué said.

Phil Corwin: Yeah, this is Phil. I'm going to jump in. And in regard to Mason, what I was trying to get at perhaps in artfully was to ask them for their rationale, so I'm fine with that change. And Mary, if you want to propose some language on the second part of that question, that would maybe flesh it out a little bit better. I'm fine with that as well.

We don't want to antagonize them that what we do want to say, you know, we want to let them know diplomatically that we have our charge from the Council and we're going to pursue it in a very objective way without any prejudging any of the issues that we are happy to have their input on these matters.

Petter Rindforth: Thanks, Phil. Petter here. And I said, if Mary and Mason, if you could send out email your proposed changes so that we can amend the document and then send out the amended draft to the full list. And maybe if we can have a kind of formal acceptance here today at this meeting with the proposed amendments and if we send it out to you all before we send it to the Council because we still have time to get it out this week and before the Council meeting.

Any other - yes, George.

George Kirikos: Low can you hear me?

Petter Rindforth: Yes.

George Kirikos: Oh hi. George Kirikos speaking. Just curious from an administrative point of view, as the GAC actually appointed somebody in leadership to liaise with us? Because there was some talk that Heather Dryden had stepped down and that her replacement was not going to be taking a position as the head of the GAC until sometime mid next year. So there was kind of like a leadership vacuum for the next few months. I was curious whether they actually have somebody that is formally going to answer the letter that we send.

Petter Rindforth: Yeah, I think there is a newly - (unintelligible), Mary.

Mary Wong: Thanks for the question, George. I don't think we as staff have any further information than the group has. But the new chair is Thomas Snyder. Typically any correspondence from one SO or AC to another would go through the chair great so in our case Jonathan Robinson would send the letter to Thomas crew would then direct it to whoever or which ever subcommittee of the GAC is working on that issue.

So hopefully the sort of transition that's happening in the GAC leadership now really won't affect where our letter goes or whether it goes to the right person. I hope this helps.

Petter Rindforth: Thanks. Petter here again. And GAC also have a group that works with this kind of issues, that's led by Peter Nettlefold from Australia. And I don't think there have been any changes they are. So once our question reach GAC there will be people that knows about the topic and are active in the issue.

George. George, your hand is up. Okay, Mason.

Mason Cole: I was just going to elaborate on that. I agree with you that Peter Nettlefold is in a position to help out the Council on this matter. I'm also just, for this working group's understanding, I'm searching for someone inside the GAC

with whom I can interact on a day-to-day basis to talk about GNSO related issues.

So I'm hoping for that so that we don't waste time, is not the right term for it, that we don't lose time trying to communicate to the entire GAC. We can find a representative inside the GAC with whom I can communicate and then it was the GAC response.

The second point I wanted to make is, I think that going forward working groups and the Council should try to construct communications with the GAC anyway that tries to get a specific outcome from the GAC.

The more specific we can be, and this letter is very specific, which I appreciate, the more specific we can be the more likely we are to actually get useful information out of the GAC. Part of the problem that we have with the GAC as a Council, and as working groups is there a device is sometimes very vague and it leaves it up to us to try to interpret it.

So the more particular we can be in our language I think the better off we're going to be and that's just a general observation that I have in my limited time so far as liaison.

Petter Rindforth: Petter here. Mason, a question to you. If we raise this issue to GAC and we get the traditional formal reply, can we perhaps by Nettlefold have possibilities to get more clarification even if it's not (unintelligible) how to read that very formal reply. Mary.

Mason Cole: Okay, there we go.

Mary Wong: Thanks, Petter. And I'm not sure that this is really in direct response to you but following up on George's question and comment, like I said, I think the letter will go to Thomas Snyder just because of the chair to chair communication. But in terms of that plus Mason's comment, as I noted to the

chairs on the pre-call this morning, we have an IGO member of the working group as an observer, that's WIPO.

And since they do track the mailing list as an observer and since they are one of the IGOs who have been involved in this issue as well as on the earlier working group, I feel fairly confident that for our group at least and for this request that it will go to the folks who are working on it on the GAC side. And I would assume that that includes the IGOs who are observers to the GAC as well. So again hopefully this helps.

Petter Rindforth: Thanks, Mary. Mason.

Mason Cole: Just another thought, one observation about how the GAC may reply. We should be prepared that the GAC does a reply at all. We should consider that they may reply and say just refer to our communiqué, that's how we feel about it.

Or they might come back with something very specific. They may also come back and say we have individual government feedback but we don't have any additional information as an entire GAC representation. So I mean I know the working group is in a position to try to take clarification wherever it can but, you know, until we sort out who is going to speak for the GAC and at what level then we should be prepared for almost any reply including none at all. And that's just again another observation.

I do hope we get a fulsome reply from them; I think that would be the most helpful obviously. But I'm not sure what we're going to get at this point. This is sort of the first test case for me as a liaison.

Petter Rindforth: Okay, yeah. Well we'll keep our (thumbs). Again to summarize, it seems that (unintelligible) reaction in general to this document. We have got some good proposed for amendments, attachments from Mason and Mary. So if you can

write them down and we'll make the amendments and send out the document again quickly to you while before we pass it on to the Council.

And Paul. Please go ahead. Paul, sorry I can't hear you.

Terri Agnew: And this is Terri from staff. I see Paul's line is unmuted at this time. Paul, if you can please check your mute button.

Petter Rindforth: Okay yeah, on the last item on the letter I suggest...

((Crosstalk))

Petter Rindforth: ...reference to the possibility of amending the mutual jurisdiction language (unintelligible) IGOs to limit immunity waiver issues. That was what you wanted to say.

Paul Keating: Yes.

Petter Rindforth: Good. Thanks for that. And I'll pass on to Phil.

Phil Corwin: Yeah thanks, Petter. I'm already marking up the - right after this call is over I will circulate a new draft of that. Paul, if you have specific language you'd like included in the letter if you could shoot that to me right away I work it in. Do we think that the GAC - I just don't want to start raising issues they didn't raise. But of course we're kind of guessing at their reasons for saying don't amend the UDRP and the sovereign immunity jurisdiction issue could well be one of them so I certainly think that's within scope of putting in this letter to the Council. And...

Petter Rindforth: Okay.

Phil Corwin: And, Paul, yeah, I see your language in the chat. But if you have a specific way you want to pose that you can just shoot it to me in an email and we'll

work it into this draft that file circulate shortly after this call. And if we can get signoff by working group members today we can get that letter out this week and hopefully get this matter on the Council's agenda for when they meet next week. And that's all I have.

Petter Rindforth: Mary.

Mary Wong: Thanks, Phil. Thanks, Petter. And so since we have Paul on the call, even though I guess he's having some voice problems with being heard at least, Paul, I know you can hear us. I was wondering, Phil and Paul, is in respect of Paul's suggestion instead of making it as a question I guess we could simply, you know, the that GAC's advice on, you know, how we could go about dealing with the jurisdiction issue. Phil, I'm sure you can craft it more elegantly than that.

But I thought that it might be helpful to at least subtly in the language make a distinction between asking them questions that stemmed directly from what they said in a communiqué and then taking the opportunity to ask for any further advice they might have or input they might have on an issue that we know we have to consider.

Petter Rindforth: Thanks Mary. Paul. Are you on the line now? The last thing I see from you is okay. George.

George Kirikos: Hi, George Kirikos speaking. And just wanted to point out that if we ask them though for what their advice is on handling the jurisdiction issue they might come up with just another conclusion or directive that ignores our own research so they might prejudice the entire work of the working group...

((Crosstalk))

Petter Rindforth: Paul, you're still on line, do you want to say something?

Paul Keating: Yes, please. Hello?

Petter Rindforth: Hello?

((Crosstalk))

Petter Rindforth: Oh okay, yes.

Paul Keating: Sorry about that.

((Crosstalk))

Petter Rindforth: And I think, George, your hand is still up but you said what you wanted to say. So, Phil.

Phil Corwin: Yeah, just responding, I think George raised a good point. I think we want to, again, this working group is going to operate under the relative addition we got from the Council in an objective and comprehensive way and not limited by, you know, anything from the GAC or others.

I think we want to differentiate between this letter's intent to ask for GAC clarification of statements they made in the communiqué. I don't think we want to be in the position of asking for open ended GAC advice. The GAC is free to send any advice it wants to the Board but they have a different relationship with the Board than they're going to have with us.

We are part of the community, we're working on behalf of the GNSO Council with members volunteering from the community. And we want to hopefully to use this working group to establish a better means for the GAC and also for IGOs to interact with the work of the Council and its subsidiary groups.

But I don't think that includes asking for advice from the GAC as opposed to clarification from the GAC regarding statements they party made that are

relevant to our work. I don't want to parse this too finely but I don't want to create a precedent where the GAC feels free to give advice to GNSO working groups on any matter as opposed to participating in some way with the work of those groups. And that's I had to say on that subject.

Petter Rindforth: Yeah, that's a good point. Okay, Paul.

Paul Keating: Petter, I don't know if (unintelligible) last section was an explanation or reason why we might want to amend the UDRP in a very limited context just to deal with the waiver of immunity issues. You know, clarifying (unintelligible) mutual jurisdiction (unintelligible) not necessarily waiving objections to the jurisdiction or waiving their immunity rights.

Petter Rindforth: Yeah, that's helpful. There was a lot of echo on that.

((Crosstalk))

Petter Rindforth: Maybe if you - yeah...

Paul Tattersfield. I'll write it out. I'll type it out.

Petter Rindforth: Okay. Well to conclude, I think we have got some good input. And so just to be able to proceed with this matter again, will make the amendments and send out a new draft that we can make a formal acceptance of before we send it out on time hopefully to have the Council to get it on the table next week.

And thereby I suggested that we move on to the next item on the agenda which is discussion on possible distinctions between IGOs and INGOs and the Red Cross and IOC compared to other INGOs.

I don't know if we have any specific features on that. Mary, you have anything to start with on this?

Mary Wong: Hi, Petter. Hi everyone, this is Mary again. Like I put on the screen is the email that Paul Keating sent to the working group some hours ago. And we're doing that on the basis that maybe some working group members may not have had a chance to review everything that's been noted in his email.

I would note that he is basically carrying forward a discussion that's already started on the mailing list. And I know a few comments were made in prior calls as well. So at least three issues that he's listed in his email at the beginning would seem to be the three issues that we have started talking about.

So, Petter, I don't know how you want to pick up the discussion or if anybody else is in the queue to speak or perhaps, Phil, I know that you have started that discussion as well so perhaps that's a good place to start to agree that these are the three issues and maybe take them in turn.

But I would note that of course on Questions 1 and 2, as you see from Paul's note on the screen, those are the things that we've just been talking about in respect of getting some further GAC input on it. But that should not delay our discussion or perhaps conclusion or preliminary conclusion on this matter pending any further input.

Petter Rindforth: Thanks yes. And I also note that we have discussed cost when it comes to what we sent out to the GAC. So anyone that wants to start a discussion. Yes, Phil.

Phil Corwin: Yeah, shortly before the call started I had circulated a quick response to Paul. And, you know, I think his concerns, you know, are very valid. But I don't think this group has expressed any consensus, desire to treat organizations differently or to limit our work.

As I said, I think Petter and I are both committed to carrying out the guidance for this working group under the GNSO Council resolution in a very objective and comprehensive manner and not prejudge anything.

But I'm standing - my take on these issues, and it's purely personal, and doesn't bind the working group, on standing, we're trying to determine whether IGOs, and we're going to get back in a minute to whether we're going to delete IGOs other than Red Cross and IOC from their further consideration. I think we're probably at that point; let's get back to that in a couple minutes.

Yeah, is there any reason that IGOs can't use the existing curative rights process? Is there some barrier to them getting trademarks, which is a precondition to using those processes? And is there any validity to their sovereign immunity concerns, which is an - we haven't made any decision on that yet, we're looking into it.

On the cost issue, you know, on nominal cost, I'm not sure what the GAC means by nominal. I would view both UDRP and URS as nominal means for protecting one's rights. There's certainly much less expensive than litigating under trademark law.

In the US and I would guess that's probably the same situation in Europe and Canada and Australia and probably even in other jurisdictions, developing jurisdictions. I'd be surprised if even in a place like India or China you could access the legal system if there is applicable law for less than those processes.

On the issue of, you know, free access our group has been directed to consider cost but we have no mandate nor do we have any means of creating a subsidy mechanism to provide free access to dispute resolution providers. I think we have to work under the assumption that whether it's the existing UDRP or URS or some version that's been modestly amended to

accommodate IGOs or even a brand-new curative rights process which I think we only do that if we think it's absolutely necessary and if there's a rights basis, it can be grounded.

And somebody has got to make the decision, some expert arbitrators, and they're not going to work for free; they're not going to do pro bono work. So if IGOs want free access someone has got to pay for that. And this group has no ability to create such a funding mechanism.

So I'll stop there but again I want to assure Paul and everyone else that we are going to proceed in a very comprehensive and objective way and only make decisions where we have good consensus within the working group.

But others want to comment on Paul's letter before we get back to Item 3 on the agenda which is IGOs and INGOs and Red Cross and IOC?

Petter Rindforth: Mary.

Mary Wong: Thanks Petter. And thank you, Phil. I'm not putting comments to Paul's letter, not being a formal working group member. But I thought it might be helpful for our working group to also bear in mind the ICANN Board's proposal that was last into the GAC in March earlier this year through the new gTLD Program Committee, or the NGPC.

And that is the proposal that the GAC is expected to come back on. And I believe there's been some discussion between the NGPC and the GAC on that proposal. But I could be wrong but I haven't seen any formal response from the GAC.

And the reason I bring it up is because in that March proposal from the NGPC they do talk about the URS as well as an arbitration mechanism. And on the URS, the NGPC suggests that IGOs will not be required to pay to use that URS so that's one proposal on the cost issue, specifically on the URS.

Another proposal on the URS is to do away with the consent to national jurisdiction. And I know this has been an issue for some members of this group. In relation to the arbitration mechanism, and they don't, you know, use the word UDRP I guess because they are foreseeing that it could either be an amended UDRP or a new process.

They're talking about an arbitration process that would resolve the claims potentially on appeal from whatever dispute resolution proceeding ultimately becomes.

So I don't think that these proposals, since they're merely proposals under discussion, should direct or determine the direction of our group. I thought it might be helpful background information in addition to what Phil, Paul and others have provided.

Petter Rindforth: Thanks Mary.

Kathy Kleiman: Hi, can you hear me?

Petter Rindforth: Yes.

Kathy Kleiman: Great. Thank you. Mary, now I'm totally confused. So Cherine Chalaby's group, the NGPC of the Board, is already talking to the GAC about specific proposals for IGOs and the URS and cost. If that's the case I don't understand what we're doing here.

Mary Wong: Petter, can I...

Petter Rindforth: Yes.

Mary Wong: ...follow up on Kathy's comment. Actually, Kathy, that's right in that if I took a step back and go back to the background for our working group, and what

I've just done is put the proposal on the screen here is that all this happened before are working group was constituted. And this came up because of two things, one, the inconsistencies between the GAC advice and the GNSO's recommendations from our prior working group.

And so that's all the TMCH stuff, for example, that you see on the top of this page. And this is part of the dialogue between the GNSO, the GAC and the Board.

And secondly, because the GAC advice, dating back to I believe might be Buenos Aires or even before that, again that was all last year, that talked about URS arbitration and UDRP, the whole idea of a nominal cost proceeding.

So when the Board first received that GNSO's recommendations in February earlier this year, it directed the NGPC to develop a proposal that would take into account the GNSO's recommendations as well as the GAC's advice.

And so this is the proposal. And this was sent to the GAC in March. And it was also sent to the GNSO in March. So this was on the mind of the Council in developing the charter for our working group and in asking us to simply just look at the curative right question.

So this was kind of a long winded explanation but hopefully it's helpful to those folks who haven't been involved in earlier phases of this. I don't think that this affects what we have to do. I think as Phil pointed out earlier, our tasks are very clearly set forth in the charter.

But I was simply trying to provide this as background information that's being discussed. So like I said, there's been no formal response from the GAC, I know this is not something that anyone is, you know, interested in talking about but like I said this was just background information. And I think our

group should proceed on the basis of what we on a consensus basis believe to be the right thing to do.

Petter Rindforth: Thank you, Mary. Kathy.

Kathy Kleiman: Yeah, thanks for the follow-up. So, Mary, does the Board know that we are working on this? Is the Board - and do we know whether the Board, and particularly the NGPC, the new gTLD committee which actually acts as the Board because so many Board members are conflicted out of new gTLD issues. Do we know, are they waiting for us or could they be going forward on this? Is there a halt to the Board's work or could we wind up with completely conflicting policies?

Mary Wong: Kathy, I would be happy to respond and basically I'm happy to say that the Board is very aware of the work by our group. In fact what they did was they asked the GNSO Council before LA to send them an update on what are group was doing. And the Council did send a briefing note to the Board, I believe that may have been in August or September.

And similarly, the GAC advice in the LA communiqué did note the ongoing work of our PDP working group. So I'm confident in saying that both the Board and the GAC are aware of our work and our tracking our work.

The like I said, a lot of this other information is background for our group just you know what else might be going on, just to know, you know, what might be happening.

That most of what is happening outside of their working group at the moment as between the Board, the GNSO Council and the GAC really concerns the trademark clearinghouse issues because they're really focused on resolving the differences between the GAC advice and the GNSO recommendations on that.

So I would say that for the time being, you know, they're aware of our work; they're interested in our work but they are not proceeding in parallel in any way.

Kathy Kleiman: Thank you. Because once we talk about URS it seems like they may be but okay thanks.

Petter Rindforth: Petter Rindforth here. Just wanted to add that when the Council had a meeting with the Board in LA they confirmed that they know about what we're working with and appreciated our work. And they also stated its importance to get a quick reply on specific issues directly from the GAC.

Phil.

Phil Corwin: Yeah, just to reference the resolution that we're operating under is the basis for this working group. The next-to-last paragraph says that we should invite participation from other ICANN supporting organizations and advisory committees including the GAC and from interested IGOs and INGOs which we're doing of course, and this letter we're sending is actually part of that in a proactive way.

And then it says we should track any ongoing discussion with the GAC and GNSO on resolving remaining differences between GAC advice and GNSO recommendations on Red Cross Red Crescent and IGO acronym protection, which is what Mary was just talking about.

But what we are working on goes beyond new TLDs and goes beyond trademark clearinghouse and acronym protections. It's about whether that UDRP URS works for IGOs and INGOs and if not what if anything can be done to provide them with some protective process.

In regard to, in the chat, Paul I think was saying, you know, why was I differentiating between International Olympic Committee and Red Cross and

all the other INGOs, and that is because they are specifically referenced in the resolution that created this working group which, as I read it, gives us an option on whether we want to do anything for INGOs generally but also mandates that we look at the relevance of specific legal protections for IGOs and certain INGOs and then it says namely the Red Cross and IOC.

So the very resolution that created this working group directs us to at least keep Red Cross and IOC, you know, a focus on them even if we decide not to do anything for other INGOs. That's the extent of my comments on that.

Petter Rindforth: Thanks. Paul.

Paul Keating: Hopefully I've got a better connection now. Is that better for everyone?

Petter Rindforth: Much better.

Paul Keating: Okay. That's what you get for paying for - as I'm calling through that US instead of through Spain. But okay so my concern is, Mary, first of all could you put up the other document you had put out before it you put up my email?

And I have a real concern here. My concern mainly is to be consistent throughout the whole process because my experience is particularly if we expect unknown third party groups to enforce what we're going to come up with we need to really have consistency and we have to have consistent touch tones to the precedent rules, the rules that have preexisted us. We can't just go around creating new rules for unique entities.

So for me I would very much like to approach, and I don't have anything against the Red Cross or the Olympic Committee, I think they should fit in the same standing criteria so that they have a trademark, they are protected under national laws of most countries so I don't see why they don't already have standing.

That drives it down to the other two issues which are cost and immunity. And I think we've dealt with the cost issue, I don't have any greater for financing them other than the ones that Phil came up with.

And then I left with immunity. So I'm very much concerned about separating things out and dealing with these entities differently. We need to have a rigid set of rules that are going to apply otherwise we're going to create a disaster.

And I was very concerned when Mary put up that piece of paper that showed changes to the URS, the TMCH. And I don't mind about changes to the TMCH, it's just an advisory notification. But the next section said that ICANN will amend the URS to provide to allow IGOs to participate.

Then we are now we're playing with a standing issue. So we need to deal with those things and I think we need to deal with it for all entities in a consistent fashion and not just IGOs versus INGOs, the Red Cross versus my mother's favorite trust, okay. That's my comment. Thank you.

Jim Bikoff: It's Jim Bikoff, can I respond on that?

Petter Rindforth: Step in.

Jim Bikoff: I just want to say I think we are creating more work here than needs to be done. I represent the IOC, as everybody knows. I have represented the Red Cross in the past. They both have registered trademarks, they both participated in UDRPs, many of them come each one, and we have no cost concerns.

And I mean, I think it's silly to make this more of an exercise than we need to. I think the real problem here is the IGOs and I think, you know, Paul's point about, you know, expanding remedies where we don't have reason to and expanding our charter even though some of these issues have been included

in the charter, is going to take up a lot of valuable time that we all could be devoting to the real issue here and that is whether IGOs have access or not and if they don't, you know, what we do about it.

And I think the questions posed to the GAC should be answered. And I'm not sure we should spend a lot of time on things that we know are already true such as access to that UDRP and the URS by the IOC and the Red Cross. As far as IGOs go I think that's still an open issue. And I think that's where our efforts should be.

Petter Rindforth: Good point. Paul.

Paul Keating: Yeah, not to - I don't mean to beat a dead horse so please feel free to cut me off here if you think I am, Petter. For me I don't have any problem with IGOs or INGOs participating in curative remedies but they need to sustain the basic standing requirements which is either a registered trademark or a common law trademark.

I mean, the first element of the UDRP and the URS is a hurdle, it's so small, I think I wrote in my email that a worm could cross it. So I don't understand why we have this big need to go overboard to protect them. The rules are in place. We have 15 years worth of experience of whittling down the first element of the UDRP so with almost nothing.

I don't understand why they can't go about protecting their rights the way everybody else in the world protect them. Get a registered trademark or produce the evidence to show that you have a common law trademark to get into the game, to cross that standing threshold.

That's all I have to say.

Petter Rindforth: Thanks Paul. Petter here. I think we all more or less agree with that and that's also why we may conclude that we should proceed with the work related to

IGOs and conclude that INGOs can have enough protection in the system that already exists.

Phil.

Phil Corwin: Yeah, just to comment on what Paul said. You know, we may well wind up in that place where we say that - we may determine I don't think we've done all the work necessary to reach a conclusion yet that IGOs can obtain trademarks, that's on the immunity issue maybe we decide that it's not a valid concern or decide that we can make a simple jurisdictional change for those IGOs that allow them to use the existing processes.

I think the last thing any of us want to do, unless we have to do it, is create an entirely new dispute resolution process. We'd have to decide who's going to be the providers, what's going to be the basis for standing, what are going to be the categories that limit the rights similar to goods - categories of goods and services. I mean, something like that is going to be a nightmare.

So we may wind up in that place but we haven't done all the work at. I do - and maybe it's one minute before the end of the hour yet, maybe we can't make the decision today but I hear - I think we came close on the last call and kind of the same place this call in deciding that there is no reason to consider INGOs further other than perhaps Red Cross and International Olympic Committee.

And even there I'm not sure we need to other than that it's in the resolution, simply because they have no difficulty getting trademarks and no sovereign immunity issue and there's no barrier to them using the existing process other than cost maybe for some of them.

But we're not a group that can create a subsidy mechanism for them. So I think it's probably too late to make a final decision on that today but I think first order of business next week should be whether to go down the road I

think everyone is saying which is let's take INGOs off the table and focus the remainder of our work on IGOs and see where we are - do some more targeted research on that.

Petter Rindforth: Thanks, Phil. Very short note from Paul. We have to in the meeting now. Paul.

Paul Keating: Yeah, I still am sorry, I don't see - I see a distinction in treatment between INGOs and IGOs as a distinction without a difference. If we're going to create a logical framework for dealing with them I see no difference between how we treat one versus the other. So and I don't see how it's going to incorporate more work to deal with it within the same framework, I just don't understand that, Phil. So if you're saying you're hearing from me consensus building to separate them, I'm sorry but you're not. I'm exactly the opposite. I think treat them all the same, create a logical framework for dealing with it and then let's move on processing to the framework and creating our document that sustains our work.

Petter Rindforth: Okay thanks. Kathy, last speaker, one minute. Go on.

Kathy Kleiman: Okay, I know we're going - who is not just making by the way?

Paul Keating: That was Paul Keating speaking last.

Kathy Kleiman: Oh okay, that was Paul. I just wanted to say I agree with what Phil said. And I thought it was a consensus until Paul spoke up. Thanks.

Jim Bikoff: This is Jim Bikoff. I agree also with what Kathy and Paul have said.

Petter Rindforth: So I see from the notes on the letter to the Council and GAC Phil will edit the letter and final version will be sent to the Council by the end of this week hopefully. And I also just wanted to note to you that will have the face-to-face

facilitator working group session at ICANN 52, that will not be in Marrakesh but in Singapore that the dates remain unchanged.

Should the subgroups continue meeting before the next call? I think it's - if you still have some and I know that our groups have some remaining follow-up questions that it's good to finalize and good to have on a first report for our next meeting so you can send out on the email list.

Those stating that, thanks all for today and getting up next week.

Mary Wong: Thanks, Petter.

((Crosstalk))

Mary Wong: Thanks, Phil. Thanks, everybody. Talk to you soon.

Coordinator: (Cybil), if you can please stop the recordings. Once again that does conclude today's call. Thank you for joining. Have a great remainder rest...

END