

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

Wednesday 12 November 2014 at 17:00 UTC

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Attendees:

George Kirikos - Individual  
Jim Bikoff – IPC  
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  
Jay Chapman – Individual  
David Cake – NCUC  
Nat Cohen - BC  
David Maher – RySG

Apologies:

Kristine Dorrain- Individual  
Paul Tattersfield - Individual

ICANN staff:

Mary Wong  
Steve Chan

Berry Cobb  
Nathalie Peregrine

Coordinator: Your recordings have begun.

Woman: Thank you so much (Asa), good morning, good afternoon, good evening everybody and welcome to the IGO-INGO curative rights protection PDP working group call on the 12th of November 2014.

On the call today we have Jay Chapman, Gary Campbell, Petter Rindforth, Alexander Lerman, Osvaldo Novoa, David Healsley, Val Sherman, George Kirikos , Mason Cole and Phil Corwin.

We have a few apologies from David Maher and Kristine Dorrain. From staff we have Mary Wong, Berry Cobb, Steve Chan, myself, Nathalie Peregrine. I would like to remind you all to please state your names before speaking for transcription purposes, thank you every so much and over to you Phil.

Phil Corwin: Okay, good morning, good afternoon, good evening whatever it may be where you are. This is the call for the IGO-INGO curative rights process working group.

And any changes in statements of interest since our last call? I hear none, Mary I'm a situation my laptop is acting up where I am and I'm just in the process of rebooting it.

So I can't look at the agenda. So can you tell me the next agenda item please.

Mary Wong: Sure, we had as the next agenda item to continue the deliberations that have already been started and that have been quite active on the list on the potential differences between IGOs and INGOs for purposes of our PDP.

And further to that potentially differentiating between the Red Cross and the IOC who are the two INGOs that the GAC has said, have special protections versus the other INGOs.

I do note however that (Paul Keeting) is not on the call so that may be something to consider bringing back to the list to the extent there is any additional talking points since (Paul) was quite active in earlier discussions.

So that is the next agenda item Phil and the one following that would be qualifying requirements and so forth.

Phil Corwin: Right and sorry I missed who was on the call. Do other members want to speak to that? We can revisit it when (Paul) is next on, he's been prolific in sharing his views with us.

Mary Wong: So if I may, this is Mary again.

Phil Corwin: Yes.

Mary Wong: Just for working group members who may not have participated in recent or many GNSO working groups. I think one of the issues that (Paul) may have raised, not the substantive ones but in terms of process is whether there are others who feel the same as he does in terms of their being or their not being sufficient reasons and grounds for the proposed differentiation.

Obviously there is a difference between consensus and full consensus in the GNSO equally obviously as many veterans will know, this is not something that is being subject to a formal consensus call at the moment.

But it will be very helpful for documentation purposes as well as for other reasons to get a sense of the working group members as to whether many or most folks feel that there is or there is not a reason or reasons to differentiate.

And we can of course record that there was or there was not. And so I just wanted to highlight that so as we go into the discussions because on the list there was several working group members that expressed support.

(Paul) has argued against it and so I think the question now is next steps on that before we document the decision and move onto the next question.

Phil Corwin: Okay well that's - do others on the call want to speak to that?

Mary Wong: George has raised his hand Phil.

Phil Corwin: Okay and again I apologize I'm not in the chat room I'm still rebooting my laptop, unfortunate technical difficulties. Yes go ahead George.

George Kirikos: George Kirikos speaking, I think the point that (Paul Keeting) was trying to make was that there is a bigger picture i.e. whether IGOs and INGOs are being treated differently than anybody else.

And there are I guess the three main prongs, which were, you know, do they have trademark rights at all. And we've kind of talked about this on the mailing list but they could probably meet a standard of having common law trademarks in many cases whether or not they are listed on the article 6TER database or not.

Basically the common law trademarks provides a lower threshold than having any registered rights per se. The second issue was the costs, whether costs are, you know, certainly different for them versus anybody else, which is, you know, a big point.

And the third issue was the mutual jurisdiction/immunity issue and I sent an email to the list last week about the U.S. State Department's position on that

were IGOs wanted the U.S. Government to intervene regarding I guess for the (unintelligible) dot com domain name.

Phil Corwin: Yes, George on that one can we defer that until later in this call because I want to speak to that I think that was very important but I think it's separate from the issue.

And let me say at this point it was my impression on the last call that there was pretty wide consensus that there was no need to do - other than perhaps the IOC and Red Cross because of their specific identification by the GAC that there was no need to look at INGO separately because they were simply a private sector non-profit organizations with no bars to registering trademarks and no sovereign immunity issue in any way.

So, does anyone - I think that, you know, we've been moving toward the position that we're not going to discuss INGOs other than perhaps Red Cross and (unintelligible) and just deal with the IGOs. Am I correct in that, anyone have a different view on that?

Jim Bikoff: Phil, Jim Bikoff.

Phil Corwin: Yes.

Jim Bikoff: No I think you have the right view, also I just want to say that, you know, we have no problem using the curative remedies and we're not seeking any assistance on that score.

Phil Corwin: Right, okay so that leaves us with the IGOs and I think (Paul's) position was, you know, there's no need to differentiate for them either but I don't - my personal view is that we're not at that point yet and that even if we decide that they can utilize some version of the existing processes of UDRP and URS that we may need some minor adjustments in terms of standing and perhaps other issues for them to use that.

I'm not arguing at this point that we need to create an entirely new curative rights process for them, which would be an entirely different thing. Does anyone - what are the views on that?

I think we still need to investigate IGOs quite a bit longer and in that regard I think the information George shared last week was quite useful.

Mary Wong: So, Mary again, can I be in the queue?

Phil Corwin: Sure.

Mary Wong: And seeing no other hands I'll just plunge ahead. So a couple of points before we get to your last question. One is that what staff will do then is write up a summary of the discussions to date as best we can about this specific question of IGOs versus INGOs for purposes of moving forward.

One question that I did have for Jim especially but also for everyone else is, with respect to the second specific step question, which is distinguishing the Red Cross and the IOC from the other INGOs.

I understand that the IOC is not seeking anything particular from this PDP. We don't have representatives of the Red Cross on this working group and that may be a matter for further discussion at some point with the GAC for example.

However, my question for now is since the Red Cross and the IOC were specifically noted by the GAC in various pieces of their advice as being non-governmental organizations that have a special status if I can use the term, based on international legal protection and protection in multiple national jurisdictions.

I just wanted to ask and I said Jim and the working group to if we can spell out the rationale perhaps for not making an exception for the RC and the IOC in this case.

In other words when we say differentiate between IGOs and INGOs we mean also that the Red Cross and the IOC are in the INGO camp and not further distinguished.

I think that would be very helpful for record purposes as well as for potential questions that our working group may be asked by the GAC and by others in the future.

Jim Bikoff: Well if I can answer, Mary it's Jim Bikoff. I think that while the Red Cross and the IOC are INGOs there's no question about that, they do have a special status that's been recognized through their protection under international treaties and national legislation, specific statutes in many countries protect their names and marks.

So I think that they are somewhat special in the sense that they have this special protection that's been granted for many, many years for their names and logos.

So I think that sets them a little bit apart from the normal INGOs but they are - they do fall in the INGO category without question. I hope that helps.

Mary Wong: Yes thank you Jim.

Phil Corwin: So Jim on the issue of dropping them are you saying, are you suggesting that we should defer on that for now because I do have some special international recognition and protections that most INGOs don't have or are you...

Jim Bikoff: No I'm...

Phil Corwin: ...agreeing to drop them?

Jim Bikoff: ...I'm agreeing to drop them because I don't think either one is seeking any special, you know, any special means to access curative remedies. Both of them, I think both of them have registered trademarks, both of them have used the UDRP many, many times without any hindrance because of their status.

So I think that they fall in the categories that we've been discussing. They have trademarks, they've used the UDRP, they're not asking for any special treatment or any different access methods to get into those remedies. So I think they should be dropped also.

Mary Wong: Phil, (Petter) and then George have their hands up.

Phil Corwin: Yes thank you for handling that Mary I apologize but I'm having intense laptop difficulties and...

Petter Rindforth: No problem, Petter Rindforth here. Just I think it's good even if we don't have direct representatives from yourselves and Red Cross in the group we have - are turning some people that have actually been dealing a lot with disputes for them and that you also agreed that they should not be counted in to the same group as the IGOs.

Then I had more a formal question maybe Mary can apply to. Before we proceed to concentrate or work to IGOs are there any specific formalities for to set down that decision?

Do we need to write something in a specific format just to note that we'll go further with that? And also do we need to connect with the counsel to confirm that or can we just move on as we are, thanks?

Mary Wong: So Phil I'm going to jump in here ahead of George and respond to (Petter) question. So (Petter) your question about how we proceed, this is really looking ahead to the initial report that as you know when we come up with it



will have to be published for public comment. And so the decisions and the rationales will have to be recorded. There is no formal actual requirement as to, you know, to how we do that it's simply record keeping at this point.

The formal consensus call of the working group will come at the end when we actually have specific policy recommendations. That said and on your second question on the staff side we would recommend that some sort of preliminary report, well an oral report, an update if you like a five minute update be given to the GNSO council maybe at its next meeting in December.

Presumably alerting them as well as through them their constituencies and groups that here's what we've done so far and here's how we've proposed to proceed. On that point at the council meeting tomorrow the point that there is not current liaison to the group from the council will be noted and brought up.

In the absence of such a liaison as staff we have been serving the information function and obviously would be happy to continue to do that if the working group were to agree that a status report at least orally to the council at the next meeting would be useful.

Phil Corwin: Okay and in terms of liaison, you know, we can - is Mason on the call today? I can't see the attendee list.

Mason Cole: Yes I'm here Phil.

Phil Corwin: Yes, you can say no Mason I'm thinking, you know, if we need a DNSO liaison to this group you're already on the group and you know that (unintelligible) liaison to the GAC and this is group is just because of the GAC request.

So you might be the most logical person. I don't think it would add any burdens to you, you are already involved with the group so it's not like we

have to bring you up to speed on what our discussions are or what our thinking is.

Mason Cole: That's probably doable.

Phil Corwin: Okay, okay well that would be good.

Mary Wong: So Phil the next person in the queue is George.

Phil Corwin: Go ahead George.

George Kirikos: George Kirikos speaking. I wanted to follow - two things. First I want to follow up on Jim Bikoff's earlier point. I just want to know whether he could clarify whether the cost issue was a big concern for the Red Cross with the IOC as clients.

Also whether the mutual jurisdiction issue has been much of a hurdle. He has brought the EDRP before, I just want to get his direct input on those because he mostly focused on whether they have the trademarks registered.

Second point was that we do have (Gary Campbell) on the call today who is from the GAC and we might benefit from having him speak a little bit because we spoke a lot about the GAC the last couple of phone calls to having an actual GAC member present....

Phil Corwin: Sure, sure.

George Kirikos: ...is a unique opportunity to hear from him.

Phil Corwin: Well I think we're welcome to - we welcome his input at any time and if he had anything he wants to say at the moment.

Mary Wong: So I'm not seeing any hands up but I guess George your question was directed first to Jim and then second to (Gary). So I don't know if Jim or (Gary) either of you would like to respond?

Jim Bikoff: Okay it's Jim I can respond, I can respond on behalf of the IOC. There is no cost concern, these are nominal fees and certainly much less than we'd engage in courts would entail. Secondly there is no jurisdiction issues.

Phil Corwin: Right, right.

Jim Bikoff: Does that answer your questions George?

George Kirikos: I guess, George speaking, thanks Jim.

Jim Bikoff: Okay.

Phil Corwin: Yes I would just observe, of course the Olympic committee is not a typical INGO and I'm not arguing to continue I just want to note for the record that it's a fairly well off organization.

And my understanding in terms of the Red Cross at the time was not with the big - with the international Red Cross organization it was some of the local country Red Cross' had cost concerns but I don't think they have other concerns in that regard.

Jim Bikoff: So Phil I - Jim Bikoff again for the record. I have represented, had represented the Red Cross previously in filing somewhere around 10 or 12 UDRPs and cost was never a concern at that time.

Now that was the U.S. Red Cross.

Phil Corwin: Right.

Jim Bikoff: I don't know if other local committees have had - what they've done. I'm not really privy to that, but cost was not an issue on the ones that were filed on behalf of the American Red Cross.

Phil Corwin: Okay, all right. Well I think we're good with the (DKOs) I think the consensus of the group seems to be that our further work will - we've already agreed we were not going to look at IN that there was no good reason to look further at INGOs except perhaps the Red Cross and the IOC.

And we seem to be reaching the point where - and Jim who represents the IOC and has represented the Red Cross has agreed that there's no need to even do further work on those groups, which would that our working group will focus solely on the - what is necessary to protect the rights of - hold on I can use my speaker because I've actually just made it into the chat room.

Thank goodness, where was I, that there is no need to - we're going to focus the rest of our work on what is necessary to protect the rights in the domain name system of international governmental organizations.

Organizations that are created by treaties or other means and the members of which are government. Is there general agreement on that going forward? I don't - is there any dissent on that point let me put it that way. I'll take silence as assent.

Okay, all right so I'm in the chat room now. All right let me just bring up your email with the - what is the next agenda? I'm going to bring up that email but I want to stick the program here.

Mary Wong: Yes Phil the agenda if you can see it I don't know how your Adobe screen is set up, it's on the right side in the notes part and while you bring up the email (Petter) has his hand up.

Petter Rindforth: Sorry it was just, it was meant to - I just agreed to that summarized completion.

Phil Corwin: Okay, all right. Mary I'm getting over to - all right okay so I think we've finished with item two. Denote the potential considerations for IGOs and INGOs for - and we're going to strike and INGOs that is relevant to their use of CRPs.

On that now I think that's a good point, place to discuss the document, which George unearthed and shared with us last week. That was a document and George if you could just chat, what year was that?

It was a (unintelligible) department memo on how the U.S. was going to treat the protection of entities that had - that were covered by article 6TER at the Paris convention, what was the date of that memo? I think it was about 10 or 12 years ago.

George Kirikos: George here, I just posed a link to it on the chat room it's June 7, 2002.

Phil Corwin: That's what I thought 2002.

George Kirikos: Long-standing advice.

Phil Corwin: And that was fairly - I forget when the last iteration of the Paris convention was done but with the two key takeaways I took from that was that the memo noted that each nation was free to, you know, implement the protections of the Paris convention in its own manner.

And of course in the U.S. treaties are not self-executing there has to be additional steps taken by the legislature or executive to implement them. So at least the U.S. approach was going to be that an entity, an IGO under 6TER if it wanted to protect its right in the United States had to register not a

trademark but a record of its protection, its coverage under the Paris convention with the patent and trademark office.

That would then be used to block conflicting trademarks and if somehow someone was operating in the U.S. in violation of that registration their remedy was to bring a civil lawsuit in the courts of the U.S.

So I think the key thing from that were that in the United States at least if you're an IGO you need to - and you want protection you need to register at the PTO, not a trademark but a record of your coverage.

And that your remedy generally was to bring civil litigation just like any other entity. So the United States at least did not see a sovereign immunity issue with (unintelligible) that of IGOs to protect their rights in the United States.

Which one was the question with me in the pre-call with (chairs) what (Petter) and I discussed with Mary that we need to know more about how other sovereign nations have approached their obligations under the Paris convention.

And if we (Chris) and (James) certainly found that many of them have taken a similar approach and including utilizing their civil court system as a protection that would be highly informative to our work and might lead to the conclusion that there was not imbalanced sovereign immunity issue to use to the current UDRP URS with their appeals process to courts of national jurisdiction.

And then the other - we might not need to have an organization have a trademark registered or otherwise, which simply haven't taken the steps somewhere to register their rights under the Paris convention.

And if they had done so that could - we could propose a fairly simple amendment to the UDRP to provide standing in that. So I'm going to be quiet and bring up the discussion to the implications of that June 7, 2002 State

Department program and what others think it means and how it might inform the further work of this working group.

And I see no hands raised, is this important document not raise any urge to discuss it in any way among other members of this working group in terms of how we should proceed?

You know, I think based on suggesting that we should try to find out how other nations have implemented their obligations under the Paris convention.

Mary Wong: So, Mary, George and I have our hands raised so maybe George could go first.

George Kirikos: George Kirikos speaking, yes I just wanted to say I do agree with you Phil so that silence wasn't saying dissent obviously from my post.

Phil Corwin: Sorry, yes now I see your hand, sorry about that.

George Kirikos: My posting of the letter to the mailing list was, you know, obviously with a position that IGOs shouldn't get special treatment with regards to the mutual jurisdiction/immunity issue if in the real world where - not the real world, in the off line world when they're doing enforcement they need to go to the court.

They don't have any special dispensation that, you know, that it goes to some international, tribunal or some other venue. That if the actual enforcement in the off line world involved going to the national courts then the same legal standards should exist with regards to the online world and domain names. That was just my point.

Phil Corwin: Yes, I agree with that as a general proposition and I'll note for the record that in the world of we're talking of course about a ICANN created curative rights process whether it's the current ones UDRP or URS or a new one, which

offers a faster and substantially less expensive alternative to protection of rights when a party believes that they've been infringed by a domain name.

And the actual incidents where the sovereign immunity issue might even arise would only be if a registrant prevailed in a UDRP or URS, which is a minority situation most complainants prevail when they file UDRP or URS.

And it's even more rare and it's not unheard of for a registrant to either appeal a UDRP or URS or to trump it then by filing an intervening case in a court of national jurisdiction to move the dispute straight into the court.

So it does happen sometimes that in a, you know, very small percentage of the total number of filings that occurs. And Mary I recognize your hand is raised.

Mary Wong: Thanks Phil and thanks George for the comment. I wonder if this specific question on the sovereign immunity might be a good question for us to bring to the small group of the IGO coalition.

That as I've noted previously is being formed and, you know, this was something that the GNSO and the board discussed at the joint meeting in Los Angeles.

The reason I suggest that as staff support for this group, George I know your answer, I have your question in the chat. I do not know that, I will find out from staff support to the board and hopefully have that answer for you in due course and quick time.

But it seems that because this issue is something that has been raised previously including in GAC advice, it would be worthwhile for us to engage in an exchange with the IGOs.

Another thing that I thought of as Phil and George were speaking again as staff support is that this may circle back in some ways to (Paul's) and other



points earlier on about the basis for creating a separate dispute resolution procedure.

I think the question was asked in our working group if not trademarks then what is it and the second question that was asked was well is it enough that there is protection specifically when an IGO name and acronym is used as a trademark because of 6TER of the Paris convention.

And it may well be that A, circling back to that question what should be the standing or the basis could involve a discussion of a second point, which is B I suppose in that the UDRP and the URS in their various phrasings does require affirmative submission to a court of a national jurisdiction in filing the complaint.

And Jim and (Petter) and others on this call know better than I do what that entails in the papers and so forth. But not that I'm saying this is a good reason but it may be something that has some implication for IGOs because of their status.

And so for those two reasons Phil, I would propose that we try to address the specific question to the IGOs before we make a determination, thanks. And so I also had some other suggestions that we discussed...

((Crosstalk))

Phil Corwin: Mary just for clarification what is - could you restate the specific question you want to pose to the IGOs and then maybe other questions we want to pose to them as well, but what was the one you had in mind?

Mary Wong: Well, just thinking off the top of my head I think it's more of a general question maybe I shouldn't have used the word specific as in the working group would like to, you know, understand in greater depth and detail the specific concerns that IGOs have with using the UDRUP and the URS.

We understand that there is a concern about sovereign and unity but that does not seem to be a problem in enforcing trademark rights for example. So something along those lines Phil like setting out that we understand but there is a concern.

But we'd like to understand in greater detail and more specifically why it's a problem for curative rights for domain names.

Phil Corwin: Right, right yes and I think we'd want to add to that. I'd like to know how they have in nations like the U.S., which in order to protect their rights outside of the domain system they have to make some type of registration at the (unintelligible) done that because the only reason (unintelligible) as a basis for bringing a civil lawsuit is say, you know, let's take (Unesco) as an example.

(Unesco) (issues) holiday current raises his money that way, if somebody was putting out counterfeit (Unesco) holiday greeting cards and they wanted to bring an action to stop that they'd have to avail themselves of the U.S. court system to get an injunction against that.

So they may not have agreed as affirmatively to submit to a court somewhere but the only point of making the U.S. registration would be to have standing if they needed access to the court system.

So I think we want to know how they've moved to implement their Paris convention rights in various nations and whether that implicitly might involve them in civil litigation in those nations.

Jim Bikoff: Phil this is Jim Bikoff can I get in the queue?

Phil Corwin: Sure, yes Jim why don't you go ahead and then George has his hand up we'll get back to George.

Jim Bikoff: Yes I was just going to say going back to Mary's comment. It might be prudent to pose those questions first to the GAC since they're the ones that have made the representations about the IGOs needing this special type of remedy in order to access the UDRP and the URS because I don't know if there's one person who can speak for the IGOs at this point.

But since the GAC has raised this maybe bring this as one of the questions to the GAC and let them run interference with the IGOs.

Phil Corwin: Well actually Jim in the pre-call (Petter) and I discussed that with Mary. She was concerned that if we asked the GAC we could be waiting a very long time for any time of response and that it might not be comprehensive.

And it might be more pragmatic and go directly to this IGO representative group once it's established while keeping the GAC informed of what we're doing and but, you know, we can explore that. George what did you have to say here?

George Kirikos: Yes George Kirikos speaking, I just, you know, want to point out in sub group B we had actually talked about that a bit that we - questions we wanted to raise to the IGOs and one of the questions was, you know, how they do their enforcement of existing rights in the off line world compared to the, you know, domain names.

That would give us (unintelligible) - hello somebody is talking.

Phil Corwin: Someone needs to silence their lines, thank you.

Coordinator: Excuse me this is the Operator I'm looking for that line at this time.

Phil Corwin: Yes we've got some very young stakeholders. I don't think they were adhering to the ICANN standards of conduct in those (unintelligible) but we'll move on.

George Kirikos: We don't have (Cathy) on the line today at least so far but back when the UDROP was being created, you know, cyber squatting was considered to be a wild west where, you know, people could go to the courts or sorry would have to go the courts to enforce their rights.

And the UDRP bargain so to speak was that people still had the right to go to court but this alternate procedure would exist if both sides wanted to do it. The ability to actually go to the courts was definitely a big factor in having people have acceptance of the UDRP as a policy.

If it was a mandatory policy where, you know, there was no appeal to the national courts probably the UDRP would not have been struck in the first place. And I think (Cathy) could probably speak to that a lot more if she were on the call.

Phil Corwin: Yes and that, you know, my view on that is, you know, (settlement) effect of ICANN depriving citizens of various jurisdictions of their legal rights in those jurisdictions and I don't believe ICANN has any ability to do that.

So you're correct an in that some of the UDRP or URS are basically a consensual system in which both sides have agreed to use that arbitration process in lieu of a standard court process.

And even when it's free the complainant would always be free to file a trademark infringement action in court and the registrant is free to either appeal the UDRP decision or basically to stop the UDRP process through a filing in a national court.

So yes that is a good observation George. So do others have views on this issue which I guess is two issues here, standing is there something other than trademark rights and it might be as in the U.S. simply registration (unintelligible) Paris convention coverage with the PTO that could be an element for being a complainant in a existing DRP.

As well as the sovereign immunity issue, which is various nations have already told entities covered by the Paris convention that their remedy for offline claims of infringement in those nations is through civil litigation.

It would certainly I don't know I don't want to say it in the gates the sovereign immunity issue but certainly is a major, raises major questions about the validity of that argument.

Mary Wong: Phil this is Mary again.

Phil Corwin: Yes.

Mary Wong: Would this be a good point to bring up the suggestion that the chairs and staff discuss in our pre-call about using ICANN's general counsel to assist at least in part?

Phil Corwin: Yes that was discussed in the pre-call and the general counsel's office has done research in the past on issues related to the subject matter in this working group.

So the co-chairs had no objections and then welcomed the suggestion that we made in ICANN legal staff to see what else they could dig up on this subject. It may well be that someone, you know, in the intervening years between the enactment enrollment section to the Paris convention.

And now there may well be a (law review) or other course, some other research somewhere discussing how various nations have actually implemented their obligations under the Paris convention and if we could find that it would be highly informative for our work.

So does anyone have comments on or objections to the notion of requesting further assistance on this point from the general counsel's office at ICANN?

Man: No.

Phil Corwin: Okay, in that June 7, 2002 telegram from the State Department to the UN, U.S. rep office at the UN, point one says, U.S. UN has requested to send a note in paragraph two to the UN legal counsel in response to his inquiry regarding the domain name registration for an Internet site.

I don't know if that UN counsel has taken similar action against - and moved that to other domains. But perhaps and is willing to share information, but it does suggest that some communication with the legal counsel of the United Nations on implementation of the Paris convention might be a fruitful avenue.

I don't know what others think of that suggestion because if they've asked the U.S. to respond on this and they asked other nations and gotten replies back from them I don't know if they'll share that information but they may be holding valuable information.

All right well I'll take the lack of comment as full agreement with everything I've said on that point. So let me - 48 minutes past the hour, we've been dealing with question three on developing potential considerations for IGOs and IN -just IGOs we're striking INGOs and relevant to the use of DRPs.

We've discussed the standing issue, vis-à-vis the Paris convention and we've also touched on the sovereign immunity issue in the context of how they enforced their off line rights under the Paris Convention.

So others have anything more to say on that subject? Item three or if not I think we'll move the discussion on with about ten minutes to go to the next text for this working group.

Well, I think already on the table is the notion of giving an oral report to the council at their December meeting. We discussed the possibility of having the council establish an official non-staff liaison with this working group.

And I suggested Mason might be the right person already participating and already being the one who is going to interface with the GAC on some of the issues we're dealing with.

But looking toward a call next week and moving on with a focus solely on IGOs going forward how do people think we should proceed for our meeting next week to - which I believe at this point we're really looking a are there valid reasons for IGOs to not use the UDRP or URS be it standing sovereign immunity or other issues.

And if there are can they be dealt with through some amendments, I don't want to say minor pre-(unintelligible) the scope of them but some changes to those existing (unintelligible) very difficult in this arduous road of creating entirely new CRP for IGOs.

So I think we're going to be digging deeper into standing and other issues for access to a dispute resolution process. And I don't have specific suggestions at this moment of how - of what we should focus on next week. Others on the call have views?

Mary Wong: Phil this is Mary.

Phil Corwin: Yes Mary.

Mary Wong: Actually I'll (unintelligible) to Jim and go after.

Jim Bikoff: That's fine, I was just going to say Phil that the idea of contacting this IGO coalition, do we know that they represent all the IGOs or only some of them? Could we find out more information who is on this coalition, what groups they

represent and whether they would be speaking for all IGOs or whether we would need to, you know, contact separately IGOs to make sure that we're inclusive in getting the views for all the IGOs?

Phil Corwin: Sure, sure well I don't know if we'll ever get the views of every single IGO but we certainly need to know who is, you know, and Mary had indicated in the chat that she can't ensure that group had even been established yet.

If it's not established yet it's just in formation we can't check on who is in it. But I think once it's established we can see who is in there, we can also see if they have a process where they're keeping the other IGOs informed and thereby where we might view them as reflecting the views of more than just these specific members of the group but I think it's immature to know the answer to that question.

Jim Bikoff: Well the other thing I was going to suggest was some of us may have contacts with IGOs. I know I do and maybe we can discuss next week whether any of us would be willing to approach the IGOs we know with some kind of a questionnaire that we could organize on these points to try to find out what the issues are.

Phil Corwin: Yes I think that's a good idea, that's a good idea. (Petter) I see your hand up.

Petter Rindforth: Petter Rindforth here just a short note, I think that once the group is established they are representing the IGOs and especially they are representing the IGOs that are actually active in this question.

So of course we can informally reach out to get the inputs from (unintelligible) we know about, but two issues. We at the end we need to have more formal reply from reps and then official representatives of IGOs.



And once there is an official group set that will also be the group that are specifically interested and active in this question. So I don't deny anyone to talk to people we know.

I think several of us have contacts with other representatives but the most important would be to actually get active input from the group, thanks.

Jim Bikoff: Phil can I respond to (Petter)?

Phil Corwin: Sure, sure go ahead Jim.

Jim Bikoff: I think (Petter) hit it right, once this group is established and if they do as (Petter) suggests represent all the IGOs perhaps they would be willing to have a representative or one or more representatives join this group.

Phil Corwin: Well that would be ideal from my view, from my perspective. So they could take part directly and help us shape our work rather than reacting to our work.

Jim Bikoff: Exactly.

Mary Wong: Phil this is Mary can I get back in the queue on this and other things?

Phil Corwin: Sure, sure.

Mary Wong: So to partially respond to George's, (Petter's) and Jim's points I think (Petter's) already covered quite a lot of it. My understanding is that the IGO group would function at least in terms of representative views much like the IGO representatives and coalition on the previous group that Jim and others were involved with.

They also submitted comments in relation to the public comment forum for not just the previous group but the preliminary issue report for our current working group.

So that's my understanding that regardless of which IGO is or is not in that group that that would be their function and that would be their role. Certainly it would be helpful for working group members with contacts at IGOs to funnel the same questions to them because the more input the better.

And lastly on this point like I noted in the chat and as Phil noted, we do have an action item about the IGO invitations that we can send through the GAC secretariat.

But on that note too, a reminder that we do have not just GAC members on a working group like (Gary) but as an observer we also have WIPO. So they would be kept abreast of our discussions by the mailing list as well as by our recordings and transcripts of all calls.

And so hopefully, you know, there may be better and further participation going forward but it's not to say that there is none right now.

Phil Corwin: Right, yes and WIPO of course is a very important member in this group not only is it an IGO as a UN agency but it is the leading arbitration provider for the UDRP at least.

Historically it has the most number of UDRP filings for years so it has tremendous experience with the actual administration of dispute resolution procedures relating to domain names.

So its perspective is very welcomed by our working group. Let me - it's three minutes before the hour. It's - if people have - if anyone on this call other than Mary I see her hand is still up I don't know you had something to say Mary - have something to say about what we should be doing next week please share it.

If you're not ready to share it now let's all think about what we want to get onto next week, but really I think we've made progress. We've narrowed things down to where we're just dealing with IGOs going forward.

We've unearthed some very important information about how the United States implements Paris convention rights in the off line world, which suggests that we need to build our database for how other nations handle it.

And we're going to be preceding that looking at the potential obstacles to use of the current DRPs and deciding whether those are valid concerns and if they are valid concerns how they can best be addressed.

So if folks have ideas on what they want to discuss next week to move our work forward our mailing list is active, share those thoughts on the mailing list and the co-chairs will take all that into consideration and work with staff to put together a positive agenda for next week that will move our work forward.

And Mary I see your hand up so let's give you the last word and then let's close down the call.

Mary Wong: That's very kind it was an old hand with two new points actually. The first in response to next week, one thing that the co-chairs and the working group might want to consider is whether for next week or the week after we might need to take a break for a week or so to do a couple of things.

One, to review what we've already done and as I noted previously staff will send out a summary for that. And secondly to await, you know, Mason for example engaging with the GAC and to finalize our questions for the IGOs, which can be done by email.

So Phil and (Petter) that's one suggestion that the both of you may want to consider.

Phil Corwin: You know, my suggestion is that we have a call next week and then take a break the week of the 24th if for no other reason than Wednesday, November 26 if the day before Thanksgiving in the U.S.

And I know that an awful lot of people in the U.S. are not going to be on that call because people tend to be either traveling to their Thanksgiving destinations or getting ready for visitors and I anticipate that we are going to have very low U.S. participation.

And also a lot of our ICANN support staff is all based in the U.S., they may have travel plans as well. So I would suggest that we, you know, try to make some more progress next week and then take a break the week of the 24th and then reconvene on Wednesday, December 3.

What do others think of that suggestion?

Mary Wong: Phil this is Mary.

Jim Bikoff: This is Jim Bikoff I think it's a good suggestion.

Phil Corwin: Yes thanks Jim.

Mary Wong: Okay, we will keep that on the schedule as suggested and the last point I wanted to make so I'm aware it's one minute past is, to remind folks to let us know if you plan to be on the ground in Singapore for planning purposes for our face-to-face meeting.

And the reason for that is because we do need a critical mass if you like of folks not just on the phone but also in the room. So I did send an email around, if folks could let us know as soon as they know if they're planning to travel to Singapore in February that will be much appreciated, and that's it Phil.

Phil Corwin: Yes and if you're not sure on that point but think you're, you know, but or leaning towards attending that would be useful too. If you're sure you're attending or sure you're not attending that would be highly useful information.

I hope we have enough attendance in Singapore to hold that face-to-face meeting that we don't have to put it off until the mid-year meeting, which is going to be somewhere in Latin America I'm hearing Mexico, but it's not firm yet.

I think it would be very useful for our group to have that facilitated face-to-face meeting but I do realize that attendance in Singapore maybe negatively affected those by the fact that we're returning to the venue where we met just one year ago at the time of the meeting and that it is an expensive venue in terms of both travel costs and hotel costs at least at their event hotel.

So but give us as early an indication as you can of whether you're thinking of attending the Singapore meeting. And with that I think we'll call it a - end this call and look forward to talking and next week taking off the following week and please send in your ideas for what we should focus on next week to make that a useful discussion. Thank you very much.

Man: Thanks.

Coordinator: That concludes today's conference you may disconnect at this time.

END