

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

Wednesday 07 January at 17:00 UTC

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Attendees:

George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Kristine Dorrain- Individual
Mason Cole – RySG
David Maher – RySG
Val Sherman - IPC
Gary Campbell - GAC
Paul Tattersfiled – Individual
Jay Chapman – Individual
Kathy Kleiman - NCUC
Lori Schulman - NPOC

Apologies:none

ICANN staff:

Mary Wong
Steve Chan
Berry Cobb
Nathalie Peregrine

Coordinator: Welcome and thank you for standing by. At this time, this call is being recorded. If you have any objections, you may disconnect at this time. Again,

this call is now being recorded. If you have any objections you may disconnect at this time. Thank you and you may begin your conference.

Nathalie Peregrine: Thank you very much, (Cordell). Good morning, good afternoon, good evening everybody and welcome to the IGO, INGO Access to Curative Rights Protection PDP working group call on the 7th of January, 2015. On the call today we have Petter Rindforth, George Kirikos, David Maher, Mason Cole, Gary Campbell, Kristine Dorrain, Paul Tattersfield, Phil Corwin and Kathy Kleiman. We received no apologies for today's call. And from staff we have Mary Wong, Steve Chan, Berry Cobb and myself, Nathalie Peregrine. I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you ever so much and over to you, Petter.

Petter Rindforth: Thank you. Well let's go through just adversity matters first. We had a role call and then a statement of interest updates. Yeah, I see no hands up, so let's proceed to point number two, update from chairs and staff. And actually what we presumed to start with is to discuss the Article 6ter of the Paris convention to see if this is something that can suit us for further discussion on the protection for IGOs. And before I give it over to - I can start - perhaps you can also at this point just give a quick update on our planned face-to-face meeting so we don't just drop that, losing time as it's on Friday, February 13. It's pretty soon.

So I'll pass it over to Mary, perhaps.

Mary Wong: Sure. Thanks Petter and hello again everybody. This is Mary from staff. So if we start with the face-to-face meeting first of all thanks to everyone who has let us know whether or not you'll be attending either in person or remotely. If you haven't done so, please let us know, especially if you are going to be on the ground in person in Singapore so we have a sense of the size of the room we'll need, for example. We will be assisted by a professional facilitator as we may have mentioned previously and he has worked with ICANN before and is from a company that has worked quite extensively with ICANN and is at the

moment getting up to speed on the background and some of the work that we've been doing.

There are some people who are attending who are receiving support in the form of hotel room nights either for one or two additional nights. As a reminder this is something that comes through either your stakeholder group or your advisory committee or other supporting organization, if not the GNSO so if you would require or want to request this funding, please get in touch with your respective chairs.

We have had names from some chairs but not all and we'll be following up with them. So we'll come up with a draft agenda in consultation with the facilitator and of course the chairs and hopefully send that around to everyone as soon as possible. So any other questions please let us know either by e-mail or by raising your hand now. And Petter that's all I had on the face-to-face meeting and if you like I can move on to the 6ter issue unless you would like to give an introduction or an update on that yourself.

Petter Rindforth: Well I can just say a few initial words and then I hope you can fill in. But we - although the point three today may not perfectly describe this but as we discussed in our preparatory visit I think the first step today would be to probably to discuss Article 6Ter of the Paris Convention for the protection of industrial property, especially point 1A there that describes the prohibitions concerning state emblems official hallmarks and emblems of intergovernmental organizations.

And I'll just read it quickly. The countries of the union agree to diffuse or to invalidate the registration and to prohibit by appropriate measures the use without authorization by the confident authorities either as trademarks or as elements from trademarks or armorial bearings, flags and other state emblems of the countries of the union, official signs and hallmarks indicating control (and variety) adopted by them and any imitation from a from a heraldic point of view.

And as we discussed the last meeting that I actually may have been misunderstood but this point mentioned trademarks and other emblems so to speak but I perfectly agree with other head point of views there. It can be - even if it may not be formally described as trademarks everything in this article, is practical, there are used as trademarks because they are signs that identify a specific organization.

So we'll start with this article and see if this may not be enough to refer to when it comes to IGO's protection either to state it's identified their trademarks or if you want to say that way to identify their name rights as trademarks and similar to trademarks. And then I'll turn it over to Mary or Nathalie if you want to make any other initial comments on this.

Woman:

Thanks, Petter. And so following your lead and speaking of Article 6ter we wanted to let the working group know that the research into trademark protections that was outlined and requested before we broke last year is work that staff has started to do. We've run trademark searches for a number of IGOs from the GAC list through a number of national trademark databases and we found a couple of things that we thought would be useful to highlight for the working group on this call today and that's specific to Article 6ter.

The reason why we wanted to highlight this was that even though this is probably something that's familiar to a number of working group members -- especially those who deal with these issues as a matter of law -- it might be helpful to remember that as Petter has just read and as we've put in the notes part on the right if you look at the text of Article 6ter what it really seeks to do is to have countries of the union, of the Paris Convention and as we know that also WTO member states agree to in effect prohibit the registration by third parties of a trademark that matches in the instant case a name or an abbreviation of an IGO.

So it's not something that says the IGO has to go and apply for a national trademark. In essence -- and I know I've said this before -- what 6ter tries to do is if you are a covered IGO then if you then take the affirmative step of notifying WIPO that you wish to exercise your 6ter protections WIPO then duly as according to the Paris Convention notifies all the member states of that intent. If a member state does not within 12 months of the notification object to this IGO of whoever on the list then that member state and all member states are obligated to prohibit third parties in that country from registering a trademark that matches the IGO name or acronym. So what we found in our search, and we've done for example Australia and the United States -- and we've uploaded those to the working group wiki so you can see what we've done -- is that in countries like those once those countries receive notifications from WIPO of a 6ter protected IGO -- and I believe these notifications are sent out once or twice a year -- then a certain serial number according to a particular category -- I think it's 90-blah blah blah in the case of Australia and 89-such and such in the case of the United States -- is assigned to that IGO and it's put in the trademark database such that anyone whether it is a potential registrant or a trademark examiner searching that database will come across that particular notification.

And based on that notification in the United States for example according to the trademark practice manual then the trademark examiner would have to refuse a third party who tries to register a trademark that matches that IGO name or acronym. There are a few more things that we can talk about but at this point Petter we thought that might be something that would be useful to flag for the working group as we start to talk about issues such as standing and the extent to which IGO's are protected under national laws.

Petter Rindforth: Thank you. Petter here. (Unintelligible) from the discussion list. I just saw that you also noted that not every IGO on the approved GAC list has sought 6ter notification and protection and in addition some of the IGOs have external notifications only for their clear names like United Nations while others have sought protection only for their acronyms.

So, but I - despite that I would say that the 6ter notification is a clear indication of what each IGOs actually be as the (broad) name protection. So if it's not used and registered by the 6ter notification it could be something that we will not take in consideration when we discuss this external protection and the dispute.

So Phil please.

Phil Corwin: Yes thank you Petter and thank you Mary for the summary and happy New Year to our working group members. The three quick take-aways I get from the review we've been conducting of the nature and scope of the Article 6ter protections is that one they're not self-executing to get the protection against the registration of trademarks that are identical or confusing to the IGO's name or acronym. They actually have to take the step of notifying WIPO of their request for such protection which then goes out to the signatory nations of the Paris Convention and to the WTO member nations.

Second that it is a right. It's not identical to a trademark right but it's a right within the trademark system. It's not a right that's based in some other body of law. And that third and that I think it should be noted it may be relevant to our future discussion of sovereign immunity that even a nation that's a WTO member or a signatory to the Paris Convention may object and refuse to give protection within their borders to a particular name or acronym.

I don't know how much that has occurred. We might want to look at that. But there is some discretion left to individual sovereign nations on what to do when they get that WIPO notification. And I'll stop talking there.

Petter Rindforth: Thanks. Next George.

George Kirikos: Oh, I just want to point out -- George Kirikos speaking -- that Mary had said earlier that the country's trademark systems would block marks that were on

the IGO list or the Article 6ter database and that's not strictly correct. It would be only if they were of a type that would be confusing. So Paragraph C of the Article 6ter treaty spells that out. That's all I wanted to add.

Petter Rindforth: Thank you. Kathy? Kathy? Sorry, we can't hear you.

George Kirikos: She's waiting.

Man: She posted in the chat room that she's still waiting to get on a bridge so we may want to come back to her.

Petter Rindforth: Okay.

Coordinator: And one moment, please stand by.

Petter Rindforth: Yes, Petter here. Something about we're - unclear it's actually - it's a lead. It's not an automatic protection. It's a lead for actual work done by the respective IGOs that wants to protect their names. And of course apart from this those that also have pure traditional trademark protections they can use the as they are today. Yes, Kathy.

Kathy Kleinman: Hi, can you hear me?

Petter Rindforth: Yes.

Kathy Kleinman: Thank you very much. Happy New Year everybody. Sorry about that, I was waiting on the bridge. Here is my question. It has to do with Mary and it's mostly for Mary. And the update was great but I wanted to do -- and I know George was talking about it too. I think what we really need to zero in on and I'd love your guidance on this is exactly what evaluation National Trademark Offices take under the 6ter when someone applies for something that is an exact match or similar to the IGO mark, that as Phil pointed out the mark that

doesn't exist just on behalf of the IGO but because they've asked for special protections.

So I really think we should look closely at that because I think that's where the rubber really hits the road. It's my understanding but please stop me if I'm wrong. So we have the step where the IGO asks for this additional protection and the countries are notified. And let's say a country does give, like the US does give a protection. Then it's my understanding that that protection is not complete or automatic or absolute, that there is an - then someone comes to the US trademark office asking for a trademark on something like WHO and that then there is an evaluation of whether there is a confusing similarity or an overlap of goods and services.

But could we talk about that - if anybody thinks this is a waste of time let me know or please let the chair know but I would really love to know how the US and other countries go through that evaluation process and whether they can say yes and whether they can say no. Thanks.

Petter Rindforth: Thanks, Kathy. Petter here. I think that we can off of the - when we discuss the 2007 draft, we can also come back to this because the recent proposal there somewhat relates to this but as to have a reply on the current situation please Mary.

Mary Wong: Thanks Petter. And Kathy I think that really is a fundamental and excellent question. I was actually trying to pull up the exact language from the US Trademark Manual of Examining Procedure which you or (Lori) or others may actually be more familiar than myself. It does come up. Obviously in the US and Australia like I mentioned when the notified IGO is put in the database that will come up in a search either by a prospective registrant or certainly by the trademark examiner. And as part of the TMEP in the US that becomes part of the trademark examiner's pool of resources if you like.

And they therefore have to refuse the attempted registration if it does in fact fall within the scope of 6ter which as George noted is not absolute. So for example a third party has to be using it as a trademark and has to be suggesting a connection with the IGO and so on. I believe -- and we can check this -- I believe that there have been a number of cases before the trademark trial and appeal board in the United States about these types of issues.

So it may well be that it's not automatic, it's part of the trademark application process. I hope this helps.

Petter Rindforth: Thank you. Petter here again. I just wanted to briefly refer to the draft text resolution procedure that actually someone mentioned this on Page 7 Point A, applicable disputes that it says that Point A1, A, B and 2 what you can as an IGO refer to is that the registration were used as a domain name or abbreviation of the complainant that has been communicated under Article 6ter of the Paris Convention is of a nature to suggest to the public that the connection exists between the domain name holder and the complainant so that it's not automatically . It must be so to speak a risk for confusion there.

Or to mislead as to the existence of a connection between the domain name holder and the complainant or on the ground that the registration were used as a domain name of a name or aggravation of the complainant protected under an international treaty violates the terms of that treaty. That last one I think may be a little bit too broad but at least point A and B is connected to the use and that it actually must be some kind of more or less use misleading to connect the domain holder on the IGOs. Yes George.

George Kirikos: George Kirikos speaking. And I just wanted to point out that the United States is obviously the most important trademark registration system in the world but in many parts of the world they do not review trademark registrations. They just have like a filing system.

The European lawyers would probably know more than myself about that. That would probably set up a mechanism where either those matching marks automatically get registered or they'd get blocked and then there would have to be an appeal mechanism to the national courts. Because I wanted to point out that the language of the text says the countries of the union so it seems that it's not like the federal government of each country.

It's presumably the national courts would be responsible for deciding the issue. I just wanted to point out those two different issues that it would be the national courts of each country but also that there isn't necessarily a formal review prior to registration. Some of the countries just automatically register the marks without any review per say.

Petter Rindforth: Yes, thanks George. Petter here. As I said, for instance, when it's come to European community trademarks, the only examination is formal examination and then it's passed on to registration opposition procedure where everyone within the European Union that's had some kind of name protection -- either it's trademark or company name or family name or copyrighted protection -- can oppose.

So yes, that's a good example of what you just stated in this aspect. Okay and here we have drafts of the staff report and a draft IGO domain name dispute resolution procedure that I mentioned and that we have discussed very briefly before. And of course it's from 2007 and much has happened after that when it comes to both practice and dispute resolution procedures but it's an interesting good initial draft to at least look at and further discuss and see if this is something that we can use in our further work whether it will be as an external so to speak dispute resolution policy by its own or if we can use some parts of this just to add to the UDRP on that procedure or US procedure to clarify the trademark protections for IGOs.

So I open the floor for comments here. I know that you at least before Christmas had a lot of it. Yes George please go ahead.

George Kirikos: George Kirikos here. I posted my thoughts on the 2007 report on the mailing list in mid-December and I've got a link in the chat room so I won't repeat everything but I didn't really think of it as a really useful analysis except as a signal of what not to do because it was a very poorly received proposal back then. They have changed various things in an ad hoc manner. There wasn't really any research behind the proposal. It was more somebody just going through and making suggestions as a first stab on what they thought might work.

So I wouldn't give much weight to the 2007 report. I have more detailed thoughts in the mailing list so people could read that again if they had any questions.

Petter Rindforth: Thanks George. Petter here. Yes but I presume that you can - you have nothing against the reference to Article 6ter in that report. Is this at least something I think that we can use in our further work?

George Kirikos: George here. Which paragraph in particular and page number are you - of the 2007 proposal?

Petter Rindforth: It refers to when it comes to the identification of IGOs. It refers to Article 6ter of the Paris Convention.

George Kirikos: George here. I wouldn't have much objection to the use of Article 6ter because in my opinion most of the UDRP panelists would already consider that as a common law mark and so that's just further evidence of the common law mark so I wouldn't have any issue with that per say.

Petter Rindforth: Thanks. I just wanted to make it clear. Okay Mary, please.

Mary Wong: Thanks Petter. And I'm not sure that my comment was specifically addressed to your question but speaking generally I think you noted this as well in your

earlier remarks this draft was over seven years ago and was prepared for a different group and a different purpose so I think our intent in having it available to the working group was to have the working group have a starting point for its own discussions, not so much to adopt the text or not. So for example I think as you and Phil pointed out and as you did what we're looking at here on Page 7 I think it is, is a very faithful to some extent following of the 6ter grounds.

For example that 6ter is physically referenced here and the limitation is to suggesting a connection between the domain name holder and the IGO in question. So we were thinking of this more as if the working group -- and this is still a big if at this point -- were to go down the path of either amending one of the existing procedures or either of thinking of a new one whether on the standing issue for example what's in this draft might be a helpful starting point.

On a slightly separate point going back to an earlier point of discussion I've posted in the notes part on the right on what I think is the applicable language from the United States PTO's trademark manual of examining procedure as to what happens after the IGO notification from WIPO is received by the US PTO and what the trademark examiner has to do or is supposed to do when that happens, when there is a search and there is somebody trying to register a mark that looks like it might incorporate or be an IGO name or acronym. So two points and hopefully they're both helpful. Thanks.

Petter Rindforth: Thanks, Mary. And as said it's Page 7 there, Point 4A, applicable disputes where we have this clear reference to Article 6ter and as I said before we also had this examples of where they are so to speak infringements. And whether we independently - if we create an addition to the existing UDRP or we - or it will be separate dispute resolution procedure I think the reference to the Paris Convention we can agree upon. Then of course if we do it the easy way and add this reference to clarify under the existing UDRP then we should also use the rest of the UDRP without any differences.

And what we have to consider, but on this - if this would be enough for IGOs or if we should look at something like the A, B and 2 here in Point 4A to dread to the reference to Article 6ter.

Phil Corwin: Yes thank you Petter. And I just wanted to chime in to my own views as to why it's useful to review this document from 2007 and clarify it does not mean that in any way we expect or are pushing the working group to move toward establishing a second - a separate CRP or that if we did that that we would use this as a starting point for a model. It's just that we thought that the working group should go through this to be familiar one with this document which is a historic document from ICANN staff that's relevant to our work so that we understand.

And two so we can at least in reviewing it get some sense of what the positives or negatives and the issues arising would be if we were to go down that path. So I just wanted to clarify why I thought it was useful to go down this road today. And since I see George is next to speak, has his hand up, that goes to the second thing I wanted to raise. I saw in the chat that George had noted that he thought on the existing UDRP that an IGO's notification to WIPO asserting its rights under the Paris Convention would be considered as a common law mark already.

So I was wondering if I understand that correctly what his thought would be if we just were to suggest amendment of the UDRP just to clarify that it should be regarded in this way and that way assure that notification in and of itself without follow-up trademark registration on one or more nations would constitute a valid basis for bringing a UDRP. I'll stop there and return the conversation to others.

Petter Rindforth: (Unintelligible). And from I see from the chat room. I agree with George that - and Mary also that it contains - includes other things that just protected word marks and flags, et cetera. And I presume that in case we have - there is a

dispute of course you can't really refer to a pure figurative mark as a flag in order to protect from a domain name. If not the combination of the flag in some way a well-known also as a word trademark. George?

George Kirikos: Yes I just wanted to follow up on two things. First as I noted in the chat room 4A really changed the legal standard compared to the UDRP making it a lot simpler to make - to win a dispute. They changed the and standard which required all the legal tests to be passed and made it so that the burden is only that one task needs to be - one burden needs to be met. So it's like the or versus the and. So that was one of the controversial reasons why this proposal didn't go anywhere back in 2007. So that language would need to be really redone completely if this was to go anywhere.

But going back to Phil's question earlier whether we can explicitly add the Article 6ter to the existing UDRP language I'm not really convinced that it needs to be there because I think it's more a matter of just educating IGOs that they don't necessarily need any registration per say even in the Article 6ter database to file within the UDRP system.

So they would have a common law mark and whether - and I think almost all the panelists would recognize that. So it's more just educating the IGOs, maybe having a WIPO view on it within their - they have like a section of their Web site where it has panelists' view on what constitutes a common law mark, maybe just pointing them to that rather than making any change in the UDRP in that respect. I think in the end all we're going to be left with is the immunity issue and that's why I called for that straw poll earlier in December which didn't go anywhere. It was controversial. But I think I'll just leave it at that.

Petter Rindforth: Thanks, George. And I have to actually say that you're fully right when it comes to the law. I've only seen this before when it comes to .eu disputes where there is a lot of or and then rather easy to actually win the case when you're a trademark holder. No more said about that system. So I think we can

fully agree and I also see from that chat room that there must be ands. If we see the reason to use any of this specific specifications of A and B and 2 at all.

When it comes to educate IGOs that's a possibility of course but also I think that we also need to show that we have actually done something, an effort for IGOs and not just leave it and say well you can't read the current policy.

Obviously there is a view that there are problems and it must be clarified. And I think if we don't do anything else in creating a new policy or something like that, the - at least what we can do to actually see that we have taken care of their difficulties is to especially add a clause somewhere with reference to IGOs and to their specific protection related to the Paris Convention. And I see no hands up, so (unintelligible). Yes, let's see, George - Kristine do you want to comment on this?

(Kristine Sumner): Hi this is (Kristine Sumner). I have to admit that I looked away to look at an e-mail a moment ago. What was the question again?

Petter Rindforth: If - we talked about the education aspect. If we should add a clarification to the dispute resolution procedures as suggested by someone as to clarify, to educate IGOs that they can actually use the current system as it is.

(Kristine Sumner): Oh sure. Yes, this is (Kristine). Yes, I think it really becomes a marketing issue because there's absolutely nothing in the current UDRP that says it's only limited to certain people or certain types of brands or certain trademarks or only people who are selling something, that sort of thing. So yes, I think it really becomes a marketing issue where we - and I don't think it takes a lot of effort for the IGOs to be reached with an e-mail or with some other information. I mean obviously the UDRP policy itself is a document that you're going to reference when you get to the point of filing.

They need to know that that's even an option to begin with and I think that's where you come up with the marketing issue and you have to say yes, that IGOs routinely file under the UDRP, they win under the UDRP. You just have to sell the same thing everybody else sells and I don't know that that's - I don't know that inserting education into the UDRP itself is the place to go but I am absolutely a fan of marketing.

Petter Rindforth: That's - we have you online. Petter here. Thanks for that comments. What is your point of view of at least specify that protection of name protection under Article 6ter of the Paris Convention if also connected with this trademark protection in the wider point of view.

(Kristine Sumner): I don't know that there are any UDRP decisions that have actually referenced the Article 6ter list. And the ones that I've found they have not. But the panelists are pretty bright people and they have a sense of is a company's name being used as a trademark in the trademark sense and by company I'm referring generally to any IGO, business -- et cetera. Is it being used in that trademark sense?

The UDRP as you know is not limited to just marks that are registered anywhere, with a federal authority or with the Article 6ter list. So I think that ultimately yes, panelists could be educated to include the fact that there are lists of places where there are legitimate organizations that have rights for their name but I can't think of a single panelist off the top of my head that wouldn't be able to figure out very quickly based on the complaint this is an inter - international continental organization.

And then also Kathy has a question (unintelligible) Kristine is education of panelists an issue here, too. And yes, I guess I tied my answer to that as well and that is absolutely we talk about - when we do panelist trading we talk about looking at the different types of merch, looking at the actual use of where it claimed to be a trademark.

Panelists routinely reject the notion that personal names are not trademarks because they really are looking for that sort of - that culture, that quality of trading some sort of service or good under that name and personal names really fall into a gray area. I've never seen an IGO or any sort of organization whether it's an IGO or not fail on the trademark grounds just because they haven't jumped through any particular formalization hoops.

Petter Rindforth: Thanks. Phil.

Phil Corwin: Yes Petter. Yes, two points. On the discussion we're having I have a similar view to what you stated where I think being sensitive to the politics surrounding this issue within ICANN and we should never do something just for political purposes but this is a hot button issue and if there's a way we can come out with a report that recommends doing something rather than just saying everything is - nothing to look at here, just move along, they can protect themselves.

Now something might be - maybe we engage in discussion with WIPO and say what's the best way to clarify for panelists and to get the word out to IGOs that once they've invoked their Article 6 tier protections that's going to be viewed as a common law mark and as a basis for standing.

Is a clarification of the best way and a communication to WIPO, from WIPO to IGOs? WIPO of course is both the leading arbitration group for UDRPs although they chose not to get involved with URS and is an IGO in and of itself, a UN agency. So get their input what's the best way to do this. Or would it be a simple clarifying addition to the UDRP just to clarify that an IGO communicated name or acronym should be considered a common law mark for standing purposes.

I think we can deal with that but I think it's better if in the end we come up with something affirmative to be done rather than just saying everything is okay. I wanted to pivot - I'm not trying to cut off discussion of this issue but I

wanted to pivot to one other consideration that arises from the page that's - Page 7 where in this 2007 staff report the A1 is that one of the grounds for bringing the action would be that the registration or use as a domain name of the name or abbreviation has been communicated under Article 6ter of the Paris Convention.

So even in this 2000 staff draft they were saying that the IGO just being an IGO was not sufficient, you had to do something affirmative to invoke your Paris rights. And I raise that because Mary had made the co-chairs aware that in March 2013 in response to a March 2013 communication from the GAC they had seemed to be of the view that just being an IGO established by treaty and having received a standing invitation to participate as a UN observer might be sufficient and I wouldn't share that view.

I think the 2007 report got it right on that grounds that without the IGO taking some action to invoke its rights which in turn would get their name on the protected list for national trademark authorities that they wouldn't have standing without taking that minor action required to invoke their right.

So I just wanted to point that out that that was a part of the standing provision in this 2007 staff paper. Thank you.

Petter Rindforth: Thanks. Before I proceed to Kathy, I saw George notes on the chat something that could be added to for instance the WIPOs overview site where you search for domain disputes and different thoughts and bullets. And that's of course (unintelligible) has a similar (unintelligible) and of course that's one of the use that should be pointed in so it could be easily reachable also, this kind of disputes.

And as (Kristine) said all good but that still doesn't reach them with UDRPs and option relying on an IGO finding the UDRP and saying well I guess we can't use this. Okay, I saw Mary's hand up. Would you like to make any comments on there?

Mary Wong: I would Petter. Thank you. Hi everybody. It's Mary again. I'd like to follow up on Phil's last comment and in some way it loops back to something George said earlier. In terms of the GAC list, the 192 IGOs, Phil just mentioned what the GAC noted was the criteria for including the IGOs on that list and not all the IGOs on that list necessarily have taken the affirmative step of notification under 6ter. As George notes in the chat the scope of this working group was limited to that GAC list.

I would like to suggest though that should this working group in its deliberations on principle -- and this is hypothetical of course -- figure that any protection under any creative process whether it's amending the existing processes or a separate process has to depend on the IGO having taken that affirmative 6ter step then obviously this may not just limit some of the IGOs from the GAC list but might open it up to others.

My suggestion as staff is that I don't think we should let the GAC list itself prevent us from discussing what the appropriate substantive principle should be but we should certainly be aware of the implications as George has noted.

And on that point too Petter whether it's amending the UDRP or a separate procedure what we have here on Page 7 which is the 4A of the draft text -- and the UDRP itself has got its own 4A -- what we really see here is the distinction between using the UDRP amended appropriately and a new proceeding because here the standing requirement and the substantive grounds you don't see that face legitimate rights and the kind of language that you would have in the UDRP.

Instead that is replaced as Phil noted by the language of 6ter itself. So going back then to an earlier comment I think Kathy or someone else made. In terms of whatever it is that is the ultimate language should we go down the path of a separate DRP? You are going to be requiring the panelists to

engage in some sort of decision making and investigation that's of a substantive legal nature. And those were my two comments. Thanks.

Petter Rindforth: Thank you. And as Kathy mentioned I see you on the speaking list so please go ahead.

Kathy Kleinman: Thank you very much, appreciate it. And I think this is a fascinating discussion and I really feel like we're moving forward. I learned a lot from listening to (Kristine) and I wanted to share that that regardless of what direction we pick -- education or modification of UDRP rules -- I think there is a lot of work for this working group because I don't think one path or another - I think it's interesting to have options right now and one way or another I think we're going to wind up at the end of the day with more IGOs knowing what their options are and how to work with that. I can share that when the UDRP was drafted we were not thinking of 6ter at all.

I don't think any of us knew about it. It was never raised in the discussions, at least the ones that I was at. So it seems like one way to do things before we even decide if we're - what the next path is, is maybe to look and let me just throw it out, see if other people agree. The fact that IGOs have already gotten some protections under the UDRP is interesting and the idea that the UDRP - I would like to compare, work with others to compare the UDRP to the 6ter, see what's missing or what the links or - or what the gaps are because I'm not sure there are any yet.

So anyway just a lot of different thoughts, a lot of good things have been thrown out today and that there seem to be a lot of different options about how to proceed. Thanks.

Petter Rindforth: Thank you. Mary?

Mary Wong: Actually Peter I'll go after Phil. I'll cede to him first.

Phil Corwin: Thanks Mary. I'll be very brief because we're coming up at the close of the hour. Two quick comments. One, the reason why following up on the observation I made before I think why we would want to require the WIPO notification is it follows up on the - the UDRP requires a trademark registration.

It requires an affirmative act to establish a right, a protection. And part of that is fairness to the registrant, so the domain registrant has some database to refer to and isn't - which would go to the issue of intent which is part of bad faith registration and use.

And the second part is that when I compare what they put in this 2007 draft where they picked out the Paris Convention language rather than using the UDRP language, confusingly similar bad faith. Actually I think the UDRP may be broader and may provide broader protections than the Paris Convention but I think Kathy's suggestion that we compare them side-by-side to see if just using the UDRP encompasses all the Paris Convention protections is a good idea. That's it.

Petter Rindforth: Thanks, Phil. So Petter, just a quick comment on the UDRPs. It's not just registered trademarks. It's also trademarks that is used and known. So I mean it's - even if of course if it's part is in the same country and you refer to registered trademark as the complainant, you can - you can often, of course, refer to - it's easy to search in the US PTO database or whatever it is to see that it's a registered trademark but otherwise you refer to that as it's a well-known and well-used trademark in your specific business.

So that can be compared to these kind of name protection as we also speak to. Okay. Mary.

Mary Wong: Thanks and I'll be real quick. This is just a follow-up to Kathy. Just in terms of a cursory look between what we have here on the screen for example and the UDRP I would venture to suggest that the link really is with the language

of the UDRP that talks about confusingly similar. So we don't see anything in 6ter itself or in the suggested draft text which Petter notes we don't really have to follow at all that goes on to talk about something like bad faith.

Again that's not to suggest the working group could not but just to say that the most immediate comparison if you like is probably as between the suggestion of a connection with is the 6ter language and the confusingly similar ground under the UDRP. Thanks.

Petter Rindforth: Thank you, Mary. Phil?

Phil Corwin: Oh, sorry. I forgot to (unintelligible).

Petter Rindforth: Yes. Okay well thank you all for a very interesting and effective discussion today and we are actually two minutes past so I think that if not any one of you would like to make a final comment I thank you for today and yes, what's the plan for next week? Let's come back to you on this as soon as possible, hopefully before the end of this week or at least a couple days before our next meeting so that we can be all well prepared. Again thanks all of you for today.

Nathalie Peregrine: Thank you Petter. Thank you everybody. And if we can just stop the recording now and sign off.

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