IGO-INGO Access to Curative Rights Protection Mechanisms Working Group

TRANSCRIPT

Wednesday 21 January 2015 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
Jay Chapman – Individual
Kathy Kleiman - NCUC
David Heasley – IPC
Nat Cohen – BC
Alexander Lehrman -

Apologies:
Paul Keating
Paul Tattersfield

ICANN staff:
Mary Wong
Steve Chan
Nathalie Peregrine

Coordinator: Thank you. This call is now being recorded. If you have any objections, you may disconnect at this time.

Nathalie Peregrine: Thank you very much, (Alia). This is Nathalie and I'll just do the roll call. Good morning, good afternoon, good evening everybody and welcome to the IGO INGO Curative Rights Protection PDP Working Group call on the 21st of January, 2015.

On the call today we have Petter Rindforth, David Maher, Phil Corwin, Mason Cole, Jay Chapman, Kristine Dorrain, George Kirikos, David Heasley and Val Sherman.

We have a tentative apology from Paul Keating. And from staff we have Mary Wong, Steve Chan and myself, Nathalie Peregrine. I'd like to remind you all to please state your names before speaking for transcription purposes.

Thank you very much and over to you, Phil.

Phil Corwin: Yes, and good morning. Phil Corwin, for the record. I'm co-chair of the working group, along with Petter Rindforth. It's my turn to chair today's call, though I will note that if we do get to the proposed thought experiment in terms of proposed first stab at amending the UDRP to make clear that IGOs have standing if they've exercised their Article 6ter rights through WIPO notification that Petter will lead that discussion since he prepared that document.

Is there anyone with update to their Statement of Interest? I gather not. I just wanted to note two administrative things before we get into substance here. One, I think everyone's aware that we didn't have a call last week because many of us were attending a very large domain industry conference taking place in Las Vegas and it would have been difficult to be on the call.

And, second, we will have a call next week but our call next week will focus on getting input from the members on how they want to structure our full day face-to-face meeting that's going to be taking place in Singapore the day after

the formal conclusion of the ICANN meeting, I believe that's on Friday the 13th. Lucky Friday the 13th will be that meeting.

So we're going to focus on how to best structure that meeting. Mary's been talking to the professional facilitator who will be joining us there. She can give us some feedback on his behalf. And so it'll be a planning meeting next week for our full day meeting in Singapore.

And I see that Kristine has to cut out early. Just checking the chat room here. And let me just not answer that call. Sorry about that, my cell phone started ringing.

All right so what we're going to do first is, as everyone recalls, we sent out the questions to all the SOs and ACs. We've gotten two responses so far, although their deadline is next week for that. One response was from the Security and Stability Advisory Committee to advise us they had nothing to say on this subject; probably not surprising given their focus which is primarily technical.

But we have gotten a response from the - and let me bring it up - and, Mary, someone, do we have that small - IGO small group response? Can we display that? There we are. Okay. And it's untethered so anyone can scroll through it.

So what I'm going to do now is this is a very significant response as it is from the selected group of IGOs which is focusing on this issue within ICANN and that we're going to have to try to satisfy to the best extent that we can base on our - the resolution that's guiding our work and our consensus view on what, if anything, needs to be done to assure that international governmental organizations have the ability to bring at least UDRP and URS cases when they feel that their rights have been infringed by a domain name registration and use.

So what I'm going to do is quickly take us through their response. I will say there's a bit in here on sovereign immunity which affects the appeals process. I will note it when we get to it but I think our discussion today should be mostly focused on the standing issue.

I think it's generally the view of the chairs that we should not really get into the heart of the sovereign immunity appeal issue until we've decided whether or not we need to amend the UDRP or URS or on the alternative do nothing or create a new curative rights process. So it would be better to consider appeal and sovereign immunity once we know what we want to do on the basic question of what process we're dealing with.

The first question they're responding to - and I think this question might have been phrased differently if we had sent it a few weeks later after gaining a better understanding of Article 6ter among ourselves.

It says, "Given that many jurisdictions, IGOs benefited from Article 6ter only by registering trademarks that they'll have to defend in a national court, what are the specific problems and concerns faced by IGOs in relation to UDRP and URS requirements that in order to file a complaint they agree to submit to the jurisdiction of a court of competent jurisdiction?"

Now that question obviously deals with the - focus on the sovereign immunity. But it's really - in this state, as we don't have a complete picture yet of what national jurisdictions require to protect Article 6ter rights. What we do know is that when an IGO registers their rights with WIPO, WIPO passes that information along to all the nations that have signatures through the Paris Convention and to all nations that are members of the World Trade Organization.

And that their trademark authorities are then supposed to block the attempted registration of trademarks that would have interfered with those rights under Article 6ter. So it's not correct. The statement in the question that they have

to register trademarks is not correct; they do have a type of trademark protection, you know, to the extent we know in the United States and probably in other countries just by notifying WIPO they don't have to register trademarks.

On the other hand, at least in the US, and we're waiting to see if the policy has changed, although I doubt that it has, if an IGO believes that your trademark authority has failed in its responsibility and has permitted the registration of a trademark that infringes on Paris Convention rights at least in the US they've been told the way for them to pursue their grievance is to file a Lanham Act lawsuit.

So - and in reading this as I come to understand it better, we have to parse the litigation question into two things. One is that in the US to pursue an alleged violation they have to access the national courts. But that's somewhat different than having to defend in a national court when a domain registrant either vitiates a UDRP or URS or appeals one through a filing.

So the difference would be in the IGO initiating the litigation versus defending litigation initiated by another. At least that is my understanding as I gain greater familiarity with the intricacies of this issue.

All right, so they begin their reply by saying, "The question appears to be based on a misunderstanding that trademark registration is required." I think we agree with them on that point.

And let me try to get through a few - let me try to get through this first answer and then we'll open it up to questions and discussion and then move on to their answer to the second question. I just want to preempt any hands up that keep us from piling through this.

They ask are we aware of such jurisdictions; I don't think we do. They do note that some countries record IGO identifiers in their trademark database. You

know, I think, again, we need more research but I would think that the only effective way for most countries to protect IGOs against infringing trademark registrations once they've gotten WIPO notification is to either record the name and the abbreviation in the trademark database or some other database they have to compare attempted registrations. Otherwise I don't see how they could prevent them from occurring.

Then they repeat provision of Article 6ter that we're all familiar with. And go on to note that the Paris Convention provides preventative and curative protection, which I believe is consistent with our understanding that we've developed of Article 6ter.

And the obligations are on the signatories, not on the IGOs to ensure that they're protected. I think that's correct but I would add it really doesn't go all the way because, one, sometimes an IGO may believe that a trademark has been allowed to be registered which infringes their rights when a trademark authority has not felt that way or at least not identified it.

And, second, they fail to note that nations are free to opt out of protecting any particular mark if they notify WIPO. That's something else we've learned in our own review.

They go on to say that their concern arises from the manner in which 6ter is implemented in national legislation. You know, insofar as I know in the US I don't even know that there is legislation; it's simply a decision that's been made by the Patent and Trademark Office about how they're going to deal with this.

They do say that they'd have difficulty meeting the UDRP and URS standard requirements of holding a trademark registration. That's an issue we should get into when we look at Petter's concept paper on how the - a UDRP might be amended to clarify that they have standing through their Article 6ter protection.

Then they go on to say that there's a question that the - about submission to court jurisdiction that goes to the heart of IGOs independent legal identity and ability that they're not required to defend their rights in national court. I would differ with that.

You know, and again we just have the US position to go with. But the US at least has said that if you believe a trademark has been registered that infringes on your rights your exclusive remedy is to go after it in a Lanham Act lawsuit. Whether that - I think that would probably equate to defending their rights and it requires access to a national court.

But again, as I noted before, there may be a difference when you parse this between an IGO filling litigation and an IGO being brought into litigation filed by another such as a domain registrant. We'll have to deal with that distinction and whether we think it's meaningful when we get to the sovereign immunity issue.

Then they review their privileges and immunities including immunity from legal process which, again, I believe is immunity from being sued. But I think we can probably find examples where they have access to courts on their own volition and they go into the reasons why they have that immunity to ensure their independence from any single state. And I think we recognize and respect that but we're trying to deal with how that should be implemented in the domain name system.

They note that when they - when an attempt is made to summon an go before a national court, which I believe would be equivalent to them being sued by another party, IGOs regularly raise their immunity including the intervention of competent authorities which are usually the foreign ministry of the relevant state.

And they note that enforcement and misuse of IGO identifiers is responsibility of states signing the Paris Convention or the World Trade Organizations TRIPS Agreement. I think that's - TRIPS - Intellectual Property - I forget exactly the meaning of that term but we can look it up.

They state toward the end here that submission to UDRP and URS as currently drafted would necessitate waiving their immunity from legal process.

And I would note in passing that if they've registered a domain name they've had to agree to be subject to UDRP or URS. I don't know if every IGO is registered one or more domain names but that article weakens a bit in at least they've signed a contract of adhesion where they've committed to abide by UDRP and URS if they're in a new TLD if someone brings a claim against them for infringement.

And finally, they note that these concerns are fundamental to their existence and extend beyond the domain name system. So I'm going to stop there and, again, most of this goes to the sovereign immunity question which I don't want - I think we should put off a really detailed debate on that until we decide on what we're going to do about amending or not amending the UDRP and URS or creating a new process because to - you can't really discuss how sovereign immunity should be treated in an intelligent way until we decide the first question.

But anyone have anything to say here about the standing issue that they've said correctly that they don't have to register a trademark to protect their rights in individual states that are signatories to the Paris Convention or to the TRIPS Agreement.

So any discussion here of the standing requirement and in particular, and this ties into what Petter has done, whether at least a clarification might be needed that a IGO's notification to WIPO of their Article 6ter rights is sufficiently equivalent to having a trademark or service mark to provide

standing for those existing curative rights processes. Any commenters on that?

And, George, not surprisingly, you are the first to jump in and please go ahead.

George Kirikos: George Kirikos speaking. Yes, as I pointed out in my email today I think that I agree with you that you have common law rights that their Article 6ter registrations are evidence of. And even without the Article 6ter registrations, you know, they could rely on common law marks.

And as I pointed out in the chat room half of the currently-reserved IGO names in the ICANN list are not in the Article 6ter database. So, you know, clearly, you know, those names are significant in the common law and ICANN is...

Phil Corwin: Can I just interrupt? I just - I'm surprised - would we presume that they have simply failed to notify WIPO and that's the reason they're not in the database? I'm trying to figure out a reason why half the names that ICANN has identified of IGOs aren't in the Paris Convention database.

Mary Wong: Phil, this is Mary. Just to jump in here that I typed a response in the chat that may explain this in the sense that the GAC did not rely on the 6ter database in compiling its list of IGOs.

Phil Corwin: Okay. Well then we're going to have to deal with that because we've been focused pretty much exclusively on rights derived from Article 6ter. And if GAC is identifying IGOs which are not protected under the Paris Convention I'm - that's a whole separate issue that we're going to have to at least look at a little bit.

I'm sorry to interrupt, George, I hope I haven't interrupted your thought process. Why don't you go ahead?

George Kirikos: Oh, (unintelligible) again. Yeah, my thoughts were relatively complete so I kind of agree that the common law marks are, you know, are sufficient to - under the current UDRP and so that's something maybe that the IGOs aren't aware of and they could be educated on.

Phil Corwin: Yeah. Yeah, and I see Kathy has asked a question, "Where did the GAC get its IGO list?" And Mary in her comment in the comment room - in the chat room says that, "The GAC identified IGOs as intergovernmental organizations having international legal personality protected against one or more international treaties."

So the GAC has apparently brought in IGOs based on treaties other than the Paris Convention. Would that be correct in that, Mary? Is that the correct interpretation?

Mary Wong: Yes, that is correct. We don't know of course whether 6ter formed part of the internal GAC discussions but the GAC expressly said in its letter when it sent the list of IGOs that that was the criteria. I believe the word they used was "criteria" for including IGOs on their list. And you're right, Phil, that's something that we will have to deal with down the road.

Phil Corwin: Yeah, why don't you just note that as something we may want to devote some time in Singapore to looking at. But I think the big group of IGOs we're looking at we're basing this on 6ter and we can just, you know, have a place holder for IGOs under other international treaties and deal with that later. I don't think - I think the analysis - well, I don't even want to guess if the analysis is similar. Petter, please go ahead with your comments.

Petter Rindforth: Thanks, Petter Rindforth here. Well, first I think we should still focus on 6ter and - before we add something else because that's - everything we add on that will cause more problems to identify the right groups of interest.

What I wanted was just to raise another question that struck me when I saw the comments on Point 2 where they - they're quite clear that, for instance, they say it is worth emphasizing here that IGOs seek only to prevent abusing - misleading use. And they talk about to prevent it several times.

Just wanted to remind about their remedies of the UDRP and URS, at least of the UDRP that it's limited to requiring the cancellation of a domain name or the transfer. And one thing that struck me is that it seems that they - what they are interested of is the cancellation of a domain name and not particularly of the transfer.

And of course if we talk about adding something to the URS this will be a less problem. But just wanted to raise the question if this is the way we should read it - their reply that they're actually quite satisfied with just a cancellation which probably makes it more difficult for us because then we can just - not just simply refer to UDRP as it is today. Thanks.

Phil Corwin: Yeah. And was that, Petter, was that comment in regard to their answer to the second question?

((Crosstalk))

Phil Corwin: I'm trying to identify the portion of their response that you were referencing in your...

((Crosstalk))

Petter Rindforth: Oh yes, just one note I made on the Point 2 when they are trying to explain what they seek to reach by amendments; they only seek to prevent abuse and misleading use.

I can't see anywhere in their reply actually that they refer to anything where there's actually a transfer; they also refer to the possibility if they have to stop

uses of trademarks, etcetera. So it seems that they are focused on more the cancellation rather than also...

Phil Corwin: Yeah.

Petter Rindforth: ...the possibility of a transfer.

Phil Corwin: Well why don't - since that's in - their answer to Question 2 why don't we - does anyone else have comments on their response to Question 1? If not we'll get into Question 2 and look at what points they make and what issues it may raise.

Mary Wong: Phil, this is Mary. I did have something that was somewhat related to Question 1 following from George's comments.

Phil Corwin: Yes, go ahead.

Mary Wong: And well first of all I think staff wanted to remind the working group of where we were at the end of the last meeting and then the response came in. And, Phil, you had alluded to this and that is that if we're talking about an IGO that has provided the requisite notifications and the 6ter the kind of protection that they get under 6ter is prohibitive in nature.

Phil Corwin: Right.

Mary Wong: Firstly. And secondly, and this goes to some of Petter's points he's just made, it is not absolute and is not a block, it is against a third party registration of a misleading or a confusing trademark in whatever national jurisdiction. So that was one point for clarity.

And the additional point that we wanted to make was we're a little concerned if the working group should proceed to use phrases like common law or common law marks. It seems to us that if we're proceeding along the 6ter

path that it might be crisper, if you like, to simply focus on what those 6ter protections are rather than using the words "rights."

And in that respect it would before the working group as part of this conversation to discuss whether having protections under Article 6ter that allow them to be protected by national trademark offices. It is the equivalent of a trademark right however it is that we come up in the actual language at the end.

So we would caution against using words like "legal rights," or "common law rights," or really just saying "rights" itself because when one uses the term "rights" under 6ter, that can be misunderstood by I guess less informed person. And that was it for now.

Phil Corwin: Right. My quick response on that - yeah, I'm tending to think as I gain understanding of all this, that, you know, when a IGO notifies WIPO and WIPO in turn notifies the nations who are signatories to the convention or to the TRIPS Agreement, unless the nation opts out for that particular name and/or acronym, they get preventative rights.

So I think of it as - it's not a trademark right but it's a right to be protected within the trademark system. And I don't personally, although I don't determine things for the group, I think that's sufficient on which to base standing for them in the existing UDRP and URS process to protest what they believe is an infringing - a domain registration that infringes that particular right that they've gained within a national trademark system.

That's my personal view and the working group is not bound to it. So it's note quite a trademark right but it's a right to be protected within the trademark system, to have against having their organization name and acronym infringed within the trademark system.

But it's not a blocking right and it's up to the trademark administration of a particular nation whether to block a particular registration. For example, there could be World Health Organization doesn't get to block every trademark registration that might contain the word "who" somewhere in the registration. They don't get to stop ICANN from having a Whois database just because it contains the word "who."

So - and there's no blocking system within existing ICANN dispute resolution process that trademark clearinghouse does not operate right now for the legacy TLDs. For the new TLDs it does not block a registration; it simply provides a warning to a potential registrant that they may be infringing someone's registered mark in the TMCH database but that it's up to them to determine whether it would do so depending on the goods and services to which the domain name is going to relate. And it's their responsibility to check that out but they're not blocked.

So with that background let me move on to their answer to Number 2 which is, "What are some of the ways that IGOs currently use to obtain and enforce national rights pursuant to Article 6ter protections?" And again, I note they're just talking about 6ter, not about any other treaties that the GAC might be thinking of in their list of IGOs.

Again, I think we're misunderstanding it. I'm not sure. It is to prevent the misleading use of IGO identifiers. I think we know that but we also know that sometimes nation states allow the registration of trademarks that they find to not be infringing which a IGO may come to believe is infringing their 6ter rights. And at least in the US their remedy is to bring a Lanham Act suit. So prevention is not full proof as in every other area of life. It's not full proof in this are. And sometimes they have to go beyond relying on the state.

They note that it's up to each state to ensure that adequate measures are in place. They say they know how it works in some jurisdictions so they have

the same knowledge gaps we do. They don't know what goes on in every nation in regard to their rights.

They say, "Usually a trademark examiner would notify an applicant of a possible conflict between its proposed registration and an IGO identifier. And if the applicant wishes to pursue the application further it requests a non-objection letter from the IGO."

I'll defer to the more - the people who are more involved with trademark registrations to judge whether that's a correct interpretation. That's not a field - I understand a good bit of trademark law but I haven't been involved with registering or defending trademarks on my own.

They do note that IGOs only seek to prevent abuse of a misleading use of their names and acronyms. I think that's similar to the analysis a trademark examiner would make. They wouldn't reject every registration of a identical or similar name or acronym just because it's similar; they'd be looking at how it was going to be used in - as stated in the trademark application.

They don't want to be misunderstood as seeking to universally block all registrations and Web addresses. I think we do understand that and I think if that was their intent we probably wouldn't support it because that goes beyond the nature of the rights they're given in 6ter.

And that all they're doing in good faith is to prevent abuse or confusion in the DNS. They go on to say enforcement efforts may take several forms when they believe infringement has occurred. They - pretty much what private parties do, they contact the potential infringer to insert the rights and demand their use cease. We're all familiar with trademark C&D letters - cease and desist letters.

They may report the use to the relevant ISP or domain name registry. Again, that's a process we're very familiar with. They may seek the assistance of

relevant government entities. That's something that doesn't usually go on with private complainants in the UDRP and URS. They don't go to Justice or foreign affair ministries, they just send a C&D and if they don't get satisfaction hey file a UDRP or URS or they file on a trademark infringement lawsuit.

They repeat that due to the fundamental nature of their immunities they would really, if ever, waive the immunities to enforce their rights. I guess we'd have to ask them whether they would view the requirement to file on a Lanham Act lawsuit in the US, that being the US practice, would constitute a waiver of immunities.

They go on - and we're getting toward the end here - they note, "ICANN is striving to increase its global accountability and the Affirmation of Commitments to promote consumer trust," which I think is a goal we all share. So they're against the allowance of unfettered domain name registrations without providing for curative mechanisms.

Again, I don't want to speak for the group but I think we'd probably all say that we are likewise opposed to unfettered and abusive domain name registrations that would undermine consumer trust and the particular name and omission of any IGO.

And they keep reemphasizing they're not trying to do anything at odds with the DNS openness. And they just want access to curative rights protection measures. So on that my comment is they may - they seem to have already accessed the UDRP in past cases so - and we may want to clarify that they have that right. But, again, you know, that brings up the sovereign immunity issue which we'll bring up later.

And then they reference the 2001 WIPO report which we've looked at. And they call on us at the end to recognize that their protection is in the public interest and to make sure they have appropriate measures of redress. And I think that's a goal - that's a view we share and a goal we share.

So I find that we're talking a little bit past each other in these questions and answers, in my view, but we're getting to more of a common understanding. And I'll shut up in one second.

I just want to note that on the co chair's call that we had with staff earlier we discussed the fact that this working group does not have a meeting during the formal ICANN meeting; our only meeting in Singapore is the full day working group session the day after the formal meeting concludes.

Staff brought up the possibility of meeting with members of this IGO small group informally, not an official session. Petter and I both said we're open to that. And also we can raise now and on our call next week - I would not have any, you know, we don't meet in closed session at that full day group.

And if anybody from that small group or any other IGO representative wants to attend and observe I don't have any objection to that but we can discuss that as a working group when we plan next week for our face to face. But I think the point I wanted to make is we may have opportunity for informal interaction with IGOs in Singapore.

And I think anything that moves us to a more common understanding of the rights they have and the concerns they have and our own views on that would be useful. So I will stop talking at that point and open it up for any comments on their answer to the second question.

And while I'm waiting to see if anyone has comments I'm just going to review the most recent comments in the chat room to see if there's anything there we need to talk about.

Okay, George, please go ahead.

George Kirikos: George Kirikos speaking. I think the big point was that it's up to each state to determine what measures are in place. And so that points to the ability of the state actors to perhaps act as a proxy for the IGOs in bringing complaints, which was one of my early proposals to handle that issue.

Phil Corwin: Yeah, I think your proposal was to actually have nation states bring litigation or on behalf of an IGO that has a claim.

George Kirikos: Right, like the other example was where a law firm brought the (Unit aid) UDRP on behalf of the IGO because they had licensed the mark with the permission of the IGO. But, you know, having a state actor, you know, the government's attorney general or whoever is responsible for filing lawsuits, be the person - because that's what would happen in, you know, in the offline world.

Like let's say I open the UNESCO restaurant claiming to be affiliated with UNESCO. It wouldn't be UNESCO that would file the lawsuit; it would obviously be some, you know, some agent of the government acting to ensure that, you know, consumers are protected by - through the, you know, relevant rights of the IGO. So of course the government may decline to file such a lawsuit but the IGO obviously puts pressure on them to bring the lawsuit...

Phil Corwin: Yeah.

((Crosstalk))

George Kirikos: ...and the quantum of damages was significant enough.

Phil Corwin: Well, I think that's a concept worth exploring down the road for this working group. I think we have to - we're going to have to survey the GAC whether nations are interested in doing that.

I don't know, you know, the US, again, we just know the US position right now the US position is hey IGO, if you think we've messed up and the PTO has let a trademark registration go forward which is infringing, your remedy is to bring a Lanham Act suit or I guess whatever other - I guess there are other measures - administrative measures one can take within the trademark system to try to have a mark revoked as well.

But all of them would require the IGO to be the moving party. I don't know that the US government wants the responsibility to bring - once upon notification to bring those actions - to pursue them on behalf of the IGO. There's always a question of time and resources at both administrative agencies and law enforcement agencies. But we can get into that. Other comments?

George Kirikos: George Kirikos again. I just wanted to add though that in some cases the state actor is the appropriate agent for bringing an action, like, somebody commits a crime like murder it's not the family of the murder victim that brings the lawsuit, it's the state. So the state definitely has a role.

And the treaties actually impose the obligation on the signatories which are the countries so ultimately it's the countries that are supposed to enforce this thing, not ICANN, not individual registrants, not registrars, registries, it's the governments.

Phil Corwin: Yeah.

George Kirikos: So it's their obligation and, you know, if they don't meet their obligations I guess, you know, the IGOs can complain to the treaty making body or whoever. But we've seen from the State Department letter that, you know, they complained about (Unifam) and (unifam.com) is still registered to a private party, you know, 12 years later or 13 years later so it's...

Phil Corwin: Okay. So I see your point that since 6ter puts the obligation on nation states to protect their rights that if they've messed up and let one be brought in the trademark system that they have the responsibility to cure that. I understand the logical argument; on a practical level I'm not sure we can get commitments from nation states to take that step since it involves dedication of personnel and resources to do that.

Also, I don't see nation states bringing UDRP or URS actions against - on behalf of IGOs because the DNS, you know, that's the registration of a domain name and no nation, thank goodness, controls the domain name system.

Other comments? Mary has - Mary wishes to intervene.

((Crosstalk))

Mary Wong: Hi, Phil, and everyone. Actually I put my hand up but I wonder whether my comment would be better categorized if we were to go to the text that Petter had drafted. So I would just put it down and put it up again at the right time.

Phil Corwin: Yeah, okay. Well I was just about to suggest that we've got 14 minutes left, we're not going to be able to get into an extensive discussion but I think we should - if there's no further comments on the IGO small group response that we should let Petter take over at this point and put up his initial stab at what a clarifying amendments to the UDRP might look at and let him lead that discussion.

And I'll - all I'm going to say is I made a mistake - everyone should be clear as we go through this that the text in red is not new text, it's simply Petter highlighting relevant text in the existing UDRP; it's not adding anything. It's only the blue text that is a proposed part of this thought experiment, it's to see what clarifications of the UDRP might look like to assure that IGOs have standing in the existing curative rights processes that are available.

And I will turn it over now to Petter.

Petter Rindforth: Thanks. Petter here. Yeah, as you said, the text marked in red are more - tried to point out where there are any references to which kind of rights protection that is covered by the UDRP. And on the marked text in blue is just follow up what we discussed in our last meeting to see where we could refer to Article 6ter.

So let me initially just quickly go through the red text where you can see in the UDRP under initial presentation what's on Point 2 your representations where it says to your knowledge the registration of a domain name will not infringe upon or otherwise violate the rights of any third party.

And this actually does not refer to just trademark rights; it refers to the rights of any third party. So that's nothing that we need to amend or add. And also especially Point B there you will not really use the domain name in violation of any ethical laws or regulations and that it's your responsibility to determine whether your domain name registration infringes or violates someone else's rights. So that's actually reference that's in the system today, that could well also include Article 6ter protection.

Let me scroll down, well come to Point 4 about the mandatory (unintelligible) proceeding when it describes the applicable disputes. Your domain name is identical or confusingly similar to a trademark or service mark. So here we see the description of the protection for the first time. And, as I said, we (quit) the blue text here at this point.

Let me also see, the evidence of registration used in bad faith, Point 1 there that Page 3. We should - the complainant who is the owner of the trademark or service mark and we'll also see it on the Point 2 there, trademark or service mark reflecting from the mark, Point 4, with the complainants mark. So still we're talking about trademarks, marks, service marks.

You can also see a little bit further down on Point C there. And scroll it down here. So you see most of the text is actually not referring to what kind of rights. You see the complaint on Page 9, it also says specify the trademarks or service marks. Any trademark or service mark registration, Page 10.

So if you then go to Page 20 if we - as we discussed on a previous meeting, there may be a need to explain to the URS that the - to explain that this kind of protection is actually covered by the UDRP as well today. And WIPO has an overview of WIPO panel views on selected UDRP questions.

And you can see the first UDRP element that identify (unintelligible) registered trademark etcetera, with questions and replies to those questions. And what I thought of was that here we could, without changing or amending the UDRP as such it could be possible to add a specific question. Does the complainant have UDRP relevant trademark rights as UDRP talking about trademark rights, in a name or abbreviation of the complainant that has been communicated under Article 6ter of the Paris Convention for protection of industrial property. Or how do you like that to be identified.

And then when you see the specification replies we go to Page 22. It could be identified in - in the case where the complainant is an international intergovernmental organization, IGO, (unintelligible) organization with international legal personality established by international agreement the complainant may have trademark rights in its name or abbreviation where that name or abbreviation is protected under Article 6ter of the Paris Convention for protection of industrial property and has been duly communicated a such to the countries of the union as well as members of the World Trade Organization through the intermediary of the International Bureau.

And then of course it will be filled up with relevant decisions. So this is just a way to show that how we could add it to the clarification on how to read the

UDRP and how to identify that also the IGO rights even if it's not maybe traditional trademark rights it will be related or handled as trademark rights if they are actually protected under Article 6ter.

I have to admit that I could not find the same place when it comes to - not for instance but there is at least one page there where there are clarifications on specific documents that still not need to amend the policy as such. So I've just added - or possible added Annex B to refer to Article 6ter.

And, well, that's so far if we don't change the UDRP as such. If we don't think that this identification on IGOs can be explained in the questions and answers part. We have to clarify it either directly in the UDRP or as we also spelled about in a specific dispute resolution policy.

And that's where - in the policy I had just added possible blue mark text. But let's keep to the - just the parts that are question and answers so that we don't need to amend anything. Thanks.

Phil Corwin: Okay. This is Phil. I have my hand up. I'm going to jump in here particularly because we're down to our last three minutes. And we're not going to - clearly not going to be able to get into a very substantive discussion of this.

I want to thank Petter for putting in the time and the work to prepare this. I think it's a great point of departure for a discussion. My only comments right now are - is that I believe that, one, if we come to a common agreement that IGOs already possess the rights to bring a UDRP or URS action, that they have standing, I don't find anything objectionable to minor clarifications of the UDRP and URS that make that clear we're not creating new rights for them, we're clarifying that they already have the right.

And I think politically, frankly, it would be better to produce something even if it's just a clarification of existing rights and to say you've got those rights and we're not changing a word realizing of course that the GAC has told us they

don't want us to amend the UDRP or URS but that's not what the resolution we're operating under from the GNSO instructs us to - do they instruct us to consider potential amendments.

The other thing I'd say is the way - on Page 2 the way this new addition that starts, "Possible amendment for a, one..." I just want to make sure that we're being clear that we're not creating a new right, that we're just clarifying that we're of the view that notification of WIPO under Article 6ter creates a right to protection within the trademark system that is sufficiently similar to a trademark or service mark as to give them standing. So we might want to play with the wording a little bit.

And underneath where it says, "For the avoidance of doubt," I'm open to that as a clarification. I think, again, we want to make sure that we're not getting into anything in terms of a general revision of the UDRP that is really the business of a future working group based on an issues report that's going to be delivered by ICANN staff, I gather now in October rather than in March.

So it's 12:59. I think this - I think we've identified on this talk today two issues that we probably want to look at in our full day session which is what a potential clarifying revision to the UDRP and to WIPO guidance for examiners might look like.

We also want to better understand who is on the IGO list that the GAC has provided since some of them appear to be getting rights from international agreements to her than the Paris Convention although I'm not clear - I would think that any IGO, once it exists under a treaty, has a right to be protected under Article 6ter but perhaps I'm wrong on that.

Does anyone else want to say anything? We've hit 1:00 pm. I think we can extend this a minute or two. And, again, reminding the group that we have a call next week to discuss the agenda for the full day meeting in Singapore. So

any other comments before closing out the call? I don't see any hands raised or hear any voices so I think we're done for today.

And Petter and I look forward to speaking to - by the way, how many of you - could you just raise hands - how many are planning to be in Singapore? And then I'll ask how many will not be in Singapore but plan to join as much as they can through remote participation. So I'm seeing three, four so far. I should put my hand; I shall be there. And so that's five of us. Steve Chan is staff. I'm assuming Steve will be there in Singapore as well as Mary.

All right so let's put down hands. How many of you who won't be in Singapore plan to join remotely for part or all of the full day session? And I know that's difficult with the time difference. Three, that's three so it looks like a significant majority of this working group will either be in Singapore or participating remotely. And that's good because I think we can get a lot done in that day in Singapore.

All right with that I'm going to conclude the call. Thank you all for participating and looking forward to being on with all of you next week as we make plans for our face to face session in Singapore.

Petter Rindforth: Thank you.

Phil Corwin: Good-bye.

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

Nathalie Peregrine: Thank you very much. And, (Alia), you may now stop the recordings.

Coordinator: Thank you. That does conclude today's conference. You may disconnect at this time.

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