

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

Wednesday 11 March 2015 at 17:00 UTC

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Attendees:

George Kirikos - Individual  
Petter Rindforth – IPC  
Phil Corwin – BC  
Val Sherman - IPC  
David Heasley - IPC  
Paul Tattersfield –Individual  
Jay Chapman – Individual  
Jim Bikoff – IPC  
Kathy Kleiman - NCUC  
David Maher - RySG  
Imran Ahmed Shah – NCUC  
Gary Campbell – GAC  
Paul Keating - NCUC

Apologies:

Kristine Dorrain- Individual  
Mason Cole – RySG

ICANN staff:

Mary Wong  
Steve Chan  
Nathalie Peregrine

Coordinator: The recording has been started you may begin.

Nathalie Peregrine: Thank you very much (Joni), good morning, good afternoon, good evening everybody and welcome to the IGO-INGO Access to Curative Rights Protection PDP working group meeting the 10th of March 2015.

On the call today we have Petter Rindforth, George Kirikos, Val Sherman, Jim Bikoff, Phil Corwin, Paul Tattersfield, Jay Chapman, David Maher, Kathy Kleinman and David Heasley.

We have apologies from Kristine Dorrain and Mason Cole. 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 so much and over to you Petter.

Petter: Thanks, Petter, here. Any new statements of interest? I see no hands up. Okay, so the main topic of today is to review the (low expert) response, the specific questions that we sent out.

And I hope that you all had time to study the replies to our specific questions. I know that George Kirikos had at least done that and thanks for your comments.

I would like to deal with it this way so that we don't miss anything. I'll leave it to Mary to make some initial comments first and then I prefer to go through the specific topics and then I'll give it out to general comments afterwards so that we don't miss our questions and replies after that and see what's left and what we may want to have further comments on the (low expert) or how we want to deal with it.

So if that's okay with you I'll give it out to Mary first.

Mary Wong: Thank you Petter. Hi everybody this is Mary from ICANN staff. So as he noted just introductory comments not getting into the substance of the questions or the response but I think two things.

One is, why we reached out to Mr. (Corell) and secondly, the expectations of Phil, Petter and staff when we did do so. First so, Mr. (Corell) has been someone who has given advice off and on to ICANN so we knew of him but neither Steve nor myself had had any personal interactions with him prior to this.

When we were asked to look for experts to help the group with the sovereign and unity issue Mr. (Corell's) name came up. In part because we knew that he would be able to give us a relatively fast response as he's done.

When we did reach out to him with the questions that Phil and Petter also reviewed and commented on, our expectation was that this would not be a full legal opinion partly again because of the time issue but also because we felt that it would be very difficult for anyone whether it's Mr. (Corell) or somebody else to really provide us with clear information quickly if we had to go into all the, you know, what this group is up to, what we've done, what the background is and some of the more specific details.

So our expectation was that there would be followup based on whatever the initial response that would come back. We felt comfortable that Mr. (Corell) would at least give us some sort of guideline at least an initial sort of direction because of his qualifications having been in the UN system.

And now being out of it so he would actually we felt know a lot more about the actual IGO workings than perhaps other experts. This is not to say that the group should not reach out to other experts as well and as Steve and I were talking to Phil and Petter before this call today staff is happy to do so.

So we expect that there will be other action items including a followup perhaps of Mr. (Corell), perhaps an investigation into other avenues of research and also with the IGO's and with the GAC.

So the final introductory remark I'll make Petter is that to the extent that we look for additional opinions including full opinions that include judicial citations and so forth.

It's not so much the cost issue, which is obviously not a working group concern as much but it will probably take some time and if it's something that we need to do then yes we'll do it but just so that everyone knows that that will take time first to get an expert to agree to do it and secondly to allow them the time to do a thorough job.

So over back to you Petter.

Petter:

Thank you for that. And well as you saw from your (CV) that Mr. (Corell) is a former Swedish Diplomat but I had nothing to do with the GSO using him as to outreach to.

And as working as a legal counsel for the United Nations, which is in fact one of the ideas that one - and as you can see he has not dealt with the main dispute so much but the at least two cases that he mentioned.

One was that was sold without going to any dispute resolution procedures. What could be interesting there is to see a little bit more details of how the other dispute was actually settled.

Well and if we then start with as you can see his focus was on the United Nations and but at least that's one of the ideas although it might be one that has a very special role in this compared to other ideas.

And he initially refers to the regulations there where the United Nations it's proper (unintelligible) assets, where they're located and by (unintelligible)

held shall enjoy immunity from every form of legal process except in so far as, you know, the particular case it has especially waived its immunity.

That was interesting to note but on the other hand my personal question how they work when they buy let's say copy paper for their office and make traditional normal day-to-day business deals.

There must be some cases where they have (unintelligible) focused by this. And also when it comes to disputes that's maybe more interesting for us and for our topic that the UN had also a settlement out of court and this is normally done through arbitration.

And I will say then when we come to the, at least when we come to the UDRP that is a similar way to actually deal with disputes. And so his answer to question number one, when we wanted to know if there is a difference when a claim of sovereign immunity is asserted by an IGO when defending a complaint brought against it in process to a case when the IGO files the complaint itself and thereby arguably submits to the jurisdiction or the national court.

He has referred to the - what he said initially in the document that they tried to avoid this and to settle such disputes. And as I said again, I don't see any problems there when it comes to the UDRP because it's actually not a traditional court action but compared to if you want to go further to a national court that's where we have to find a solution.

So that's question one in short. I'll open the floor to any specific problems on that. Yes George please go ahead.

George Kirikos: Hi, George Kirikos speaking. Apologies for my voice I've got a cold. I made a more detailed response to the mailing list but I think his answer is not entirely correct given that he is only referring to cases where Section 29 applies where the UN is a party to a contract.

And, you know, something like the UDRP or any other kind of dispute where it's not a party to a contract his answer just doesn't apply. And also I sent an email to the list regarding a Canadian law case, which kind of picks apart his argument that the IGO's enjoy immunity on an absolute level in the first place and I leave that to the list for discussion.

Petter: Thanks George. I comment that when we talk about part of the contract. I mean if when once you file a UDRP you also in fact sign up and accept the regulation issues I would say.

Once you do that I presume you can say that you have signed up for a contract. George do you have any...

George Kirikos: Petter can you restate that I didn't quite make it out. I don't know if it was kind of answering...

Petter: So when you - once you file a UDRP you also actually accept the regulations and how the dispute will be done and where you can go further with the case. So you sign up for a contract. You can avoid that by not filing a UDRP.

George Kirikos: Right but the United Nations - George Kirikos speaking, but the United Nations is not a party to that contract. They are a third-party beneficiary but they're not an actual party to that contract.

Are you familiar with the difference between a third-party beneficiary and a party? That's like a legal concept that maybe one of the...

Petter: Okay.

George Kirikos: ...lawyers can weigh in on but it doesn't make them a party.

Petter: So that's fine with me, okay. So let's go onto question two, is there a specific instance described in question one of an IGO leading to agree to submit a national jurisdiction on the UDRP.

An example of a situation where an IGO would be compelled to waive its immunity in order to defend its rights. And well more or less might be the same reply as to question one.

So then IGO was not compelled to waive its list immunity as long as it offered another (unintelligible) after those settling the dispute. So if my comments there if we are going to proceed with the work here instead of a local court action or UDRP dispute may be amended to be a field so to say to another arbitrator but I see I think Mary was first please.

Mary Wong: But Petter I had a more general comment so maybe you can go to Phil and then come back to me.

Petter: Okay, Phil.

Phil Corwin: Thanks Petter, Phil for the record. Just wanted to based on his response he's saying, well an IGO can agree to arbitration because it's not a national court. Well and he seems to say and he says, what we're talking about is like arbitration.

Actually is it arbitration. So an IGO brought a UDRP let's use as an example and didn't get the result it wanted it's its choice, you know, it goes against the domain that it thinks it's infringing, it doesn't win the UDRP.

It's up to the IGO whether they want to use the available appeal method, which is a national court. So they don't have to do it if they don't want to, you know, dent their sovereign immunity.

So this kind of relates to what I've observed within the past is the real situation we have to deal with would be the extremely rare case where an IGO alleges that a domain is infringing, wins the UDRP or URS and then the registrant appeals.

That if it's clearly infringing the registrant probably wouldn't spend the time and the money to appeal but we have to deal with it because, you know, there will be one out of 1000 instances where it will happen.

But, you know, so that was my comment and, you know, just to remind everyone what the real issue is going to be with sovereign immunity it's going to be the rare case where arbitration filed, the IGO loses, no I mean yes the IGO wins and the registrant decides to appeal.

Petter: Thanks Phil and as you said there are extremely rare cases we're talking about but we need to find some kind of solution there. Okay, Mary you said you had a general comment so is it okay if I pass it onto to Kathy first?

Mary Wong: Sure, go ahead.

Petter: Kathy.

Kathy Kleinman: Terrific thanks, really interesting discussion. I was wondering if we could get statistics, easily get statistics on how many times a registrant has gone to court just generally in the UDRP proceeding and maybe what percentage of UDRP proceedings that represents because that may help the GAC feel better about different types of recommendations that may come.

That we're talking as Petter and Phil said about a very unusual situation, thanks.

Petter: Thanks Kathy. That's what I think personally it's very good for both actually to get that information and when we - because we need anyway to come back to the IGO's and GAC with additional questions.

And that's actually what information that could be interesting to hear if they have any comments. It may be, well the risk is extremely low but it is there and that's why they cannot accept to use the system.

Now Mary, finally over to you.

Mary Wong: Thanks Petter. Actually let me start with a partial response to Kathy. I agree it would be very helpful. My understanding is that nobody or person actually tracks that for reasons that you can imagine because there are multiple jurisdictions in which losing registrants might go to file a court action and it could be, you know, before the determination or it could be an appeal after.

WIPO does have a very partial list of some of the cases that have gone to court and I haven't looked at it in a while but my impression is that it's really, it's illustrative but it's not particularly useful for the purpose that we might want to use it for.

So I don't actually know that there would be not just an easy way but that that would be a workable way to get that kind of information across multiple jurisdictions.

On the more general point I was going to make it goes back somewhat to George's comments as well as his notes by email. And that is that in the course of our preliminary research into this issue and I want to stress that we were doing this as ICANN policy staff we are certainly not looking at it with a legal lens as such because that's not our role.

It seems like two things might be relevant. One is that the scope of sovereign immunity as applied to whether its government or IGO's can be different across different courts and jurisdictions.

In other words there is no single universal defined limit or (unintelligible) of what sovereign immunity would mean. And so this goes to I think some of George's points about getting some sense from different court cases what that might be and thank you for bringing to our attention the Canadian case George.

The second point I wanted to make is that even for IGO's themselves or as the international law usage customarily has it IO's or international organizations. They are highlighted in a lot of the laws and treaties like the Vienna Conventions.

But there is some distinction and nuance differentiation between what they are, I think George also highlighted this. So for example there are some IGO's that would be like the UN or WT or something like that.

In other words they are set up by treaty and all their constituents or their members are governments. But there are also organizations that are set up by treaty that may have some governments as its members but might also have what international lock house other entities.

And that is something that just is the way it is. I don't know that it will be a good idea for this working group to split the list of IGO's such as it is but I thought that those two points first that there's no single universal scope for sovereign immunity and that secondly even the nature of an IGO isn't necessarily similar across the board as well might be something useful for the group to know, thanks.

Petter: Thanks Mary. Okay, coming to question number three it seems to me that we have more or less already discussed that. It was if it's relevant that the UDRP

permits both the complainant and the respondent to bring an action in a court of (unintelligible) jurisdiction at any time and that the (unintelligible) finding of such an action immediately suspends the UDRP proceeding.

And well his reply was just more or less a question that he needed to know to what extent IGO's have accepted the UDRP proceedings. We have discussed that, we have at previous meetings also seen some cases and also what we said today that well, you can accept the UDRP proceeding and you can accept the result of that case.

What we need to get more info on and find a solution for if necessary is the very few cases where the domain holder is losing heart and wants to proceed to a court action.

So and then question number four, how do IGO's have the (results) providing for submission jurisdiction and does the low end standard form and must market contracts.

And well there was in fact no specific reply to that question. It may be a question that we should rather put forward to IGO's and/or to GAC to see if we can have a specific reply to that.

And then question number five in review on the sovereign immunity issue, what are the generally recognized forms of actions that the IGO's are likely to pursue when they believe they are right or infringed?

And well he refers to just the two cases that he has (unintelligible). He said that then attempts would rather be to solve issues. And he can't believe that that if that doesn't work it would be necessary to resort to (unintelligible) disputes settled and make a (unintelligible) on the existing immunity provisions.

And what else we have said, the again the UDRP issue it's actually a way to deal with disputes in that way.

And question number six, what if any other factors that might limit or impact that capability of a sovereign immunity claim by an IGO. And he generally said the immunity is there and it's not a question of limiting it.

And when he then said also that my spontaneous reaction is that it will be possible for them to use these procedures in case there are disputes on the understanding that the procedures cannot entertain a general waiver on immunity.

In other words disputes would have to be settled exclusively by the panels nominated under the procedures. And I've assumed that again that he's talking about the UDRP as such but we asked for comments in case any thoughts would like to take the case to a court action in the country of the registrar or the domain holder.

So, well George said we have, it was interesting to at least to see these initial comments from someone that had worked with you and on the legal aspects not so much on the main disputes but at least with [0:27:16].

And then I turn over to George and your comments that you emailed us just before the meeting if you want to make any further aspects on that.

George Kirikos: Sorry I was muted again, George Kirikos speaking. I think the email I sent with the Supreme Court (unintelligible) decisions, which is relatively recent, 2013 and which was unanimous 19/0 had a good coverage and background on the legal principles.

And it cited not just Canadian law but also the international treaties and various textbooks and academic authorities. So I think it provides a better, a

good counterpoint to the document provided by the legal expert in terms of what the actual state allows rather than his anecdotal analysis.

Petter: Thanks, now we'll come to more of the step and as we all - I noticed this is an initial reply maybe not so much specific answer to our questions. But one thing that we could do is to come back to him with subsequent settle questions with just noting, summarizing the IGO's position in the matter and maybe also to refer to some specific cases so that provide us with more detailed in put there.

And also what I think may be a good thing to do once we have got his further input is to reach out to GAC and IGO's to see if they have their own reports and maybe we have discussed if we should reach out to another expert.

But it may well be that the GAC or and/or IGO's also have some report that on paper that they can refer to or at least to answer our additional question on that. Mary.

Mary Wong: Hi Petter, hi everybody. I just wanted to respond to (Paul Keating's) question in the chat just in case there are folks who are not in Adobe. And (Paul's) question was, whether ICANN can provide funding to hire competent counsel to give us an opinion presumably a more detailed one than this, which is like I mentioned earlier was seen - we had hoped that this would be either informative or preliminary or a bit of both.

(Paul) basically what would happen if we wanted to do that is of course the onset is yes we can pursue that avenue. What Steve and I would need to do is then coordinate and brief our legal department because then it would go through them.

And I think a couple of people in this group were on the original IGO working group where we did also seek legal advice pertaining to the laws of several jurisdictions on particular points.

So like I mentioned earlier this would take a bit of time, which doesn't mean that we shouldn't do it but that is what we would need to do. And in order to do that what this group would need to come up with is very specific questions.

First of all to make it clearer what the scope is that we're looking for and secondly, obviously to, you know, expedite the process as much as possible to avoid delays and sort of clarifying questions back and forth.

So what we could do if that's the direction the group wants to go is start with these questions and do some filling in and be as specific as we possibly can because our past experience has been that the kind of external opinion that we get can be very detailed but the extent of this utility does depend on how concrete the questions were in the first place. So I hope that helps.

Jim Bikoff: Petter it's Jim Bikoff, can I make a comment?

Petter: Yes please.

Jim Bikoff: I was going to say that I agree with George's original comment. I don't think this opinion by Mr. (Corell) was very helpful and I'm not sure that and coming up with more detailed questions would get us any further.

I still believe that the best way to handle this is not by trying to hire experts or get others who have some claimed expertise but to go back to the GAC and the IGO's and give them some very detailed questions about what stops them or what their point is as far as why they feel they do not have access to this remedy.

We know that some IGO's have filed UDRP's. The World Bank and I think George brought this case to our attention, filed the UDRP some years ago.

So it must have looked at the requirements and decided that it would take advantage of it and they had access and they got a decision.

There was some others that have also brought cases. So it's not I don't think we can say that IGO's do not have access to the procedure. Some may choose to use it and perhaps they would not, you know, file an appeal if they lost because again that would subject them to national jurisdiction.

But they have filed so they do have access and I think they should be answering these questions themselves and so should the GAC. And I don't know why we wouldn't take this directly to those two entities and try to find out what they believe are the obstacles to access that are opposed to IGO's, thank you.

Petter: Thanks, I see Mary's hand is up.

Mary Wong: Thanks Petter and thanks Jim. You know, even though staff doesn't get a vote on this I feel that I should say that we do think that this would be a very good time to bring very specific questions including possibly something like what (Paul) just typed in the chat, back to the GAC and to the IGO's.

And I just wanted to remind group members that we're talking about two related but different groups in that the GAC is governments and the IGO's are organizations in which the governments are members and the GAC has, you know, made that distinction before.

So I would suggest that we bring if not the same questions at least, you know, tailored questions back to the two of them. And I say this as staff because of, you know, experience just kind of helping out with different PDP's and looking at what has been happening with Mason as the intermediary and the sort of willingness of the GAC and the IGO's to engage.

Maybe tentatively for the GAC but certainly we've gotten a response on the IGO's and it would be good to follow through on that, thanks.

Petter: Thanks Mary, Phil.

Phil Corwin: Yes thanks, Phil for the record. A couple of comments. One, taking note of the comments in the chat room and emails that have been exchanged I too and somewhat underwhelmed by what Mr. (Corell) has given us back. I'm not against going back with a second round and more precise questions but dually is that we'll get much in the way of additional guidance. So I think we need to think about, you know, other resources to educate us on this besides our own research.

Second, I think yes it's good to ask certainly the GAC and the IGO's are separate. The IGO's may have more expertise here I'm not relying on the GAC representatives. For expertise in this area the GAC obviously is more political clout within ICANN.

I'm a little hesitant on sending questions yet, I'm not sure we have quite the level of understanding we need to ask really detailed focused questions because I think the IGO's will tend to give us general self-serving responses unless we really pin them down on specific points.

But I'll leave that to the group to decide if we're at that point yet. We have some anecdotal evidence in the terms of knowledge of some UDRP's filed by IGO's, some court decisions, which touch on the sovereign immunity.

I'm just saying that I think we, we're not going to send a series of inquiries to the IGO's so I want to make sure that when we do send them they are really focused questions.

Having said that I'll leave it to the group as to when we've reached that point and also raise the issue of whether there's anyone within the group either

now or at some point when we're ready to do that and wants to get involved with drafting those questions for review by the group before they go to the IGO's. And I'll stop there.

Petter: Thanks Phil. I have a followup question that you said that we should reach out to other resources and obviously you don't - meant to reach out to (Corell) again and if I understand you correctly you also wanted to wait a bit to come back to IGO's or GAC with this issue.

Phil Corwin: Well again just to clarify I'm not against going back to (Corell) though I have some doubts that we'll get much more in the way of guidance beyond the very limited guidance he's given us here and by his own admission he's been kind of out of this area for a couple of years.

And second, I'm not, I'll defer to the group I just want to make sure that when we go - again I think the IGO's if we just ask general questions we're going to get vague self-serving answers from them.

If we go back with very targeted questions saying, well what about this, these instances where IGO's use the UDRP, what about these court decisions or law review articles stating that your immunity is not absolute but is limited by various factors.

And, you know, I think we need to pin them down otherwise we're going to get general answers that favor their position and they seem to want a whole new CRP for themselves with no national court playing a role at all, which and I'm not sure we need to go that route if we find that the limited, that the right of appeal in the UDRP and the URS, which would only be exercised against them by a third-party in a very rare and unusual circumstance is not - does not rise to the level where we need to create a whole new CRP.

Jim Bikoff: Can I answer Phil, it's Jim Bikoff?

Petter: Yes Jim.

Jim Bikoff: I want to say I think we have more than an anecdotal evidence I think we have actual cases and I think we have actual court cases as well as UDRP cases. And I think we have enough that we could - I agree with Phil that we should not go with very general questions because we'll probably get very general answers.

But I think we can go with very specific questions and find out why it is that some IGO's are using the process whereas others may not think they can use it. I think we can try to get more information as to why there is an inconsistency here.

It would be different if no IGO has ever filed a UDRP but we know that's not the case and we can look at the court cases and we can look at the UDRP's and come up with some pointed questions I think.

Phil Corwin: Yes and just responding quickly besides knowing of the cases we know that there is specific language in the URS that we discussed on the last call, which clearly gives them standing to bring in URS and we have done research and we've come to believe that the IGO's covered by the Paris Convention have a form of rights sufficient to bring a UDRP but we've also discussed adding a clarification to the UDRP to make that clear.

So the standing issue really is not one that in any way justifies creating a whole new CRP in my mind and I think that's the general consensus in this group. So, you know, are we at the point where people think we have enough knowledge of this to prepare a set of questions for the IGO's that they can't just respond to in a general way?

Petter: Petter here, thanks it seems that we have come to that conclusion and that's a better next step to do rather than to go back to the expert with additional specific questions.

So and I also saw George proposed that perhaps we should start talking about functional immunity taken from the Supreme Court of (unintelligible) to narrow things further instead of saying sovereign immunity.

Well, it's as I said it seems that we all conclude that we should reach out to GAC and IGO's with more specific questions. And then of course we can use also the materials or examples we have collected as for today.

And I think one part of that would be also to refer to some cases where IGO's have been involved to get specific inputs on how that had worked and why it's not going to work for others, George.

George Kirikos: Hi, George Kirikos speaking. I noticed an important point on page number four of the experts answers where he said that irrespective of the fact that they are considered international they still have to be registered somewhere, which means that they would be subject to the jurisdiction of their whole state in the matters that we now discuss.

I think almost that's a bit of a tip off that they are still subject to some jurisdiction. So and that was kind of a limitation on this scope of their claimed immunity.

And it's actually very consistent with the Supreme Court of Canada decision where it gives Canada the Government of Canada would enter into an agreement with any IGO that is situated that has for example offices in Canada.

And so there's some agreement and so it seems as though they were talking about it in the context of NGO's but I think it probably also refers to IGO's that there is still some of that jurisdiction aspect that perhaps he didn't fully appreciate.

Petter: Thanks George that's a good point. And definitely something that we should note and highlight a specific question in our notes when we go back to the GAC and IGO's.

And it seems to like some kind of completion it seems that we should definitely next steps to reach out to GAC and with the more specified questions based on what we have concluded so far and also in that have some examples from the real life of disputes and the legal aspects.

But then just a practical question I'll turn now to Mary and it, I mean there is a specific group within GAC that represents the ideas and work with these specific questions.

When we reach out to GAC can we do it two different ways, also reach out to the IGO's representatives or do we have to set aside formally do it directly to GAC?

Mary Wong: Petter this is Mary. I think and this is talking off the top of my head I can't recall the questions that we had sent to the GAC that we are awaiting a response on.

I think what we would need to do as a group and with you and Phil as the co-chairs is figure out what would be the most streamlined way of doing so. Certainly in the way of followup and it may be that we, you know, resend the initial questions with a supplemental and annex of some sort.

So I suggest that we give that a bit of a think because, you know, we don't I think to send the GAC a couple of different series of questions would probably lead to further delay in any possible response to us.

So on that point hopefully when you give it a bit of a think we can come up with something that's helpful. That shouldn't prevent us from following up with the IGO's though and I suggested in the chat that if there a small group of

volunteers who are willing to work on it, you know, staff can certainly start the draft.

But maybe in the next couple of weeks we can have several people trying to refine it and then bringing it back to the working groups so as not to hold up the working group discussion on other matters if that would work.

Petter: Okay thanks. So we'll lead further with this and come up that we can maybe discuss next meeting the new and the followup questions to GAC anecdotally. Are they all related to GAC or if we also tempered it onto the group that - within the GAC that works specifically on the IGO's aspects.

And then if nobody else has any specific things to add to this I think need to pass on to the next topic on the agenda. I saw George's question, so yes we had a followup left on our discussion about the UDRP URS differences.

My personal view is that I think we have more or less discussed that enough. What we have is the initial view of the differences and we have the additions. So if we can put together just a final report with where we can see the differences and so that we can say that we have actually done this overview of the differences.

But I don't know if George do you have any specific comments and questions on that? I see Kathy, Kathy's hand is up yes please.

Kathy Kleinman: I'm happy to wait for George if he wants to answer first. Doesn't look like it, okay I just wanted to ask if we might in addition to highlighting kind of detailed differences or similarities between the URS and the UDRP.

Highlight the different policy objectives of the two policies and the scope of the impact of the two policies because that's very different, thanks.

Petter: Okay, yes so what you suggest is that we add that to the report so to speak or do you think that's also something that we need to discuss first?

Kathy Kleinman: To our final report is that what we're talking about?

Petter: No, well the paper we're working with...

Kathy Kleinman: Yes.

Petter: ...showing the differences.

Kathy Kleinman: Yes, absolutely, absolutely because I think people need to know what the and it looks like (Jay) has volunteered me. So but it looks, you know, people definitely need to know that URS applies only the new gTLD's and was part of the application guidebook and that's what it applies to. Whereas the UDRP applies to new and old gTLD's.

And maybe something about the tie in of the URS and the trademark clearinghouse as well, which is of course unique and the UDRP doesn't have anything like that, thanks.

Petter: Okay, excellent. Mary.

Mary Wong: Hi it's Mary again. Just to followup on Kathy's point as well. I just wanted to remind folks that part of our charter and Petter you, Phil, Steve and I did talk about this briefly, does request that this group consider the fact that as Kathy said the URS only applies to the new g's whereas the UDRP also applies to the legacy gTLD's.

So this may be something that we can take up in our discussion of whether and what we do about that particular charter task. And that may be a natural topic lead in for the next few weeks if we're going to sort of take the sovereign immunity questions slightly offline and work on them while the group gets on with the rest of the work as well. So just a suggestion there Petter.

Petter: Thanks that's excellent. Then we'll also discuss that we want to just update our working group agenda. I mean some of the questions we have on that we have sold more or less and some other questions might take a little bit more time.

But I think so to as of today we are, we're not behind the time in any of the topics. Okay Phil.

Phil Corwin: Yes just in response to Mary on just noting again that the UDRP applies to both new and incumbent legacy TLD, gTLD's because it's a consensus policy whereas the URS while it looks like just another arbitration procedure was an implementation detail of the new TLD program and could only be extended to legacy gTLD's if it became a consensus policy.

And I, you know, we can - the whole group can discuss it but I've stated before that I think that's a major step that is really not appropriate for this group and is something I think will be addressed when there is an issues report on the RPM's and if there is a subsequent PDP based on that to review the RPM's and the UDRP.

And in fact there was a decision by the GNSO council to put off any UDRP policy review until they had substantial experience with the new RPM's. So I don't think, I just want to state that for the record but we can certainly get into any other aspects of URS but making it available at dot com and others would be something I think a bridge too far for this group.

Jim Bikoff: Phil I want to just add onto your comment, it's Jim Bikoff. The - right now the intellectual property constituency of ICANN and the International Trademark Associations are working on a response to the initial report on the RPM review and one of the sections is on the URS.

So there will be a reply by those two organizations. And one of the things that may very well be in that reply is that the URS would be far more attractive to trademark owners if it did apply to legacy gTLD's like dot com and dot org because up to now as everybody knows there have been really very few URS' filed compared to UDRP's and one of the reasons is it just applies to the gTLD's.

So that may be where that's going to come out in the review. Anyway I think that could be helpful to the group.

Phil Corwin: Yes and Jim to respond as you know I'm a member of (unintelligible) Internet committee. I'm aware they're doing that. I'm going to be filing comments on that initial staff report for the Internet Commerce Association and we'll have something to say about URS.

I wouldn't be surprised at all if at some point the ICANN community considers it pliant to legacy TLD's and I don't know what my - the ICA or any other client might think of that.

It seems to have been, you know, administered in a responsible way so far but all I'm saying is that's a big question and I think that's kind of outside the focus of this group.

And if we were just suddenly to declare URS available at dot com and others for IGO's we'd be creating a precedent that would prejudice the whole subsequent discussion.

Jim Bikoff: Yes I agree Phil.

Petter: Good to know. Kathy a quick comment on that?

Kathy Kleinman: Yes, no I'm glad Phil said what he did and it sounds like Jim agrees. While I've always been surprised that somehow it was in the scope of an IGO

working group to re-look at what was a very deep and contentious compromise from a group called the STI working group that created the URS.

I would absolutely agree it's out of scope and also there's no notice to the rest of the ICANN community that somehow within the IGO working group we would be revisiting that kind of big question of URS and new gTLD's versus existing gTLD's. So plus one to Phil, thanks.

Petter: Good to know that that will be on the inputs on that topic and it seems that we can have some use for that also. Well we have passed the full hour and I just wanted to end with some good news.

We have as you know we sent out requests for inputs on specific questions and we have got a reply from the registry stakeholder group saying that the registry stakeholder group has been actively following this working groups proceedings and it's satisfied with the current state of those efforts. As such we don't have any comments to offer at this time.

So thanks to all of you for your satisfied work so far and thanks for today.

Man: Thank you goodbye all.

Mary Wong: Thanks Petter, thanks everybody.

Man: Thanks.

Nathalie Peregrine: Thank you very much we'll now stop the recording.

END