

**IGO - INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT Wednesday 18 March at 17:00 UTC**

Note: The following is the output of transcribing from an audio recording. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

<http://audio.icann.org/gnso/gnso-ingo-group-18mar15-en.mp3>

Attendees:

George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Val Sherman - IPC
Jay Chapman – Individual
Jim Bikoff – IPC
Kathy Kleiman - NCUC
Paul Keating - NCUC
Kristine Dorrain- Individual
Osvaldo Novoa - NCUC

Apologies:

David Maher - RySG
Mason Cole – RySG

ICANN staff:

Mary Wong
Steve Chan
Nathalie Peregrine

Coordinator: The recordings have started.

Nathalie Peregrine: Thank you very much, (Kathy). Good morning, good afternoon, good evening everybody and welcome to the IGO INGO CRP PDP Working Group call on the 18th of March, 2015.

On the call today we have Petter Rindforth, Jay Chapman, George Kirikos, Paul Keating, Val Sherman, Phil Corwin, Osvaldo Novoa, Jim Bikoff and Kristine Dorrain. We received apologies from David Maher and Mason Cole.

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 ever so much over to you, Phil.

Phil Corwin: Thank you. And we'd have to roll call. Anybody with changes in their SOI? I've hear none. And I'm about to enter the chat room. And then I can actually lead this event. Apologize for the delay; I'm working out of a friend's office in DC today so I have to set up a laptop. Here we go.

Okay, I'm in the room. All right, first order of business we're going to review the input received from the Intellectual Property Constituency and the ISPs. That document is on the screen for everybody to have for a review. And we're just going to go through the questions one by one. Let's hold comments until the end unless - if someone feels that something is really important that needs to be addressed, stick your hand up or else if you're not in the Adobe room, feel free to interrupt. Otherwise, let's just go through the whole document and then discuss it. I hope that's acceptable.

Alright first question, "What's your view of this stakeholder group? Are there decisions - exclude nongovernmental organizations from further consideration?" IPC agrees with our decision. And so they have no problem with that.

Question 2. "What should be the basis, if any, other than trademark rights for the standing criteria required in any dispute resolution process?" And their response was that IGOs must possess either trademark rights or be the subject of national legislation and multilateral treaty that prohibits the

registration or use by the IGO's brand. I'm not sure if brand is the right word but I'll assume that refers to name or acronym.

Excuse me. Without the IGO's consent. So they say such legislation or treaty and that of course would include the Paris Convention while be the need for the IGO to possess a trademark registration.

Actually they're a bit off on that, it's not the Paris Convention that provides notice, it's the IGO's registration under the Paris Convention and transmittal to WIPO, that fact which confirms the right, the protections and national trademark systems. But they're generally okay with the concept we've been pursuing that Paris Convention coverage is sufficient for standing.

And then - this document combines both so let me go back to Number 1. I didn't realize - I thought this was just the IPC document. I didn't realize it's consolidated. Okay, ISPs support us on Question 2 - 1 back to 2. They think the IGOs should still be required to prove bad faith registration or use.

I don't know where they got the or, the standard in both the UDRP and the URS is and registration and use. I agree it's a separate analysis but they've got the standard a little off, it may be what they wish it was but it's not what it is right now. And they talk about Canada.

But ISPs, yeah they repeat the standard for the UDRP and URS varied and they believe IGOs have substantive similar rights on their names and acronyms under article 6ter.

So let me stop right there, any comments on this right now or should I just continue? I see no hands up and I hear no voices so we shall continue.

"How should a CRP appropriately deal with the problem while also ensuring adequate due process protections for registrants?" IPC notes that the RPMs offered by ICANN include critical features for fair treatment of all parties. If it

wants to use the RPM, if an IGO wants to it either has to take on the obligations including an appeal can be taken to the jurisdiction of either registrar or registrant.

IPC says no special treatment carved out for IGOs that the result would be unfair to registrants. And if the IGO cannot, as a matter of (unintelligible) subject itself to such course then it cannot as a matter of fairness take advantage of the RPM. They say they haven't studied the issue but any attempt to dissolve an alternative CRP may - what is that word - it's suffer from the same problem of defining the jurisdiction. Yeah so they basically there's got to be a meaningful appeals mechanism for either party in an arbitration procedure.

ISPs notes they say that some nations have stated that any IGO complaint should be submitted to the jurisdiction of their national court. And we've warned that that's the US position, at least it was conveyed about a decade ago. Complaints regarding domain names should be treated the same way just like others.

So both groups basically say don't carve out any special rule for IGOs if it would be unfair to registrants or would give them privileged treatment so that's interesting feedback.

Question 4, "What's your view on this issue whether the existing UDRP and URS fees are nominal?" Okay, IPC doesn't believe that the long-standing rule, the uniform fees for UDRP should be varied for IGOs by allowing them to commence an action for no fee or for a nominal fee.

ICANN could, theoretically, create a sliding scale or discount but if they do it should be equally available to all potential claimants based on objective criteria.

Then they say UDRP fees are not nominal in the aggregate for some brand owners they become significant disincentives to asserting their legal rights especially for smaller brand owners. ICANN should consider devoting some portion of the many millions of dollars of excess revenue generated from the new gTLD program to subsidizing the cost of UDRP actions for all claimants that needs objective criteria. ICANN and consider releasing those dollars to the appropriate dispute provider who can then use that in selected cases on the objective criteria. Until such a system is in place the principle of uniformity of cost of UDRP should be maintained.

Just a comment, as an aside, there is a GNSO Council call tomorrow which is going to discuss the establishment of a working group to determine how the funds received from the ICANN last resort auctions should be used. That's different than the money - the general application fund submitted for the new TLD program, and I'm not sure if there's anything left from that because ICANN said it would give some kind of rebate if there was, and then they said there would be no rebate, that everything was used to.

But there was over \$30 million in that fund but I think - there won't be 30 million suggestions for how to use that money that there could well be several dozen. This is one, and I think the new TLD applicants what it used for some promotional purposes; they view it as money they should have first claim at. I think other governments may have other ideas so we will be discussing it. But there is no subsidy mechanism now.

Turning to the ISPs, they say it's a difficult question and they don't really answer the question. But then so I guess that's the end of what the IPC answered on and the ISPs submitted some answers on additional questions that the IPC didn't respond to.

They want the URS to be a consensus policy which would be a change from its current status as an implementation detail. And we may well be dealing with that next year after the receipt of the issues report on new TLD RPMs.

Consideration of applying policies formed by this working group to both legacy and new TLDs, they support that as a general principle. Again, I think that's coming up for the whole community next year; it's not going to be decided - or I don't believe it should be decided by this group which has a narrow focus, and that such a major issue.

Should UDRP and URS be amended to address the needs of IGOs? They say they would accept some minor amendments but they're not sure. I think the only amendment we've discussed so far was the clarification in the UDRP to clarify that IGOs registered under the Paris Convention already have standing to use the UDRP.

And should a new DRP be designed for IGOs? And they do not support that. So that said. And I'm just reviewing the comments in the chat. Okay so well that's it, comments on - and I'll start - my only comment on nominal, you know, I viewed our nominal question, we don't envision - I guess it's possible and IGO might have to file a number of arbitration actions but I think the nominal cost question goes to the actual cost of a single procedure in my mind and it's about \$500 for URS - \$500 US, about \$1500 for single panel decision in UDRP, that's my understanding. If I'm wrong someone correct me.

That of course does not count the additional legal fees for the two parties but it's certainly much less expensive than any litigation would be in the US or any other major jurisdiction. And the issue of whether there should be some subsidy for IGOs that find that a financial strain I think I agree with the comment that it should be based on objective criteria. And I'm not sure we should be deciding that. I think that's a decision for the ICANN community about whether there should be a general subsidy program for UDRP complainants or respondents.

So I see no hands raised, is that correct? No hands raised. I hear no comments so I'm presuming that no one has anything further to say in regard

to the responses from these two constituencies. So if I don't have - oh, Mary is raising her hand. Yes, Mary.

Mary Wong: I did, Phil. Partly just to get things rolling perhaps but maybe just to confirm that in terms of our review of these responses if we sort of go in turn on the issues it would seem as though the - and before I get into that I guess it would be useful to recall for the record that the Registry Stakeholder Group - since David Maher is not on the call today - did send in a short statement to say that they've been following the work of this group and are, I believe, satisfied with how we are progressing.

So in terms of the standing issue, it does seem as though the recent discussions that this working group has had, because recall that we send these questions out in I believe December, there seems to be consistency between the working group's progress and the responses at least of these two constituencies so that's quite good news.

Leaving aside the immunity issue, since that's an ongoing discussion in this working group, in terms of the cost issue just a reminder that we are still awaiting a response from the GAC because even though we did send the GAC very similar questions, I think the GAC list did specifically also refer back to some of their comments in the communiqué and the cost issue and what is nominal specifically was something that we really were hoping to get more information from the GAC.

So then finally, Phil, just one last comment on the additional questions to which the ISPs submitted some responses, I mean, clearly some of these things, I mean, we're not there yet as a group but when we do get there then it might be worthwhile doing another outreach to all the groups in terms of just asking those who did submit comments like the ISPs, whether they wanted to expand on or change their comments and encouraging those who did not to submit comments at least in respect of the new questions.

Phil Corwin: Sure. Sure.

Mary Wong: That's it for now.

Phil Corwin: And a quick response on the additional questions, the first two questions really are the same questions because if you're going to make URS available at incumbent TLDs the only way to do that since it's now an implementation detail for new TLDs, would be to make it a consensus policy.

And again, I think that's - personal view is that that's beyond the scope of this working group and should be dealt with by the - whatever working group is set up following receipt of the issues report on RPMs and new TLDs. I'm sure that question will be raised. But I think for us to prejudice the conversation by making URS available at dotCom or dotNet for IGOs would be a mistake and beyond the scope of our task.

I would note in the chat that George Kirikos noted that Nominet arbitrations for dotUK are much lower than the prevailing UDRP fees. Kristine Dorrain weighed in that Nominet is subsidized by the UK. Kristine is also correct in observing, and I was one of the people who objected when the community was considering a summary decision process. I believe that was WIPO wanted the URS that there was no response to just kind of - to be less expensive because the examiner really wouldn't consider anything at all. And that was rejected by the community.

But I'd also observe that ICANN doesn't set the prices charged by accredited UDRP or URS providers; they set the prices. They did have a certain price target in mind for the URS and the two accredited providers met that price target and NAF of course is one of them where Kristine works.

Any further comment on any of this?

Jim Bikoff: Phil, Jim Bikoff.

Phil Corwin: Yes, Jim.

Jim Bikoff: I was interested - I mean, I know George has done a lot of research and it looks like not only have a number of IGOs filed under the UDRP process but he cites cases where IGOs have actually filed in court in the United States. So I think, you know, it's troubling to see that, you know, that you have IGOs that have - obviously have access to these processes. And in fact on jurisdiction issues some of them have gone to the courts.

I think we need to find out, you know, how that squares with what they're requesting at this point because there's something wrong - if in fact IGOs are making use of not only UDRP but also court actions to vindicate their rights and names .

Phil Corwin: Okay. Yeah, I agree, Jim. There's certainly - there's some cognitive dissonance between what we're seeing in the record, you know, most of all instances in which IGOs have filed either UDRPs or legal actions in various national courts and the assertion of absolute sovereign immunity by IGOs. But and collectively, you know, playing devil's advocate a particular IGO might have decided that it was not sufficiently concerned about the possibility of an appeal or if it went to court not decided - it did not violate its view of sovereign immunity.

To do so there might be others that have a different view and I think we have to take those others into consideration. Having said that, I don't think we have to accept the view that their sovereign immunity is absolute and that the possibility of a registrant using an appeals mechanism in an arbitration process that involves the court but would violate the sovereign immunity that they're entitled to.

So I think we do need more research on that but I think we have plenty of anecdotal evidence to cite, and it's on a report, showing that there are many

many IGOs that have, you know, not felt that the sovereign immunity issue was of sufficient importance to prevent them from asserting their rights either in the UDRP or in court.

Jim Bikoff: Well I agree with you. It's Jim Bikoff again. I agree with you on that. And I think we need to put it to the IGOs, you know, and say, you know, these things have been brought by IGOs. If there are any that feel this is a problem we need to know who they are, what the problem is and we need to hear from people.

So far we're just getting some general representations about how they don't have access. But clearly they have access. And, you know, if particular ones have problems then we need to find out, they need to answer.

Phil Corwin: Yeah, well, Jim, as you know, I agree completely, and as you know we're preparing a letter with new questions to the small IGO group. I believe that issue is dealt with in that letter but if I'm wrong Mary can correct me on that. That letter is undergoing further revisions because of feedback we received on it, some as early as - as recent as last night and this morning from George and Paul and there may be others with feedback. But we'll be circulating revised versions of that letter.

And, you know, I've seen George's comments. I've seen Paul's comments on the letter. And we're going to, you know, make sure there's a good consensus in this group on a final text of that letter before it goes out to the small IGO group. But that question definitely we need a response from them about how they explain the fact that so many IGOs have made use of the available mechanisms and surmounted whatever concern might have been there about violating their sovereign immunity.

Jim Bikoff: Agreed.

Phil Corwin: George.

Mary Wong: Phil, this is Mary.

Phil Corwin: Yes.

Mary Wong: Oh I'm sorry. Please let George go ahead. I'll chime in after George.

Phil Corwin: Okay.

George Kirikos: Hello? George Kirikos...

Phil Corwin: Go ahead, George.

George Kirikos: Can you hear me?

Phil Corwin: Hear you fine.

George Kirikos: Okay, yeah, this is George Kirikos speaking. In the Barcelona.com court case the UDRP procedure was described as adjudicating light and not strictly an arbitration per se. it kind of begs the question for IGOs, you know, do they even consider UDRP to be, you know, a legal procedure in the sense that - that a well thought out decision can be reached?

Because if you look at the UDRP compared to a court case there's no discovery of documents, there's no cross examination, it's really a streamlined procedure. And I think that's why the standard in the UDRP is such that it needs to be a very clear cut decision because it doesn't have all those safeguards that exist in a real lawsuit.

And so if there was some other procedure that replaced the UDRP for IGOs I'd be curious to know whether they would even agree to things like cross examination and discovery of documents in some, you know, some sort of a super arbitration or whatever that would have parallels to the real court or

whether they would assert their immunity even for that sort of legal kind of procedure - quasi...

((Crosstalk))

Phil Corwin: So, George, you're suggesting that perhaps in addition to the letter we're preparing, you know, honing in and drilling down on the sovereign immunity issue that we should maybe think about other question asking them whether there are any procedural aspects of the existing arbitration mechanisms that they find troubling, is that what you're saying here?

George Kirikos: Right, and even in - even in the existing ones but also in some procedures that we come up with like let's say we come up with a procedure that says okay in some alternative you still have to do, you know, discovery of documents, we still have a do a cross examination just like happens in real court.

Phil Corwin: Right.

George Kirikos: Is that something that they object to in real courts or are they really just objecting to the ability of their assets to be seized by a court in terms of, you know, that portion of immunity in which case Paul Keating's arguments that...

Phil Corwin: Yeah.

George Kirikos: ...you know, if we clarify things and say that it's just a limited waiver with respect to the domain names then that might solve all the true concerns.

Phil Corwin: Yeah, well again, you know, just commenting on that the only thing they have at risk, you know, generally thinking that they're going to be the complainant in an arbitration process no one's going to be seizing their assets or asking them for monetary penalties or anything like that. The worst that happens is

they lose the UDRP and the registrant keeps the domain so. Petter, let's let Petter weigh in.

Petter Rindforth: Thanks. Petter here. George, oh okay. Just a quick comment on that, I'm open for any amended questions or additional questions. Just wanted to make sure that we don't put in any new proposals or open up for IGOs to suggest any new dispute polices or so.

I think that - I feel that the questions we have so far are quite straight on the specific topic we have. So just wanted to say that - have in mind that we don't give out any more less clear ideas on any new procedures so to speak.
Thanks.

Phil Corwin: Yeah, yeah, well thank you, Petter. My sense is that at least to date there's little to no support within this working group for creating a new CRP so I agree we - if we ask questions about whether they have any concerns about procedural aspects we got to make it clear that we're not asking them to help us design a new CRP. We don't want to give them that misimpression.

Great, do we have any other comments in response to the feedback we received from the other two CSG constituencies groups? If not we can move on to revealing the charter and seeing where we are on dealing with the questions.

Jim Bikoff: Phil, one question. Jim Bikoff.

Phil Corwin: Yes.

Jim Bikoff: When do we expect to see the - when should we expect to see the questions - the revised questions?

Phil Corwin: I'll put that question to staff.

Mary Wong: And staff has its hand raised, Phil. So obviously I think this is something that the working group would like to see handled quickly because the sooner than we get more information and input the quicker and more easy it will be for us to proceed with our work with the necessary information. So, Jim, I'm going to say that if we can get a revision out to everybody by tomorrow we certainly will try our best because what we do want to do is make sure that we take on board all the comments especially all the great additional resources that Paul and George have brought into us, but if not tomorrow certainly Friday that is our promise.

It will probably mean obviously that Phil and Petter would not have had a chance to review it before the rest of the rest of the group but I'm going to assume that they will not mind in this case.

And, Phil, if I may, just to go back to Jim's earlier comment on this point, I think one of the things that chairs and the staff had discussed is that in addition to going to the IGOs or going back to the IGOs because we want to ask them specifically what their experiences are, that this is also something that would be very appropriate for a conversation with the GAC.

And so there is the suggestion obviously that we would pose very similar questions at around the same time if possible to the GAC. And in that respect staff went back to some of the historical documents, you know, leading to and including the WIPO 2 process in the early 2000s.

And there were differences of opinion and even reservations that were expressed by certain countries and other countries expressed full support for, you know, questions regarding waiver of the immunity. So clearly governments are on the record - and this is at WIPO - about concerns and reservations so it seems very appropriate that this is something that we would want GAC feedback very much as well. And that's it for now.

Phil Corwin: Thanks, Mary. I see Val's hand up. Val, do you have a comment?

Val Sherman: Hello, can you hear me?

Phil Corwin: Val Sherman. Yes, now we can hear you.

Val Sherman: Oh I apologize, I'm - I was on mute. So I didn't get a chance to comment on the questions on the ListServe. But I just wanted to note two points that, you know, for consideration that we may or may not want to include. But one is with respect to the questions, do we want to more specifically ask them what may be the impediments if any to the IGO is using the assistance of their national representatives or proxies for example in the context of defending any appeals by losing parties in the UDRP more specifically.

And then another question is in their letter to us they claimed that the immunities, including immunity from the legal process in the court of national jurisdiction, are necessary to the functioning of IGOs in order to ensure their independence from any single state. So it seemed to me like they almost anticipated our point about the limitations of immunity.

I wonder we should - whether we should ask them. And perhaps this may have been something Mary was talking about was maybe asking for examples of how the IGO immunity jurisdictional or liability or otherwise is limited in various states especially considering that there's no single clear standard defining the scope and limits in all cases.

Phil Corwin: Okay. Okay, did staff get that? Can we take that into consideration when the questions are being revised to make sure that's touched on somehow?

Mary Wong: This is Mary. Yes, Val came across loud and clear so they will definitely be part of the consideration.

Val Sherman: Thank you, Mary. Thanks, Phil.

Phil Corwin: Okay. So once Val lowers her hand. Are we now done with this discussion for now? And can we look at the charter for a little bit? I'll take that as a yes. Can we put the charter questions up?

Okay so scroll down. Mary, where are the questions? Oh is this the issues? Just starting on Page 3 I guess.

Mary Wong: It's the bottom of Page 2 that starts with a general statement as to the scope of our task and then...

Phil Corwin: Right.

Mary Wong: ...and then at the top of Page 3 the Council instructs that as part of our deliberations we should at a minimum consider a number of issues. And those state the issues that are basically repeated from the final issue report. And then there's another further set of questions which are additional topics. And I think the questions that you wanted to ask the group to review include some bullet points on both sections.

Phil Corwin: Okay. Well I'm going to click through this fairly quickly with a quick comment on each point and then, again, if someone feels something is major stick your hand up, otherwise let's have discussion at the end just to get through this quickly.

All right, we have been asked to provide the Council with policy recommendations regarding whether to amend the UDRP and URS to allow access to and use of these mechanisms for IGOs and INGOs. And if so in what respects and whether separately narrowly tailored DRP at the second level modeled on the UDRP and URS that takes (unintelligible) particular needs and circumstances of IGOs and INGOs should be developed, should be developed.

Let me stop there. We've decided to - that INGOs need nothing, that they already have complete access to the UDRP if they have trademarks and they have no special legal considerations that would justify any special treatment or amendments.

We're certainly looking - we've decided the URS already refers - has a reference that provides standing to IGOs. We believe that the UDRP - that IGOs registered under the Paris Convention already have standing but we're considering proposing amendatory language to clarify that, not to create the standing but to clarify that they already have it under the Paris Convention so we're doing all of that.

And the particular needs and circumstances, that's the sovereign immunity issue and that's what we'll be grappling with for a lot of the remaining life span of this working group.

In deliberating the working group should gather data and research and we've been gathering data all along the way and we'll be using a lot of it in the final report to justify our report and its recommendations.

And then it says at a - this working group should at a minimum consider the following issues detailed in Section 9 of the final issue report. These are the difference between the UDRP and URS. We've done that with the helpful assistance of that chart prepared by Jim Bikoff.

The relevance of existing protection mechanisms in the AG for the new TLD program - I think we've done that for the URS. And of course if an IGO has a trademark they can register that trademark in the trademark clearinghouse and get those additional protections, the trademark claims notice and the notice to the registrar.

That raises a point we haven't addressed yet and staff notes that whether we want to look at whether registration - an IGO which doesn't have a trademark

but which has gotten Paris Convention protection whether that should be eligible for registration in the clearinghouse.

We've kind of - haven't dealt with that so far so please note that maybe we should have a further discussion on that down the road so our consideration of both new RPMs is complete.

The interplay between the topic under consideration, this PDP and the forthcoming GNSO - the UDRP, URS and other RPMs, I think that's the issue of whether we should allow IGOs to use the URS at incumbent TLDs and I voice my opinion on that but we'll make sure that's the consensus before we're done with this process.

The distinctions of any between IGOs and INGOs, yeah, we did that and decided INGOs didn't need any special treatment. Potential need distinguished between a legacy and new TLD, I think that gets back to the URS question otherwise the - and I guess the trademark clearinghouse that we deal with the issue of whether Paris Convention registration should entitle the ability to use the clearinghouse.

By the time this report is finished and by the time the GNSO and the GAC and all of that does anything final on our recommendations it may be a moot point, the entire first round of the new TLD program may be over in which case since the trademark clearinghouse generally just gives most of its protection in the first 90 days it would not be a very important point on the clearinghouse registration though it would be important for any second round down the road.

Need to clarify URS as a consensus policy. We've disused that. Yes, I heard someone.

Mary Wong: This is Mary so can I just jump in really quickly?

Phil Corwin: Sure.

Mary Wong: I think bearing in mind some of the comment that you made about the, you know, the other protection mechanisms as well as the follow up comments in the chat or some of them, just to note - and I know that you and other members know this but some members may not recollect this as clearly that the question of the existing protection mechanisms for IGOs, for example, through a trademark clearinghouse, that's a decision not for our working group but it's also something that is pending resolution between the board, the GNSO and the GAC. So...

Phil Corwin: Okay.

Mary Wong: ...in some ways when this charter was written the sense was that those discussions may have ended. But as we know at this point they're still going on.

Phil Corwin: Yes, as with many things ICANN they seem to take a very long time before they're over. And even then they're only sometimes over for a short period. That was a personal comment.

Moving back to the list need to address the issue of cost to IGOs and - I'm just going to - yeah - we're - we've considered that. And we'll address them in our report but we don't have the ability to create a subsidy mechanism.

The relevance is specifically to protections and their international legal instruments and various national IGOs and certain INGOs, well, INGOs have dropped out and, you know, again with considerable input from Jim, he's informed us that groups like the Red Cross and the Olympic Committee are fine right now, they don't need anything additional.

And we've focused a huge amount of time on understanding the Article 6ter of the Paris Convention. So I think other than, you know, unresolved work on

sovereign immunity, the need to make a final decision on URS as consensus policy whether to kick that can to the group - the working group in the future and the consideration on whether IGOs with Paris protection can register this names and acronyms the same things they register with WIPO in the clearinghouse.

I think we're in real good shape and having addressed all the basic things they wanted us to. There's no gaps. Considering on they want us to include the following topics in our deliberations. Let me just see - this is a long list so let's try to get through it before the end of the hour because I have a very hard stop at 2:00 pm, I must get off this call at 2:00.

Include the additional topics, review the deliberations of 2003 president's joint working group on the 2001 WIPO report. We reviewed that document didn't we, Mary - early on in our work.

Mary Wong: Yes we did. That was I think sub group C.

Phil Corwin: Right. We examined whether or not similar justifications and amendments should apply to both the UDRP and the URS. I think we've done that, you know, we've considered the differences and what one might need versus the other.

Reach out to existing ICANN DSPs. Well we have Christine on the call, we've had some side conversation with Brian from WIPO. Panelists, have we talked to any panelists? Are there any panelists in this group? Petter is a panelist.

Mary Wong: I think Petter is a panelist. And obviously through the IPC there's people there who are experienced as well.

Phil Corwin: Right.

Mary Wong: So while we haven't done so directly it seems to me that there have been many opportunities for engagement.

Phil Corwin: Yeah, I don't think that's a critical issue but I think we - between the IPC and Petter, we've got the benefit of the experience of panelists.

Jim Bikoff: Phil, it's Jim Bikoff. I - sorry to interrupt you. I think...

Phil Corwin: Sure.

Jim Bikoff: ...during one of our calls it was brought up about, you know, contacting panelists. And I think we decided not to do it but to make these inquiries rather to the IGOs themselves.

Phil Corwin: Okay. That may - Petter, I see your hand up.

Petter Rindforth: Yeah, just echo that. Petter here. We decided that we shouldn't reach out to single panelists. It was enough to read the decisions. And I know I was in that working group that discussed that. And we decided there and also in the full group that it could be too complicated to do that and in fact it was not necessary. Thanks.

Phil Corwin: Yeah, and I can't - I think - thanks for reminding me of that and I think, you know, we've had indirect - well both directly from Petter and indirectly through the IPC we've had the benefit of that experience, I don't see any need for specific outreach beyond that unless something arises that's unforeseen right now.

Continuing to determine what if any are the specific difference considerations that should apply to IGOs. I think when they say qualifying requirements, authentication criteria and appeal process.

Well qualifying and standing I think authentication, I don't think we really - I'm not sure what that means. Appeal is of course caught up in the sovereign immunity issue. But let's go on.

Conduct research and applicable international law. We're in the midst of that right now, conduct research on the extent to which IGOs already have trademarks and might be covered. I think we've done quite a bit on that.

Conduct research on the number and list of IGOs currently protected under Article 6ter. We've done that. We've been very diligent in our work here. Conduct research on the number and list of INGOs on the UN list. That's not relevant so - because we decided INGOs don't need any further consideration by this working group and we've been backed on that decision by other parties within ICANN.

Consider whether or not there might be alternatives other than amending the UDRP and URS (unintelligible) nonetheless provide adequate curative rights protection such as development of specific narrowly tailored dispute resolution procedure applicable only to IGOs.

I think we have considered that but we haven't seen any reason to create such a separate CRP to this point. And unless something startling happens on sovereign immunity I don't expect us to - but we have checked that box.

Consider mechanism that require very clear definition of the mission of the IGOs, scope of operations, regions and countries where it operates, to provide a context similar to that of trademarks. You know, maybe that's one we need to discuss further and staff note that I think we need some more discussion of that.

I'm not sure that we need to do much on that. I think the goods and services an IGO it's protected on are probably covered by the charter or treaty or whatever created it. You know, World Health Organization is an organization

related to health, not to automobiles or travel or anything else. But I think we ought to take note of that one and give it a little more attention before we're done.

Consider recommendations and incorporate fundamental principles and fair use for generic words and other terms and acronyms in other confusing ways. That's another one I think maybe we should, you know, make sure we've given it sufficient attention before the end of this process so again staff take note of that for what remains to be done.

Mary Wong: Phil.

Phil Corwin: Yeah.

Mary Wong: Phil, this is Mary. So if I could just tack onto your comments about the last couple of points, you know, staff spent some time thinking through at least the first one in terms of the mission of the IGOs and the path of good and services. And obviously we will sort of come back to not just this but all the questions before we're done to make sure that we're satisfied that we've covered whatever we're supposed to cover in sufficient detail.

But it seems to us that that really was based on the notion that the IGOs would still have to have some sort of trademark type rights. So to that extent using the international class and description probably was not going to be very helpful.

Phil Corwin: Right. Well it'll be (unintelligible) where IGOs have trademarked their name or acronyms how they describe their goods and services for trademark registration purposes might be something to take a look at. But I think generally when an IGO - if it brings an arbitration action the issue is going to be whether it's mainly being used in a way that creates confusion where someone is misled to believe that's the Website of the organization rather than something completely different.

On the fair use I'm not sure that's an issue for us. I think that's more of an issue for the panelists to, if some group registers a domain saying, you know, you know, corruption in that IGO and then they bring a UDRP it's up to a panelist to determine whether that's fair use in criticism. I'm not sure that's an issue for us to address but we can talk about it a little bit before the end of this process.

And the last point bear in mind that any recommendation relating to UDRP and URS may be subject to further review under the GNSO's forthcoming PDP. Okay, you know, that's - if the next working group, the one with all the big questions on UDRP, URS and the clearinghouse wants to go back and review what we've done that's fine. That group doesn't exist yet and they'll work within the scope of their charter.

Continuing down, we should invite participation from supporting organizations, advisory committees including the GAC and from interested IGOs. We've done that and we're going to be doing it again with the IGOs and reviewed feedback from two constituency groups today.

Okay we did form subgroups early on to facilitate our work. And then the final one, scope is to be limited to those identifiers in the - by the GNSO's PDP working group on the protection of international organization identifiers and all gTLDs.

And I think that gets to the issue of the scope of protected IGOs for what we're doing which is an issue that's going to be before the Council tomorrow because I think we're at a preliminary conclusion that the ones we need to protect with whatever we do are the ones that have protected their rights, taken the affirmative step of notifying WIPO per the provisions of the Paris Convention.

I will stop there. We have three minutes left. And open it up to further discussion. And if there is any. And (unintelligible) at our next session is necessary.

Mary Wong: Phil, sorry, it's Mary again. Again, it's just a note that, you know, I think some of these things the group seems to be in agreement that it would be more appropriate to be covered in a more broad context. So obviously, you know, a review of all the RPMs, including the UDRP, URS, etcetera. I think the note here is that there is not a guarantee that there will be such a PDP because the issue report that's due in September is really just an issue report.

I know that for a lot of folks, including some staff members, whom I won't name, it seems hard to believe that there will not be a PDP as a result. But I just wanted to make sure on the record that, you know, at this point we don't have a PDP and we don't know yet whether we will.

Phil Corwin: Right, yeah, I thought I made that clear. But - and - but I think we are bearing that in mind but I think, you know, we're going to make our report and recommendations and what others wish to deal with it after we do that either near term or in the future in another working group that may or may not exist is not up to us. We create a final package and hand it off and others deal with it.

Does anyone else have a quick verbal comment before we terminate the call? I hear none, I see no hands. If anyone believes we need further discussion of this charter review on our next call please let us know by email. The co-chairs and staff are discussing whether we're going to keep having calls on a weekly basis or as we wait to get more work developed on the sovereign immunity issue whether to go to a less frequent schedule for a while until we get all the material we need to address sovereign immunity.

Having said that, there may well be a call next Wednesday to discuss the revised version of the letter to IGOs since we're still making some significant

changes. On the other hand we want to get it out quickly and may be able to get consensus on a final version by email. So I wanted to note that the schedule may be - for a while may be having calls on a less than weekly basis.

And that's it. Anybody have anything further they want to add to this call before we terminate it? Well I hear no one, I see no one so we are adjourned until our next call and we'll be sending out notice within the next few days of when that next call will take place.

Thank you.

Jim Bikoff: Thanks, everyone.

Phil Corwin: Good-bye.

Petter Rindforth: Bye.

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

END