

ICANN Transcription
IGO-INGO Curative Rights Protection Mechanisms PDP
Thursday, 13 October 2016 at 1700 UTC

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Michelle DeSmyter: Good morning, good afternoon and good evening. Welcome to the IGO INGO Curative Rights Protection Mechanisms PDP Working Group Meeting on the 13th of October at 17:00 UTC.

On the call today we do have George Kirikos, Petter Rindforth, Mason Cole, Paul Tattersfield, Philip Corwin. We have Nischa Vreeling who is sitting in for James Bikoff today and Jay Chapman. We have apologies from Paul Keating and Reg Levy who'll be joining later in the call.

From staff we Mary Wong, Berry Cobb, Steve Chan and myself, Michelle DeSmyter.

As a reminder please state your name before speaking for transcription purposes. And I'll turn the call back over to Petter Rindforth.

Petter Rindforth: Thank you. And to start with is there any updates on statement of interest? I see no hands up. So as you can see from the agenda today we have a few - so initially last week when I couldn't participate in the small group proposal. And just to give us all a quick update on what they state, said at the basis for protection of IGO acronym should not be founded in trademark law, where we can agree (about).

If IGOs are created by governments on the international law and are in an – are of a different category of right-holders. And as IGOs perform important global missions with public funds implementation of appropriate protections for IGO names and acronyms is in the public interest. And finally the (legitimate) IGOs that would qualify for protections under this proposal are those that are named on a GAC list of IGOs finally submitted to you like in March 2013. And updated on March 22 2013.

And which if different from the suggestion we have. And they also as IGO that this (pewtra) solution recommends where I can, will facilitate the development of rules and procedures for separate – separate from existing UDRP dispute resolution mechanism, three-fold claims of abuse of the (mayonnaise) that already said and being used in situations where the residence is pretending to be the IGO or that – or otherwise likely to result in fraud of deception.

And, A, are identical to an IGO acronym; B, are confusingly similar to an IGO acronym; or C, contain the IGO acronym. Deficients resulting from this mechanism shall be appealable through an arbitrary process to be agreed.

Let me also say they suggest a rapid release mechanism that I can and will facilitate creation of a mechanism through which a (legitimate) IGO may obtain a rapid temporary suspension of a domain name in situations where it would not be reasonable for it to be used – to use the agreed disputed solution

mechanism. As (bet) a specific conditions defined but I want to document to clarify this procedure will not be intended for use in any proceedings with material open questions or fact but only clear-cut cases of abuse.

To obtain such release and limit IGO must demonstrate that the subject domain name is identical or confusingly similar to an IGO acronym and be already still in use in situations where the resident is pretending to be the IGO or that are otherwise likely to result in fraud or deception. And there is an obvious risk of imminent harm from the claimed abuse of such domain name.

So that's fraudulently soliciting donations in the wake of a humanitarian disaster. A release under this mechanism will be the same as that provided under the URS. And then they also stated the – about costs related to mechanisms referred to in this proposal that ICANN will work the IGOs and the mechanism provide us to ensure that IGOs are not required to pay filing or any other ICANN-defined fees to access and use those mechanisms unless examiner finds the case to have been brought in bad faith.

Three or more findings or cases brought in bad faith by the same IGO may lead to that IGO being suspended from using the mechanism for a period of one year. And that I also – some next steps – and I now noted just as on the three of them temporary protection for IGO acronyms will (decrease) when the new process is implemented.

As noted above IGO full names have been accorded protection as both the top and (second) levels of the CN2 ICANN Board's decision of April 30, 2014. And then (Phillip) had yesterday a call with the Chair and Vice-Chair as well as the General Council and a few other council members to discuss this Board letter. And I also understand that on the General Council's agenda earlier today it was discussed.

So I turn over to you (Phillip). Give us an interesting update. Thanks.

Philip Corwin: Thank you Petter. And let me – it wasn't yesterday there was a call Tuesday with the Chair and Vice-Chairs and a small number of members of the council just to have some initial discussion on it, on this matter. And there was further discussion on the council call which took place a few hours ago.

In that discussion the Chair of the council, James Bladel, stated that – how this matter was resolved would – was really an existential issue for the GNSO and the Council. And that's not because of the substance of the matter. The issues we're looking at are important but they're not existential issues.

The issue is whether – is how in the first transition ICANN, the GAC and members of the GAC will either integrate with policy making process that is run by the GNSO or whether they will be able to engage in direct discussions with the Board toward achieving policy. And I want to point out a few things about this letter on proposal and then open it up for further discussion.

Let me say up front that one of the things that was – on which consensus was reached on that council member call on Tuesday is that it's going to be very important that our final report and recommendations even if you think whatever we recommend in that report implicitly deals with this IGO small group proposal we're going to need a section of that report that explicitly addresses each and every one of the provisions of that proposal that is related to our working group and explain why we either accepted or rejected it.

And it may well cross-reference other parts of the report. But we're going to need a separate section of the report dealing with this so that there's no question that it's been fully addressed by our working group. Now the letter from the Board, if you read it carefully, this IGO small group proposal right now is nothing more than the proposal of a few IGOs. It is not endorsed by the Board. It is not endorsed by the GAC. It's not even endorsed by all IGOs.

One might ask why we're seeing it at this time if that's the case but that is what it is. The letter asks that the Council refer this to our working group. And

they've done that informally and I assured them that we'd be dealing with it on today's call and subsequent calls. So that's already taking place.

I made the point on the council call this morning – the letter contains in the paragraph that ends on the top of the second page of the letter it states the Board will not take action with respect to GAC advice on curative rights protections for IGO prior to the conclusion of the GNSO's PDP. Now that's our PDP.

And it's important to keep in mind there's two different PDPs mixed up in this proposal. There's a former council PDP on preventative measures that is blocking a certain names and acronyms at the top and perhaps the second level. And the talks that went on between the Board, the GAC and the small group were about that. But the CRP issue got introduced in conjunction with that.

But I posited to the council this morning and there was broad agreement that the Council in response to this letter should take the position that the conclusion of this PDP is after we put out our preliminary report recommendations, after we make any modifications in response to public comment, after we put out the final report, after the Council considers and takes whatever action it's going to take on that report and after the Board considers the Council recommendation that nothing should be done by the Board in regard to this IGO proposal or any GAC advice that may arise related to it.

And there's a little bit of GAC advice already on some of the elements that we're all familiar with, until we're completely done with the standard policy process. So that's important to understand where the Council is going to be coming out of. And as for the proposal itself, all I would say specifically on it and again we're going to have to deal in detail with all of it, is that in the – I would say there's a lot here I have no disagreement with in terms of the aims of what we're trying to get.

And I believe that our report is going to provide the type of protections the IGOs are looking for, although clearly we have not gone down the road they have urged. In terms of the – what they say is their framework for any permanent solution concerning the protection of IGO names and acronyms Point 1 that it should not be founded in trademark law.

Quite clearly we are grounding a lot of what we are on the way to recommending in the protection for IGO names and acronyms contained in the Article 6ter of the Paris Convention; which gives them a very simple way to gain protections in national trademark law systems.

So there's a basic disagreement on the other two elements of the framework. Yes we recognize that they perform important global missions with public funds and they need adequate protections. And the eligible IGOs that would qualify I think will look at it again with the (as I say) the staff. But I believe the scope of the protections we'll be recommending are at least as broad as those named on the GAC list of IGOs in March 2013.

On the specific dispute resolution mechanism they're asking for two new, entirely new procedures. One similar to but separate from the UDRP and the other one similar to but also separate from the URS and the – it's no secret among us and they're well aware of our work. I think the letter reveals that the Board I think informed by the IGOs is, you know, aware of where we are in our work, that we're preparing our preliminary report; that we have not gone down the road of creating separate processes. They don't state it but I think – they don't state a justification for any of this demand for separate processes and that the appeal should be through an arbitral process, not to a court of mutual jurisdiction.

But based on prior discussions with them on the occasions on which we have had conversations with representatives of the small group, we're aware that it's

based in a view of sovereign immunity which is far broader than the view we've come to adopt for our work after input from our legal expert, Professor Swain.

So I'm going to stop there and let others speak. But I wanted to give you the context of what this is. It's not something the Board or the GAC has agreed to yet or even that represents the views of all IGOs. And the Council is viewing it not just on the substance but in terms of the precedent that this route to try and gain policy provisions compared to the standard PDP process will set as a precedent for the post transition ICANN.

So I'll stop there and let other members of the working group speak. Thanks very much.

Petter Rindforth: All right so Petter here. Now see number of hands up and before I pass on to you one comment. I personally don't see (occidents) exterius the same as trademark laws so I think we can describe Article 6ter in a way that – in our report that will be the same as they want, that we don't treat it as traditional trademarks. We tried to find something that is similar but specified for IGOs.

I have just one follow-up question. When I read the document I was not sure if they propose that all working groups should also create or suggest the rapid relieve mechanism. As I read it I thought it was more a communication directly to the Board that in the meantime when we conclude our work something specified on the side rapid relief mechanism should be on this spot so to say.

But just to make it clear do they suggest that – to add this to our working group?

Philip Corwin: Well, you know, the Council – the Board has asked Council to refer this proposal to our working group. And that's already in the works right now. We're considering it.

It's not clear by what mechanism they're proposing that for both number two in their proposal dispute resolution mechanism which is a thing similar to but separate from the UDRP and the rapid relief mechanism.

Petter Rindforth: Yes that's what we're working with right now.

Philip Corwin: Right. It just says ICANN will facilitate the development of rules and procedures for a separate DRP to resolve claims of abuse, that's for two. And for three is says ICANN will facilitate creation of a mechanism through which an eligible IGO may obtain a rapid temporary suspension of a domain name.

Now we're already making recommendations for them to utilize the UDRP; which would correspond to two and the URS which would correspond to three. It doesn't state by what means other than the standard policy process ICANN would facilitate the development of rules and procedures for new mechanisms applicable to gTLDs the way that's always been done.

Best thing to have a PDP, had a report and recommendations adopted and then to have an implementation team actually develop the nuts and bolts for implementing the policy after it's been adopted by the Council and the Board. They're very vague on that.

I don't know how it would be done other than through the standard process, although there's some hint at the end in mixed steps where they may be envisioning staff of Global Domain Division doing this on their own, outside. And I pointed that out in – that point two in the conversation with the Council this morning.

But it's not clear what they mean by that, as I read it. I don't know if that's helpful but that's all the light I can shed on that question.

Petter Rindforth: Okay, thanks. Mary.

Mary Wong: Thanks Petter and thanks (Phillip). I had a couple other comments that I'll hold after George and (Laurie). But just on this specific question that you had Petter and (Phillip) your context to that as well. Just to add to both of those, I think first of all the Board and I can't speak for the small group obviously.

But as the staff member from the GNSO who was consulted about the work of the Council and this group and GNSO processes, my belief is that in phrasing the proposal this way the intention was to not dictate since they cannot and should not dictate to the GNSO how to run as processes.

And (Phillip) as you noted in the Board letter they do note that there are a couple of different efforts and processes in the GNSO. The ongoing PDP – just this one – and a separate process for dealing with adopted policy recommendations. So that's what I think the language is getting at.

And so hopefully this helps answer some of the questions in the Chat, especially and I'll add something here. The discussion earlier on in the chat about the pre-registration notification and whether or not that is within the scope of this working group's charter.

As I put in the Chat – that is something that came out of the earlier PDP and (Phillip) you noted the same thing. And there is a separate process for the Council to discuss and determine whether that recommendation and the small group proposal should go through that process; which is different from what we're doing here.

So (Laurie), on your comment that this group can certainly provide a comment on that, there's nothing to stop our group from trying to assist the Council by providing a statement or a comment and maybe giving some context as to how that might gel with what we're doing. But we wouldn't need to amend or expand our charter and in fact we shouldn't.

So Petter, everyone, I hope that's helpful. And like I said I do have another comment that I'll get back to later after George and (Laurie), if possible.

Petter Rindforth: Thanks Mary. I'll put it on my list. George?

George Kirikos: George Kirikos for the transcript. I sent comments to the mailing list last week about this proposal. So I don't want to repeat myself. But for Number 1 I think it's important to note that they haven't limited themselves to marks that are on the Article 6ter database.

And so to that extent they seem to be overreaching that they're submitting acronyms that aren't even eligible for the Article 6ter protection. So my proposal would be, you know, they could submit Article 6ter marks, you know, whether they're acronyms or not, you know, they're regular names to existing (Kim CH) database and that would solve that problem completely.

As for Number 2 and Number 3 we've kind of already dealt with it during the development in this PDP with our current documents. I don't think we need to give them, you know, very much consideration beyond noting, you know, we've listened to their concerns and in a multi-stakeholder process, you know, it's not just one stakeholder who has listened to – it's all the stake holders.

So I do note that in 1, 2, 3 and 4 they all seem to be focused only on the acronyms so I don't know whether that was an oversight on their part. They obviously wanted to protect their names and their acronyms, not just their acronyms. So they would probably want to modify that in their own document.

I'll pass the con onto the next speaker.

Petter Rindforth: All right, (Laurie)?

(Laurie): Yes, hi. So I wanted to follow up on some of George's comments. I agree that I think putting the acronyms in without putting the names in seems to have

missed an important piece of protection. We would definitely want some clarity on that.

Secondly I do agree with George. I know George this is a banner day, I do agree that if we were to perhaps propose the – to allow IGO names to be put in the TMCH without the corresponding proof of a trademark right that that could solve a lot of the problems that IGOs are currently having now.

And I want to go back and again I don't know if it's the right timing for this at once but we did talk about it a little bit last week, about context. If this issue really is about acronyms and not about the names of the organizations and I do share the concerns of overreaching on acronyms. And that there's got to be a contextual basis for asserting how an acronym would be protected.

And I think that might go to a comment, we might think about regarding the word appropriate. Because in – I think in the IGO mind appropriate means our acronym in any and all extensions which this group I do believe has consensus on that that is inappropriate. That it may be appropriate to have, you know, adequate protection for IGO names and extensions for which context can be derived like dot health or dot mission or dot home, you know, dot public interest or whatever it is. I mean I'm making these up obviously.

But I still don't want to lose that sight of appropriateness in context, because trademark law works because of context. And even though it's trademark owners who use the TMCH, when we get claim notices if we see entities that are in different businesses or have a different context than the one in which our trademark would be perceived – trademark owners are not going to go after those names. And I don't think it's appropriate for IGOs either in that respect.

So while I absolutely support the idea that IGOs do have a public interest, a special mission and should be protected perhaps differently, I've never strayed from that. I don't agree with the broad approach put out in this paper. And I

think it would be incumbent upon us to clarify what we think those limitations ought to be.

I yield the floor.

Petter Rindforth: Thanks (Laurie). Just one comment on what you said about that they only speak about IGO acronyms. But I also see that they – what I said yesterday this new (resolution) mechanism where you create points, the point C or contain the IGO acronym; which in fact could be a very broad protection. Each trademark that could be considered to have some of or part of its words being an IGO acronym could actually neutrally reading be a part of this kind of this future solution mechanism.

So this is also something that needs to be considered when we discuss the details.

I noted that I should put in Mary. But I saw (Phillip) also here so I'll give it over to (Phillip) first.

Philip Corwin: Yes thanks Petter. Two quick points. One George discussed to some small extent Proposal Number 1. Proposal Number 1 is really outside the scope of our working with (desk pat) preventative protections. There was already a PDP working group on that. It's actually the difference between its recommendations and those of the GAC, the GAC advice on that subject; which gave rise to the discussions between the Board, the GAC and the small IGO group.

And when George said we shouldn't give this much – too much work or attention if he meant we shouldn't, you know, I don't think we need to discuss a great deal how we feel about the specifics for a separate CRP given our consideration up to now. But again I want to emphasize that this issue is going to take on importance far beyond its substance.

And to not only defend our own work but to defend the GNSO policy making process in that context we're going to need to have very specific analysis and responses of the portions of this recommendation, this proposal, that are relevant to the work of this working group in our final report and recommendations. We can't just dismiss it in a sentence or two. It's going to have to be quite detailed to explain why we've considered. And assuming we stick to where we're at – have not adopted their proposals relating to dispute resolution mechanism and rapid relief mechanism.

But while we believe that what we have recommended in our report gives them equivalent relief but through the proper means. Thanks.

Petter Rindforth: Thanks (Phillip). I've - see Michelle please that Mary has replied to some of the questions and comments. But your hand is up also so I give it over to you directly.

Mary Wong: Thank you very much Petter. So actually now I have a few more follow-up points. So maybe I'll just go backwards in order. The first point – what (Phillip), you've just said in terms of being able to describe in greater detail in the report how we considered the proposals and the reasons why the group came up with certain recommendations.

I see that George agrees with that in the Chat and I'd like to add that from the staff perspective we also think that that will be very important. And that actually is one reason why the deliberation section is not done by now because of the new development.

The second point is about some of the discussion in the Chat. And while I won't repeat it I did want to make a point, for the benefit of those who may be listening to the recording or reading the transcript and that is about the question of the IGO names. And there are a couple of follow-on subsidiary questions that we may need to discuss based on this.

But just as a matter of statement and description for now the original PDP, the working group recommended that IGO full names would be reserved at the top and the second level with an exception procedure to be designed in implementation to apply to the affected organization.

Recommendations have already been approved and adopted by both the Council and the Board. So that, A, is outside the scope of our working group including for reasons (Phillip) has documented or explained. But secondly to the extent that our recommendations on the curative side are things that we might want to look at in terms of how they gel with the adopted recommendations for full names.

That's something we can look at. But the point is that we would not need to revisit those recommendations. And so ultimately when we talk about these proposals like the ones in front of us the real concern here is more likely than not the IGO acronyms. And that's what we've been dealing with for some time.

The final comment that I want to make for now goes back to the premise here that you see in the small group proposal about not founding the basis for these mechanisms in trademark law.

And again, I don't want to speak for all the members of the small group, but my understanding is that it is because we are not looking at IGOs as trademark holders. And I say we I meant the community generally. And you may recall that GAC advice has consistently said that IGOs are in a different category and have different rights than trademark holders.

And so that is why, if you look at this proposal, you'll see, for example, that some of the protections available for trademark owners such as a sunrise mechanism is actually absent from this proposal.

That doesn't mean that our (sector) discussion is not relevant at all because as (Phil), you and others pointed out last week, we're looking at (unintelligible) purposes of standing to file a complaint.

But I just wanted to explain the premise or state it in this small group proposal and to the extent that it affects any of our considerations as we go forth in our deliberations. Maybe that distinction will be helpful. Thanks Petter.

Petter Rindforth: Thanks Mary. (I have another question.). Also, when I read this letter from (Steve Crocker) to the General Counsel. It's, I read it, it's a very positive report on what's going on in all the proposals. I'm not sure if it's just, I hope it's just a way you write these kind of letters and it's not to read as a proposal or deciding positive subject of what's coming up from the small group.

Maybe (Phil) has some comments on that or (Mary's) hand is up.

Mary Wong: Sorry. Old hand.

Petter Rindforth: Okay. (Phil), have you in your discussion when it comes to ...

((Crosstalk))

Petter Rindforth: Yes.

Philip Corwin: Okay. Well actually, there was some discussion of trying to figure out exactly what the Board is saying here or what process it's recommending. And there is some confusion on that but I think all you can do is read it and take it as it is where, that they continue to work with a small group of representatives from the GAC and the IGOs to finalize proposal regarding IGO acronym protection.

Now, (Dennis) says the Board is poised to inform the Council that it's been notified that the small group has reached consensus on a proposal that it hopes will be acceptable to GAC and the GNSO.

The Board doesn't say it endorses this proposal. It makes clear that the GAC has not endorsed this proposal. Later on it makes clear that the proposal hasn't even been endorsed by all IGOs that participate in the GAC. So right now this is just the IGO proposal.

It's not anything the Board says we think this is great and you ought to run with it. They're keeping some distance from it. Then they go onto say that they understand that there are aspects that concern (preliminary) rights processes that may be referred by Council to this working group.

And they understand that we're currently discussion preliminary recommendations and that they hope the presentation or the proposal is timely and will be fully considered. Well, it's not that timely coming in at the 11th hour but we're going to deal with it.

And it is going to be, you know, it's being considered right now. But the time we're done and issue a preliminary report, it's going to be fully considered and fully discussed regarding what are adequate curative rights protections for IGO acronyms.

In fact their proposal goes beyond acronymisms to names. And what else does it say here? Oh, it says that the Board will not take action with respect to GAC advice on curative rights protection, any GAC advise, either the ones, the stuff's that's already out there on, it should be, we already know the GAC's been on record I think from Buenos Aires that the CRPs to protect IGOs should be separate from the UDRP.

And free or low cost. Remember when we asked them to clarify what low cost was and we didn't get a very responsive answer so we've had that experience. But the Board is not ...

((Crosstalk))

Petter Rindforth: Right now I think low cost is no cost.

Philip Corwin: Yes. But they, the Board's not going to take any action, it's saying here until the GNSO's PDP, that's us, is concluded and as I discussed earlier, I think the Council is going to respond at conclusion of the PDP means the full process, the final report and recommendations and its consideration. And either adoption or rejection in whole or part by the Council.

That's the conclusion. Not anything prior to that. And we're going to, Council I think is going to hold the Board to that commitment. So then it goes back to preventative protection in the next sentence or next paragraph.

Then in the final full, big paragraph it says, I want to reiterate our belief the Board's belief that the most appropriate approach for the Board for this matter is to help facilitate a procedural way forward for the reconciliation of GAC advice and GNSO policy prior to the Board formally consideration substantive policy recommendation.

That seems to be saying that somehow they want the Council and the GAC to reconcile before the Board gets something but there's confusion about that and frankly there were statement by many councils on this morning call saying that what's going on here is not helpful at all.

It would have been helpful, it would have been early GAC and IGO member engagement in our working group to make their case and not pursuing a separate course in direct talks with the Board. And that's not going to happen here. That's not my opinion but an opinion voiced by some council members this morning is that the same – what's the word I want?

It's the same disagreement we've seen on preventative measures is going to be repeated on CRP recommendation and in fact what the Board is doing here is facilitating a process that is more likely to lead to conflict and reconciliation.

But we're going to do our best to, in this working group I know to fully address the IGO proposal and to point out why we disagree with some of their specific recommendation on how to do it though we believe we've done as good or better than a job that they've requested on results in terms of giving them access to processes that will protect their names and acronyms.

And that's it. That's the best I can give you. But that question was discussed by the council and basically council is saying, well what are they, what are we, what does the Board want us to do with this other than refer it to this working group and a feeling that this was not particularly helpful in getting things, in getting the GAC and GNSO on the same page in terms of this issue.

But that's a problem for the council. Our responsibility is to put out a solid report and recommendations that fully discusses the IGO proposal within it. That's all I had on that.

Petter Rindforth: Thanks (Phil). That's what, frankly what I hoped for, that it was more of a diplomatic (writ) of information, And as we are on the (unintelligible) of our working group where we discussed it with representatives from the Board.

We got a clear (note) that it should not be treated as trademarks and should not get more protection or not even the same protection as real trademarks registered or registered trademarks when it comes to disputes.

Okay, Mary.

Mary Wong: Thanks Petter. As (Phil) notes, some of these are matters for the Council and on some points that (Phil) has highlighted for this group, I didn't get the chance when the Council called this morning to provide some sort of context.

But for purposes of our group's understanding of what, where we're going to go with this, certainly I can insert some comments here. In terms of the Board

letter, the points that (Phil) noted about the Board not expressly endorsing the small group proposal and the last part where the Board or rather Dr. (Crocker) refers to how the Board view its role in all of this.

From our understanding, that meshes with our understanding that the Board and the GNSO had at that last ICANN meeting in Helsinki where the Board made clear that it hoped that the reconciliation might still be possible between the GAC and the GNSO.

And I think it was emphasized that this small group proposal is but a proposal that still needs to be considered by both the GAC and the GNSO. And on this specific point, we've talked a little bit about GAC advice. And as (Phil) notes, that's been provided on several occasions of longstanding.

The GAC advice as it currently stands on IGO acronyms is not the same as what is in this proposal. So just as the GNSO would need to consider the preventative stuff, in terms of the original PDP recommendations and the curative process in terms of what our group is doing, the GAC would also need to consider the proposal in the context of advice that is formerly given to the Board.

Then the other point that I wanted to make was about the Board not acting until the conclusion of this PDP. That's something that the Board has said even as far back as I believe mid-2014 when there was correspondence between the Board and the GNSO Council on this very topic.

And so this is being repeated in this letter and the staff understanding is indeed, it means the conclusion of this PDP meaning that the stage when final recommendations are brought forward for approval. So I hope both those points are helpful to everybody. Thank you.

Petter Rindforth: Thanks Mary. So what we agree upon is that we need to have a specific chapter in our documentation with comments based on the small group proposal. And that takes me over to the next step.

The questions is, shall we start perhaps with dealing with that specific chapter on (unintelligible) before we then go back to our general report with all the details. Because we have a clear base in our report so far.

But it may be that we also recognize or realize that we need to not reconsider but rephrase some of the parts of the rest of our report once we have made this specific chapter on small group proposal.

But I'll leave it to the group to think of how we should proceed in that aspect.
Mary, your hand's up?

Mary Wong: Actually that is a new hand although I just simply kept the old hand up.

Petter Rindforth: Go ahead, please.

Mary Wong: Thank you. So just a suggestion from the staff side. It may be helpful for our group to at this point look at the specifics of the proposal primarily what would be, let me see, points three and four of the small group proposal because that would first of all help us and certainly help the staff in documenting the deliberations leading to the conclusions.

But secondly, it will also allow us to see clearly including for members who are not on this call where the difference lie in terms, not just of the mechanism itself but of the scope. Because if you look at agenda item number three for today, we have been in the midst of discussing the various policy options.

And although it seems fairly clear what direction much of the group wants to take, we still need, you know, to complete that circle and come back to it. So

for example, looking at this mechanism and particularly, well, two examples. One is on the rapid relief mechanism.

The proposal says it should be the same grounds as the URS in clear cut cases of abuse but it sets out certain conditions such as an obvious risk if imminent harm, for example fraud. We might want to spend a little bit of time talking about that to see if that's something that we want to take into account as we come to final recommendations.

Secondly, with regard to the dispute resolution mechanism which here of course the difference is, we are not going for a separate mechanism but the proposal recommends one. But if you look at the grounds that's also quite different or potentially quite different from the UDRP.

For example, it says that here the separate mechanism would just not be appealable to arbitration but on the grounds itself that the abuse has to be in a situation where the registrant is pretending to be the IGO or is engaging in fraud of some sort.

And that seems different not just from the UDRP but from what we're considering. So the staff recommendation is for us to dive a little deeper and make we can do this on the list, not necessarily on the call, just to make sure that we have documented those differences and so we can discuss them more fully. Thank you.

Petter Rindforth: Thank you Mary. (Wait a minute). I'm not sure that those that have completed this text and description are dealing with UDRP disputes. I'll read some of it as it could be more or less the same as it is today. But of course, one thing that is frankly more than let's say identical or confusing or similar.

Yes, that's the same. But also, as I said before, contain the ideal acronym where there's much more protection than the UDRP actually makes the day. So as I said, I think it's a good start and Mary, I would agree with, let us start

with her comments on these parts and then proceed with the rest of our general report.

And now I give it over to (Phil) and then Mary. Then I think the time is running so I propose that we skip point three today and get onto some planning for ICANN 57 to see where we're going. Okay, (Phil).

Philip Corwin: Thank you Petter. (Phil) for the record. Let me say here, you know, points two and three where they advocate separate mechanisms for dispute resolution (and rapid only) relief, there's really no rationale for why they are asking for a separate proposal other than if one goes back to their framework up above the general principles.

And it would be number one that the basis for objection of IGO acronyms would not be found in trademark law. And of course the UDRP and URS are based in trademark law.

But we've come up with ways for them, you know, aside from the fact that some IGO have actually trademarked their name or acronyms, we've come up with a way for them to have standing through an established mechanism under a very old treaty called the Paris Convention which was, one part of which, provide protections for IGOs, names and acronyms.

We're voting on what already exists rather than starting from scratch. Probably the other probable justification is at least for the appeals going to an arbitral process and they don't state it but, you know, not to quote some mutual jurisdiction/

And I note that nowhere in this proposal is there a single word about the rights of registrants which is something that our group has given substantial attention to make sure that those rights are adequate and being respected. And deal with the fact that ICANN has no authority to create new rights or to extinguish existing legal rights under national law.

But when you get, it just seems to me, maybe this is a harsh judgement, but a lot of this tends to be different from the UDRP or the URS. And the elements is just to kind of pad a weak case for separate mechanisms when a strong case does not exist.

When you go through the actual elements domain names registered and being used in situations where the registrant's pretending to be the IGO, where that otherwise would like to result in fraud or exception. You know, and where the IGO acronym or some variation of it is in the name.

But that's all covered and being used, registered and used in bad faith. All those situations are covered by a long litany of decisions by panelists, anything IN fact, I think we should point out when we discuss their proposal that the protections we're proosing are broader.

And in this attempt to create distinguishment and an artificial rationale for separate procedures, they've created mechanisms which are narrower in scope than the existing UDRP and URS standards which is just bad faith registration and use and would cover of course, fraud, deception, malware.

There was just a case this week where a domain was transferred because it was redirecting to a malware site. Al of that's covered. On the rapid relief, the same thing, identical, confusing, similar to the acronym, registered where the registrant is pretending to be the IGO. Well, that would go when you examine the Website. See what's going on at the Website.

That's the context that we were just talking about. First thing that happens in the UDRP, you look at the Website and if it's unrelated to the complainant's good and services, they'll probably lose. But if it's, you know, related to it, then there's a case.

There's going on fraud and deception that's in bad faith, imminent harm, well that was the purpose of the URS, to create a rapid, not instantaneous but a rapid relief for clear cut instances of infringement. And the original focus of the URS was not, was going to be on things like fishing and malware.

It got broader than that but that was the original intent. So I think ironically what we're proposing to provide to IGOs is broader than what they're asking for. They want to complain in the end about getting broader, more flexible relief, I guess, they can.

But there's nowhere in here other than point one and their framework, any justification for separate procedures from the UDRP and URS. So we just have to guess what that is. Thank you.

Petter Rindforth: Bye (Phil). And no, yes. (Unintelligible) or laptop. And also I noted (George) commenting in the chatroom that some of the ideas and (unintelligible) collide. For example, World Trade Organization, and World Tourist Organization. So you may see some disputes between them as well.

Let's go over to ICANN 57. What can we expect to have been done for ICANN 57? I'm not so sure that we will have our final report by then especially if we now need to work a little bit more with, to comment on the (IGO). I don't know if Mary or (George) has, Mary would have any comments on that.

And also that turns it over to, automatically to point five, next steps. Mary.

Mary Wong: Thanks Petter. First, we don't have a confirmed schedule for Hyderabad but I can say that the tentative schedule has our working group presenting, well the phasing is that it's presenting initial report.

But in any case, there is an open session for our working group apparently slated for Monday, the 7th of November at 9 a.m. Hyderabad time for I believe up to 90 minutes. So as I think we all recall, we had planned to use that

session and that is preceded with the usual discussion with just the GNSO and GNSO council a day or two before that.

But the idea was to present initial recommendations. We on the staff side think and I think (Phil) has just said that in the chat that we ought to be in a position to present what are likely to be the recommendations going in our initial report.

And apologies in advance from the staff but we at this point, given where we are in the discussion, given the proposal and the need to go through it, et cetera, we're not sure that we can indeed have the text out in good time not just for you guys to review but for us to put it out to the communities.

So at the very least, at that session and at the preceding council update, we can describe the likely recommendations as (Phil) has said and hopefully our next meeting will take us there. Thank you.

Petter Rindforth: Thank you. Referring to our chatroom, wondering if we should invite IGOs. I suggest that we start to work now with our comments on the small group proposal.

And then, you know, in Hyderabad when we have this open meeting that we invite them to be on the spot and make their comments on their own proposals and our conclusion. And summarize the steps.

I think that would be a more workable way to do it. If we invite them separately to our working group meeting before that, they may come up with some new suggestions in the late minutes.

And now we have their report. They have been invited before but they decided to make this report separately and I suggest that we make our (unintelligible) separately. Okay.

The time is running and I think what we have concluded here as the next step is to work on our comments on this report – yes, Mary, please go ahead on the practical points/

Mary Wong: Really quickly, so for the staff action items, we will take the PDF proposal and convert it into a format that might be easier for everyone to work with. And based on what everyone has just said, the idea would be for folks to work on that and to think about that between now and the meeting next week so that we can go through that then and hopefully get some resolution at that point.

We will also give some thought to how to present and phrase the description of a likely recommendation and that's something Petter that we can circle back with you and (Phil) on. The last point I wanted to make is that we've touched based with our GAC colleagues to see if this subject will be on the agenda for the GAC.

And if so, we will certainly let you all know. Unfortunately our scheduled meeting is a scheduled for a day when the GAC is still meeting so I don't know how many GAC members aside from the interested IGOs will be at our working group session.

Then finally, (George) asked a question about the time for the meeting next week. If we can we would like to suggest that we do 1 p.m. Eastern next week as well so same time as today which is 1700 UTC.

And Petter, you know, I gave you the wrong event, why we want to do that. It's not the quarterly call from ICANN. That's actually on Tuesday. This is actually a staff preparation call with our executive team for Hyderabad. So the staff will need to be on that call. So if we can do 1700 UTC same time next week, that would be great. Thank you.

Petter Rindforth: Okay. Thanks. Yes, hope it works for the rest of you also, that time for next week's call. And then we are updated for today. And we will during the

upcoming week, discuss this report and our conclusions so that we can conclude our work next week. Thank you for today.

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