IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT
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as an authoritative record: http://audio.icann.org/gnso/gnso-igo-ingo-01apr15-en.mp3

Attendees:
George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Val Sherman - IPC
Jay Chapman – Individual
Kathy Kleiman - NCUC
David Maher - RySG
Mason Cole – RySG
Jim Bikoff – IPC
Jay Chapman – Individual
Paul Tattersfield - Individual
Lori Schulman - NPOC

Apologies: none

ICANN staff:
Mary Wong
Amy Bivins
Steve Chan
Yolande Jimenez
Nathalie Peregrine

Coordinator: The recordings have started. Thank you.

Nathalie Peregrine: Thank you very much, (Richard). Good morning, good afternoon, good evening everybody, and welcome to the IGO INGO Curative Rights Protection PDP Working Group call on the 1st of April, 2015.

On the call today we have George Kirikos, Petter Rindforth, Val Sherman, David Maher, Mason Cole, and Phil Corwin. We received no apology for today's call. And from staff we have Mary Wong, Steve Chan, Amy Bivins, Yolanda Jimenez, and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you ever so much and over to you, Petter.

Petter Rindforth: Thank you. Petter here. Are there any Statements of Interest updates? I see no hands raised. Okay, so let's proceed directly to the first main point, update on engagement with the GAC and IGOs.

And well for the IGOs we have prepared seven specific questions based also on our work so far. I see nothing on the - but you have - you've got it also by email so I hope you had the possibility to look at it. I can just quickly go through the specific questions.

The first one is how do IGOs handle start contract clauses on jurisdiction and choice of law in mass markets and other standard form contracts such as when licensing software or entering into standard arrangements for the provision of goods and services.

Is it standard practice to replace these with an arbitration clause? And if so what form would such a clause usually take? And then also to get specific input on how they normally deal with contracts.

And Question 2, when IGOs register their own second level domain names how do they handle standard clauses in domain name registration

agreements covering the binding nature of the UDRP as an ICANN consensus policy, governing jurisdiction and (unintelligible) law.

Number 3, when IGOs are deciding whether or not to file a complaint in a UDRP proceeding is it relevant if the new jurisdiction specified is that one of the register concerned or of the registrant respondent and now I also see the - the document online.

Good, and question 4, as the working group charter tasked us with gathering data and research on the topic we would appreciate if IGOs can provide specific recent examples demonstrating the extent of cybersquatting in respect of their acronyms. In addition, what is the scope of the problem in the gTLD space as compared to ccTLDs? How do IGOs deal with this issue of standing and sovereign immunity in dispute resolution proceedings involving ccTLDs where the relevant policy also includes a new jurisdiction or similar clause?

Question Number 5, in view of the jurisdictional concerns what other forms of legal action that IGOs are likely to pursue when they believe they're right including those beyond the domain name system or trademark law are infringed, for example, are there intergovernmental, national or other legal or judicial mechanisms that IGOs can use that do not involve a waiver of immunity.

And what would be the difficulties if any with a mechanism by which an IGO member, (State X), on the IGOs behalf. What is the new jurisdiction requirement specify that to apply to IGOs. It has to be a jurisdiction of one of its member states.

Alternatively, would a provision that express limited IGO submission to jurisdiction only to that specific dispute involving that specific domain name or registrant alleviate IGOs concerns.

Question 6, since the adoption of the UDRP has an IGO on the GAC list pursued legal action in the national court against an alleged cyber squatter or trademark infringer besides (unintelligible) remedies that law what other means do IGOs use to pursue cyber squatters such as contact the registrar in question, web hosting companies or payment processors.

Question Number 7, maybe concerned with removing the new jurisdiction requirement is that this would raise due process issues and prejudice an individual's right of access to court, suggest if the role of the court were replaced by a binding private arbitral appeal it could also change the nature of the UDRP from an optional supplement to your legal determination under national laws to a preemptive procedure.

What substantive or procedural safeguards can be put into place that can adequately replace the diminishing of such a right and assure due process? And what we have tried to do here is to not just send out general questions but actually specify them as much as possible so that we can also get more specified replies to our questions.

And we have (creating) this questionnaire together with the staff based on what we have discussed within the working group and also what we have figured out when it comes to IGOs disputes that have already been - been settled using the UDRP.

So that's a document that I hope you can approve and that we - that we can send out to the IGO (small) group. And I open the floor. Yes, George. George, please.

George Kirikos: Can you hear me?

Petter Rindforth: Now I can hear you, yes.

George Kirikos: Oh thanks. Sorry, I must have been muted. George Kirikos speaking. I just wanted to say that it looks like a very good letter and thanks for incorporating in the footnote some of the additional comments about things like the dotDE and dotRU lack of any ADR procedures which requires the complainants to go to the courts in all cases. So I think that might be informative.

There was actually a video of ICANN President, Fadi Chehadé presenting to the DNA Association - trade group - at one of the recent ICANN meetings where he was talking about how many of the European regulators, who are trying to impose various, you know, new requirements on new gTLDs, it was pointed out them that, you know, they were trying to impose rules that didn't exist in their own ccTLDs like the dotEU, for example, when people were trying to get restrictions on, you know, casinos or dot, you know, certain professions.

They were saying, you know, what would the procedure be in the dotEU and they said there's no such procedure. So that kind of goes to the same idea for the IGOs that these special rules don't even exist in the ccTLDs. So thanks for incorporating that into the footnotes.

Petter Rindforth: Petter here. Thanks both for the comments and also, yes, thank you for the additional information you sent out that were very useful to incorporate when we prepared for this.

So and I showed - Mary, did you have any additional suggestions to this or comments?

Mary Wong: Hi, everybody. This is Mary. And thank you, George, again. Thanks, Petter. No, not from the staff side. Our suggestion would be to have you and Phil and of course we'll facilitate send that off as soon as possible because there are a lot of questions here, some quite substantive. And so we want to move ahead of our work. The sooner we send it hopefully the sooner we'll get a response.

Petter Rindforth: Thanks. George, I see your hand up. I don't know if it's still up - okay, thanks. Okay when it comes to GAC, Mason, what is the status there?

Mason Cole: Mason speaking. Well I think everybody knows the status there has been, you know, the questions have been posed. So far we've been unsuccessful in getting a GAC response. I sent a - I sent a new note to the GAC secretariat, I believe it was Friday of last week or perhaps Monday of this week, I don't recall, asking again for GAC input. I'll follow that up with a phone call if necessary but I'm afraid we haven't been very successful in getting direct input from the GAC.

Petter Rindforth: Okay thanks. Steve.

Steve Chan: Thanks, Petter. This is Steve from staff. I just wanted to mention that in speaking with some of our GAC support colleagues as far as I know they're actually circulating a draft of the responses amongst the GAC leadership. So without speaking to the timing in which they're going to be able to return the responses I know they at least have draft (unintelligible) circulated deliberating over. So I can't say exactly when it's going to be delivered to us but it's at least in process. Thanks.

Petter Rindforth: Thanks. Phil.

Phil Corwin: Now I'm off mute. Phil here. Just want to thank Mason for his continuing efforts on this. Mason, do you perceive this is just the continuing problem we have with the - we being everyone involved with ICANN - with the GAC catching up with the process or is it - do you perceive any particular, something to do with this specific issue where a - are unhappy with our work or just their basic issues with staying current on working group progress and indicating any kind of consensus or providing feedback?

Mason Cole: Petter, if I may?

Petter Rindforth: Yeah. Please.

Mason Cole: Good question, Phil. Mason again. I think it's both. I think the GAC is still acclimating itself to I think a way to collaborate with the GNSO and all its processes. And in addition to that I think the subject of the questions is thorny enough for the GAC to need to take time to reply.

You know, I'll remind the working group as they reminded me that the GAC indicated that we would have an answer - we the working group would have an answer of some kind following the Singapore meeting. So I'm encouraged to hear Steve say that there's a draft circulating within the GAC.

Frankly, I was unaware of that. I admit to some frustration that in my role as liaison I'm not getting the feedback directly from the GAC that I would like but I'm still hoping to improve that. But I think in answer to your question, Phil, I think the answer is both. I hope that's somewhat helpful in terms of shedding light on this.

Phil Corwin: Yeah, thank you very much.

Petter Rindforth: Thanks. Steve, do you want to add something? No. Okay then it seems that we're ready with this topic. And, yeah, George question here, "Will the GAC perhaps wait until after the next ICANN meeting face to face before responding?" Yeah, I presume so. And on the other hand that's the common reply that they need another meeting in order to respond so I do hope that we can at least get some kind of inputs and as we said at the meeting last time also to the possibility to reach out to the smaller group within that are actually dealing with these questions.

Okay, Point Number 3, update on proposed amendments to the working group charter by GNSO Council. And well here I note that if - I presume that if we're going to decide on something to send out to the Council I just saw that the document - the motion deadline is on Monday. So we'll see if we can

have anything clear to be sent out before the deadline. The next Council meeting is on April 16.

I'll leave it over to Phil.

Phil Corwin: Okay. And all right this is the - everyone hear me okay?

Petter Rindforth: Yes.

Phil Corwin: Okay. This is the draft motion to amend the charter. This has not been forwarded to the GNSO Council yet. I forget what the deadline is, I just got an email on that. But we have several - Mary, do you know what - I know we just got an email this morning on the deadline for submission of motions.

Petter Rindforth: April 6.

Phil Corwin: April 6, yeah, so we have five days to perfect this - to get this considered at the next Council meeting. So it's pretty simple whereas Number 1 just restates - I'm getting an echo in the background, somebody has a speaker on. Could you shut it or put your phone on mute? Thanks.

So the whereas is just a recitation of the factual background with some very minor technical amendments. And then really the resolve clause is the critical one and it would - let me take you through the words because it changes the mission and scope statement. It would amend it.

The original one for purpose of this PDP the scope of IGO and INGO identifiers are to be limited to those identifiers previously listed by the GNSO's PDP Working group on the Protection of International Organization Identifiers and all gTLDs. I think we need an acronym for that, don't we?

Returning to the text - as protected by their consensus recommendations. And then there's a parenthetical further clarifying that. And it would hereby

amend it to read, the working group shall take into account any criteria for IGO or INGO protection that may be appropriate including any that may have been developed previously such as the list of IGO and INGO identifiers that was used by the GNSO's prior PDP working group.

So basically it expands from the previous one which is rather restrictive and opens up completely. Now I had raised a question with the co-chair and staff whether this was the right approach about an earlier version of this in that it still mentions INGOs which we are no longer - we've considered and dropped, although this is a charter for our entire work and they would encompassed and being considered and dropped.

And that it has no specific reference to Article 6ter of the Paris Convention which is what we've really determined is the relevant group of IGOs that we're going to target for whatever we recommend which is those that have exercised their rights. Staff response was that they understood all that but the aim here was to replace the narrow mission and scope statement in the original charter with a much more flexible one that we could do whatever we wanted with in terms of our end product.

So I'm going to stop there and open the discussion for any comments on whether folks in this working group think the new proposed mission and scope statement gets what we want to do. And again the aim of this is to get away from being locked into the list used by the earlier working group which included IGOs that we think are within our scope of work and IGOs that we think are not. I hope that wasn't confusing.

Petter Rindforth: Thanks. And Petter here. And before I turn over to Kathy I just note that in Point 5 where it's referred to the December 2011 open letter that was signed by 28 IGOs, it was interesting to see that in that letter they specifically said that the names and acronyms of IGOs are protected within the scope of Article 6ter of the Paris Convention for the protection of intellectual property as further referred to in Article 16 of the trademark law treaty and Article 2 of

the (unintelligible) agreement. So they were also talking specifically about Article 6ter.

Okay, Kathy, the floor is yours.

Kathy Kleiman: Hi, thank you. Do we want to include any language of description here? Because I know that the groups that put in the limitations will have questions about why we're expanding now. And I also wanted to check, because I know I've missed some meetings from time to time, have we talked about - and again I apologize if I missed it - what's on our list of IGOs? I know we're talking about the 6ter.

Yeah, how - I guess the question is in general, what's the difference as we're looking at the IGO names from the first paragraph, the existing paragraph to the next paragraph, what's the difference and how would we explain this to people who liked the limitations and they fear that we're taking them off? Thank you.

Petter Rindforth: Thanks, Kathy. I'll leave it over to Mary.

Mary Wong: Thanks, Petter and thanks for the questions, Kathy. So in terms of the specific question about the difference, if I'm interpreting your question correctly, sorry if I misheard, the original mission and scope that you see that we've reproduced in this draft motion mimics this group to basically what's on the GAC's list.

And as we discussed in I think especially in the Singapore meeting that's different from the 6ter list and it was felt that in some ways that's actually a lot broader and more vague. So by expanding the charter, you know, the hope is that that will allow this group to take into account other criteria and other lists as we seem to have already done.

The other point is that in terms of how the language works here now, you know, as Phil mentioned we have considered making a specific reference to 6ter for example but given that the problem we encountered with our original charter is limiting language it was felt that it might be more useful to actually have more flexible language.

And so this doesn't limit the working group consideration, it certainly doesn't limit us in terms of our ultimate recommendation. And the final thing that I would say on this point is that obviously much of our recommendations to the extent we have any at this point are preliminary so we do still have to go back, do a consensus call, etcetera, etcetera.

And that's why, again, it was felt that having more flexibility and generality in the amendment might be preferable. I hope that answers your question.

Kathy Kleiman: May I respond?

Petter Rindforth: Yes please.

Kathy Kleiman: Would it be appropriate to put something about 6ter into the whereas clauses so we're providing some guidance to people about what we're thinking?

Mary Wong: Kathy, I think it - it is there in the - some of the whereas clauses, I'm just going back up. And, yes, I think it is clauses 4 and 5.

((Crosstalk))

Mary Wong: And, again, we wanted to be careful to not circumscribe the working group because, you know...

Kathy Kleiman: You're exactly right...

((Crosstalk))

Mary Wong: Yeah, it's possible that we might go back and say well, maybe this isn't the right thing after all. So hopefully that's helpful.

Kathy Kleiman: Very. Thank you.

Petter Rindforth: Thanks. Petter here. Yes, it is mentioned in the beginning of the document. And in fact what we mean in practice within the working group when we say extend to other criteria is to limit it to 6ter. But I guess that we cannot specifically write that when we ask for amendments rather than to have a text that gives us the freedom to make that proposal.

Okay, George.

George Kirikos: George Kirikos speaking. I noticed that the proposed amended version still mentions the INGOs. I was under the impression that we've already decided not to, you know, make any changes with regards to INGOs. So perhaps in the first sentence the "or INGO" and then the - later in that sentence - "and INGO identifiers" can be removed because I don't - I think it would be kind of confusing for people to think that the INGOs are back on the table when we've decided to not consider any changes with regards to them.

Petter Rindforth: Petter here. Well still (unintelligible) more to our initial task. And we haven't really yet got the official limitation to IGOs. So I presume that's why we still need to refer to both IGOs and INGOs. Am I right, Mary?

Mary Wong: Yes, Petter. I think it goes back to the flexibility question again. And so obviously it will not circumscribe the working group and we can - in our final recommendations basically say we were asked to look at this whole universe and we determined that actually it's this portion of the universe that's the most appropriate. So hopefully having the flexibility allows us to do that and also allows for the possibility that as we go back to look at our preliminary conclusions we can have a comprehensive consensus call as well. Thanks.

Petter Rindforth: Thanks. Phil.

Phil Corwin: Yeah, to add to that, George, that's a good question. I had those thoughts originally but you got to think of this as going back to the beginning. If we're basically time traveling back to when the Council adopted this resolution and sort of pretending that this is what it was from the beginning.

It doesn't prevent us from deciding, as we've already decided that INGOs need no special protection and the presence of INGOs in the - in the resolution simply provides a base for us to explain that we can considered them and decided they didn't need it.

Similarly the new language that allows us to take into account any criteria that may be appropriate gives us a broader base for saying well we looked at the Article 6ter, we looked at the UN list and all of that and decided that the only appropriate criteria was exercise of protective rights under the Article 6ter of the Paris Convention that the other things didn't give rise to legal rights that should be recognized for purposes of any arbitration process to protect an IGO. So that's the way I'm thinking of it now.

Petter Rindforth: Okay, thanks. Any other comments - yeah. So, yeah, can we agree that this document is something that can be sent to the Council? Maybe be up on the next meeting. We have, as we said, until Monday to decide on that. Kathy.

Kathy Kleiman: Sorry no it's just a checkmark to say I agree.

Petter Rindforth: Okay yeah, good. Then good. Then I presume that we can go further to Point Number 4 on the list to discuss consideration issues relating to possible (unintelligible) appeal mechanism for IGOs.

And I thank the staff for very interesting briefing note with the historical background. And there for instance if you see from the 2003 secretariat paper

on that recommended some minimum elements for such a procedure that the parties should be able to restate their case completely anew. They should not be confined to claiming that the UDRP panel did not consider such relevant facts or wrongly applied the UDRP but should also be able to submit new evidence and new factual or legal arguments.

And in order to provide a meaningful appeal conducting (unintelligible) arbitration should, as a general rule, not be more burdensome than conducting litigation in a court of mutual jurisdiction.

Three, the arbitral tribunal should consist of one or more neutral and independent decision makers who should not be identical or related to the panelists who render the UDRP decision. And finally, Number 4, either party should be able to present its case in a complete manner.

The arbitral tribunal, should, for example, have the authority to allow for or request additional written submissions and it should be possible to hold in person hearings. Which is still possible when it comes to some other online disputes but very rarely.

Done. Also, what I think was interesting was is the - when the (SET) discussed the paper looking at the reservations from some countries that the reservations were more of practical issues relating to - well to summarize, is there a need actually for this? Canada talked about the cost and burden of such process. And the Australia doubted the need since certain countries had already filed UDRP complaints.

US and Japan are other discussions more related to that an arbitral appeal mechanism would contribute to eliminating the four most important due process safeguards of the UDRP. Again, a reference to the UDRP.

And then a note coming from Sweden that Denmark, New Zealand, Switzerland and Sweden supported such an appeal mechanism. Whether the Netherlands was not convinced that it was necessary.

So my generally summary of this is that the arguments against it was not so strong and clear, more of a practical way. And those that did not support it more questioned whether it was necessary. But I leave the floor open to discuss this. George, please.

Jim Bikoff: Petter, it's Jim Bikoff.

Petter Rindforth: Jim, okay, please.

Jim Bikoff: I just apologize for being late, I was on another call.

((Crosstalk))

Jim Bikoff: I missed a lot of the comments earlier. But it seems to me on this appeal procedure we have the same question as was raised in the past which is is it necessary, not even getting into the question of who pays and how much it's going to cost. But, you know, it seems that we're sort of putting the cart before the horse here because we haven't heard anything yet from - I assume we haven't heard anything yet from, you know, in response to the questions from either GAC or the small group of IGOs.

And, you know, should we be putting effort in on something that may prove to be completely unnecessary or should we concentrate on getting responses to the questions we have which I think you've discussed while I was not on the call and then proceed with a course of action based on those responses.

Petter Rindforth: Thanks. Petter here. Yeah, you're perfectly right, we will try to reach out and remind about - from both groups that we need responses to our questions. And especially from IGOs as we have seen we have specified our questions

in order to hopefully get more also clear and specified replies. So there you're perfectly right.

Although I think it was interesting to see the work that has been done and taken initial general discussion about this. George.

George Kirikos: Hello?

Petter Rindforth: Yes.

George Kirikos: George Kirikos.

((Crosstalk))

George Kirikos: Sorry, I was muted. Yeah, I would agree with the comments by Jim Bikoff and also to go further, I'd be opposed to this procedure for additional reasons. If you look at the actual appeal mechanism they're suggesting they would have basically one, quote, meaningful appeal, you know, which is de novo as an arbitration.

But that doesn't really mirror what happens in the real courts. For example, in my province of Ontario, I'm located in Toronto, the first court of instance would be the Ontario court and then there would be the - which is a provincial court - and then the next level of court would be the court of appeals. And then the final appeal mechanism would be the Supreme Court of Canada. So there's three levels that are possible in terms of, you know, a dispute beyond the UDRP.

They're proposing to replace that with one final arbitration which doesn't really - and that arbitration is the first - is equivalent to maybe the lowest level of the Ontario court. And I would assume that in the United States they'd have similar procedures, they'd have presumably federal court as the first court of a dispute and then the federal court of appeal and then the Supreme

Court if it gets that far. So the due process compared to the real courts is a lot less in this procedure, and so that's a - something I'd be very concerned about.

And also they don't necessary say what the remedies would be like it still seems to be the only remedies would be taking away the domain name or canceling the registration which is very different from what a court can do. The court can, you know, award monetary damages, the court can say, you know, stop doing this, you know, change the use of the domain name to not be infringing which is something that seems to be very different than what this arbitration procedure is limited to.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thanks, Petter, and thanks George and Jim. So just a couple of - not so much responses but follow ups I suppose. One is that the idea of presenting this document was, as Petter said, to take note of some of the historical work that's been done and so from the chairs and staff's perspective is more of an FYI at this point to which we may return depending on the nature of the responses that we may get from the GAC and the IGOs.

On George's point, in fact, George, I think if you've looked at the papers you probably have some of these issues were acknowledged and there is some discussion about, for example, what the actual burdens might be, what the ability of the appeals arbitrators would be to not just go back de novo into the whole case but the sort of awards they can make.

On the one hand this is difficult because most arbitral mechanisms conventionally have dealt with different types of issues and remedies so there's - there's a big question in the international law world about, you know, enforcement of arbitral awards in different jurisdictions which fortunately or otherwise in our case of a UDRP doesn't arise. But that in and of itself does create problems, you know, because of the fit, for example.

So a lot of these issues in terms of whether the procedure and the rules and the burdens and so forth would match to the UDRP and in an arbitration versus the court, those are discussed in the paper so I would encourage working group members to look at the full paper which is on the working group wiki if you're interested. And as I noted, Petter, I think we will come back to at least some of this after we get the IGO and GAC responses. Thanks.

Petter Rindforth: Thanks. Phil.

Phil Corwin: Yeah, Phil for the record. Responding further, first, Jim, yeah, I'm with you that, you know - but we're not putting the cart before the horse here. We understand that we need to get responses, that we need to understand the sovereign immunity issue a lot better before we even think about some appeals process other than the one that's in the UDRP now which is access to national courts.

We merely - the co-chairs, working with staff, while we're waiting for that other information we wanted to - even though we have a less frequent meetings right now while we wait - we wanted to have a full meeting and thought it would be useful to get this historical background.

Turning to the substance of what staff has in this paper, I find it, you know, and it's - I am a resident of the US so I pay particular attention to US views and especially given the fact that ICANN is not an agency of the US but is in the US jurisdiction and all its contracts are under US, you know, interpreted under US law.

I found it interesting that the US said that an arbitral appeal mechanism would eliminate the four most important due process safeguards of the UDRP. That was a 2003 opinion. My recollection is that just the year before the State Department had sent that telegram to the US UN office in New York saying

tell any IGOs who asked that if they think they have a trademark complaint in the US their remedy is to file a Lanham Act suit.

So I think we need to, again, check with Suzanne Radell to make sure this is still the US view. But what concerns me the most here, and where I think I have a real question, is that is this sentence that's underlined above Notes where it says, "Once he/she does sue then final determination indicates that we resolve through the appeal procedure and the possibility of challenge in a national court will then be precluded."

If that was a statement in the paper I have to really question whether that statement is accurate. And let me give you an example. Let's say - and I think it's highly doubtful but let's say we decided that the scope of sovereign immunity for IGOs is so broad and pervasive that we need to create an arbitration system appeals mechanism rather than a national court appeal which is there now.

And we amend the UDRP or create a new CRP that does that and would further, I think, you know, to tie things up legally registrants registering or renewing their domains would have to be made aware of that if that if an IGO brought a complaint they might not have the usual remedies. I don't know how that would be done, I don't know how it would be done for registrations, you know, say for 10 years that were done several years ago.

But as a practical matter I don't think that would work. I'll give you an example, let's say that I registered the domain worldhealth.something - one of the new TLDs, I pick out one that I think is appropriate. Maybe it's worldhealth.tech and I'm writing about technology developments - I'm using as a Website to discuss technology developments which impact world health and improve world health.

And the World Health Organization decides that that domain name is confusingly similar and bring an arbitration action against them. It's a well-

known principle that you can't waive your legal rights by contract, at least in the US.

So even if I've signed a registration agreement where I've waived my access to the courts if an IGO, you know, brings an arbitration against me, I'm not sure that would stop me if I lose that arbitration, if the arbitration panel decides that the World Health Organization should get worldhealth.tech, that it should be transferred to them. I'm going straight to court and seeking an injunction to stop that. And I don't believe any court would agree that I had waived my legal rights to do so.

So I want - I'm basically raising the question of whether anything we do can really stop a private party from access to national courts if they don't like a procedure which says that they've rescinded that ability and only have access to an arbitration panel as an appeal. So I think if we ever go down this road I think we have to consider that question very carefully.

And I see Mary is putting something in the chat room which I'm going to stop talking now and read what she just put up. Thank you.

Petter Rindforth: Thanks. Yeah, I also see Mary's hand is up. I leave it to you, Mary, to say what you have written.

Mary Wong: Thank you, Petter. And thank you, Phil. So this is really just for the record for folks who may not be in Adobe chat. But essentially going back to Phil's point about precluding the challenge in a national court, the language in the briefing notice is actually the interpretation by staff of the wording in the WIPO secretariat paper.

So what I've done is put the secretariat's language in the chat room for everyone to read. And some of the issues raised by Phil would clearly have to be things that we may need to talk further about down the road. It may also be that some of the points in this paper will allow for points of engagement

with the GAC, for example, between now and Buenos Aires or at some appropriate time. Thanks.

Petter Rindforth: Thanks, Mary. Yeah, well I also wanted to note that this is actually written and discussed and decided on - well it's 12 years off now so there has been a lot of domain disputes involving IGOs since then. And obviously we have seen that the system has worked fairly good in practice (unintelligible). But again it's interesting always to go back and see the initial discussion and decisions about certain topics.

Anyone else that would like to make comments on this? Yes, Mary.

Mary Wong: Thanks, Petter. And hi, it's Mary again, everybody. So I did mean to make an additional point in follow up to Phil. And that is the notice to the registrant or respondent because the tenor or the theme in the secretariat paper, and so far to understand it, is that the basis for arbitration generally speaking is agreement.

So in most commercial cases, for example, you know, you have - you arbitrate because there's an agreement, an arbitration clause, an arbitration agreement. So it does seem that the secretariat has contemplated that there would need perhaps to be a change to the registration agreement. And obviously they did not expound on this and this is the staff interpretation. But that clearly would be another issue. Thanks.

Petter Rindforth: Thanks, Mary. Yeah, well we'll send out the follow up questions we discussed before to the IGO small group and this topic is also included there. So it's good to know what has been discussed before. And good to have it on our table when we also receive replies to our questions.

And that makes me slowly proceed to the final point, the next steps. We have decided to send out these follow up questions to the IGOs and we have

agreed about the draft motion that in such case will be up on the table at the Council meeting on April 16.

So that comes to the question on when we shall have our next working group meeting. It seems that we - well personally (unintelligible) at least is that we will send out some documents now and collecting some more information. I'm not sure if we have enough to have a full agenda next week. Maybe it's more practical to skip the working group meeting next week and to have it - when would that be - April 15.

Unfortunately the day before the Council meeting but at least they've done some more days where we hopefully can get some inputs from the IGOs and maybe also from GAC that will be reminded about our need for inputs. So I open the floor for that.

Jim Bikoff: Petter, Jim Bikoff.

Petter Rindforth: Yeah.

Jim Bikoff: My suggestion is unless something happens that is really critical for us to discuss next week that we skip next week and go to the week after.

Petter Rindforth: Good. I see no hands up so let's decide on that. And of course if there - anything comes up in between we'll also send out to the full list. Phil.

Phil Corwin: Yeah, I wanted to - Phil here. I wanted to second Jim's suggestion. There is no sense meeting every week if we don't have some substantial substance to discuss. I did want to mention that a few weeks ago when we went through our original kind of checklist of things we were going to explore, our work plan, there were a couple of secondary items that hadn't been fully addressed so that might be something we can revisit and check those items off in either the meeting in two weeks or certainly within the near term just to be comprehensive.

But our big impediment now to making a final push toward a report is feedback from the IGOs and the GAC and better understanding of the parameters of sovereign immunity for IGOs. So until we have that data we've - I think we have to kind of treat water for a while.

Petter Rindforth: Thanks. Good, then we'll see each other, so to speak, within two weeks from now. And in the meantime (unintelligible) I will see what's coming up and discuss if there are any specific questions and items so we can have a good meeting in April 15, if I'm not reading it wrongly. So thanks for today.

Jim Bikoff: Thank you.

Woman: Thank you so much.

((Crosstalk))

Nathalie Peregrine: ...you may now stop the recordings.

Kathy Kleiman: Bye, all.

Woman: Bye.

Mary Wong: Bye, everybody. Thank you.

END