

**IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT
Wednesday 5 August 2015 at 16:00 UTC**

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as an authoritative record: : <http://audio.icann.org/gnso/gnso-igo-ingo-05aug15-en.mp3>

Attendees:

George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Val Sherman - IPC
Jim Bikoff – IPC
Paul Tattersfield - Individual
Osvaldo Novoa - NCUC
Mason Cole – RySG
Lori Schulman – IPC
Rudi Vansnick – NPOC
Jay Chapman – Individual

Apologies:

Kathy Kleiman - NCUC

ICANN staff:

Mary Wong
Berry Cobb
Steve Chan
Julia Charvolen
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the IGO INGO Access to Curative Rights Protection PDP Working Group call on the 5th of August, 2015.

On the call today we have Petter Rindforth, George Kirikos, Osvaldo Novoa, Jay Chapman, Mason Cole, Jim Bikoff and Val Sherman. We show apologies from Kathy Kleiman.

From staff we have Julia Charvolen, Mary Wong, Berry Cobb, Steve Chan and myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transaction purposes. Thank you very much and back over to you, Petter.

Petter Rindforth: Thanks. And again I appreciate that you could be on the call today. I know and I regret that it has been a long time since we saw each other so to speak on these calls. But it's because we have been working in between to get some more significant replies and input from different groups so that we can have more to discuss. And at least we have a couple of points today. And also thought it was good to meet before the summer has gone to get a follow-up and we can inform you on the current topics and to get your comments back.

So let's pass on to the first real point today to finalize the draft letter and questions for external legal expert. And you see the proposed questionnaire on the screen where you still can see the amendments that has been done recently. But it sums you add it that are suggested by us but us co-chairs and the staff but it's basically made up by the document - by Jim Bikoff and George Kirikos and Paul Keating from the meeting we had.

Hopefully this will be something that we can approve because it would be good to finally send it out to what experts that we find best to give us replies to these questions.

And I'm not sure that I have to - do you want me to go through the questions or maybe better to just open the floor for comments, etcetera. I think I'll do that.

Jim Bikoff: Petter?

Petter Rindforth: Yes.

Jim Bikoff: Jim Bikoff. Steve Chan had asked me to try to get some more information on rates. And I spoke to (John Bellinger). First of all doesn't appear to be any conflict. Second of all, he would do something with either hourly with a budget and they give discounts to sovereign nations. And he thinks that ICANN might fall within the scope of a discount.

Or there could be a flat fee worked out. I think it's too early to tell. He would have to first take a look at what are the questions, whether they're narrow enough that, you know, flat fee might be better if he can have some predictability on the time it would take. And also he has an associate that works with him on these types of issues and to the extent possible he would have, you know, things that are not - that could be done by his associate at a lower rate.

So that's all I have for now but I think - I think any expert would want to probably see what the scope of his assignment is before he knows how he's going to bill it.

Petter Rindforth: Yeah, thanks. So well that takes us definitely back to the document as such. Well I appreciate that it's initially gives good background on the topic as such. We have tried to centralize on the information and so that we can come quicker to the questions also. And I think that what we're done there initially can be accepted.

So if we scroll down to the questions we have the first one in relation to the requirement to select a mutual jurisdiction in the UDRP, US context. Is the complaining idea entitled to immunity in connection with judicial action both by a domain name registrant rising from the side of conflict between the IGOs - IGO rights and the domain name registrant's registrations or use of a domain name either when the IGO has initiated the dispute under a dispute resolution process that it's in addition to or not the replacement for the registrant's legal rights under its applicable national law.

So can we accept that? Yes, Jay.

Jay Chapman: Hi, Petter. Jay Chapman. I just have a comment with regard to Question 1 and actually it applies to Question 2 as well.

((Crosstalk))

Jay Chapman: Yeah, Mary made the comment of having I think towards the middle of Question 1 she had inserted as opposed to - she'd taken out the asserted trademark, the IGOs asserted trademark and instead had put in the IGO's rights. And I think we need to make sure in the questions that we're clear that what we're trying to figure out is not just - it's not just IGO's rights but it's also our domain name registrant's rights as well.

And so my proposal would be to put in language there that indicates so where it says - here, I'll just kind of - let me put it in the chat real quick what I had in mind so everybody can see that. So in other words it would be - and the domain name registrant's rights to the registration. And then put, and/or use, because you've got domain registrants not only just have pure registrations but also going to be, you know, have them registered and actually be using them in good faith and with full right to do so.

So I think it's important in the questions that we identify that it's not just the IGO's rights, we're also considering the domain name registrant's rights and

not just the fact that they have a registration or use of the domain name.

Thank you.

Petter Rindforth: Thanks, Jay. Just so - that I'm on - where exactly would you propose to put in that? And are you suggesting that we - that we take away some words or just adding it for clarification?

Jay Chapman: Thanks, Petter. Jay again. So my suggestion is simply just to add - so where we get to in the part of Question 1 where it says, "And the domain name registrant's registration," my suggestion is is that after the word "registrant's" we put "rights to the registration and/or use of a domain name."

I put that in my comment in the chat just to kind of clearly it's, you know, it's not redlined or anything but I put that in there to kind of give the indication of what that phraseology might be.

Petter Rindforth: Yeah, okay.

Jay Chapman: Thanks.

Petter Rindforth: Thanks. I saw Mary's question in the chat room. Can we seem to find by saying something like conflict between IGOs and a registrant's rights. But I presume that's not 100% cover what you wanted to add, Jay.

Jay Chapman: Mary makes a good suggestion. I'm fine with the simplification.

Petter Rindforth: Okay good. Yes. I appreciate that because we - although we want to be clear with those questions to get the right replies but I think it's also good that we don't have too much explanation on everything. And what you said that is to be added also to Question Number 2 that - as it seems right now is - are there mechanisms with which an IGO may take - may use to escape or avoid becoming subject to judicial action brought by a domain name registrant

rising from the (unintelligible) conflict between the IGO's rights and the domain name registration and/or use of a domain name.

Jay Chapman: Petter, this is Jay. It was going to be my suggestion that we add, you know, the same language to it. Again, I just - I'd just like us, you know, to make it clear within the, you know, within the questions that we're not just talking about, you know, the rights - purely the rights of IGOs. And Phil mentioned that he actually added the part there in blue at the end to kind of indicate the registrant's rights. I just wanted to make that clear within the, you know, it's not rights versus just, you know, something fuzzy and, you know, unclear. It's rights versus rights that we're trying to balance here.

Petter Rindforth: Okay, thanks. And, yeah, I also saw Laurie's - I had the same question actually as I'm leading the meeting today. I'm also scrolling the document, I'm not sure if I'm doing just for myself. But that's good to know. Okay so just going back to the chat room. George says, "I think we definitely need the language at the end of Question 1, perhaps even more to clarify that the IGO is the one initiating the dispute."

I think maybe Mary, do we have enough information on that so that we can put it on the right way?

Mary Wong: Petter, this is Mary. Yes I think we do have some clarity. And thank you to Jay and others for the suggestion. I should say I think when staff looked at some of the edits because there were so many it was a little confusing to us. So I had a question for George in the chat that he said that we should make it clear that we're talking about an IGO bringing a complaint under whatever dispute resolution process. But this question talks also about immunity when the judicial action is brought by a domain name registrant. So I'm just wondering if that's actually more confusing than it should be.

Petter Rindforth: Any reply to that? George.

George Kirikos: George Kirikos speaking. I think we have to make it clear to whoever is doing the research that it's a little bit more complicated than is normal because it's not just a case where out of the blue some registrant is taking an IGO to court in their national court. It's not like the IGOs are saying, you know, out of the blue there's this dispute and we claim immunity.

It's the IGO that initiated the overall dispute, albeit in the UDRP or the URS process. And so the overall dispute was in fact initiated by the IGO. And so whether they can claim immunity in one forum for a dispute that they initiated in another forum is I guess a question that needs to, you know, be in their mind when they're answering, you know, or providing us with their advice.

Petter Rindforth: Thanks, George. Petter here. I think I've seen it on the second note, right, make clear that IGO would claim immunity when the registrant brings suit. But in terms of initiating the dispute it would be the idea that fights a complaint under relevant DRP. Well, Phil.

Phil Corwin: Yeah, thanks Petter. Phil for the record. Yeah, I just wanted to chime in and expand on what it just posted in the chat room. The only, you know, as we've discussed before, the only situation in which sovereign immunity issue could arise would be an IGO bringing a UDRP or URS or, you know, if there was a new similar dispute resolution process just for them.

And the registrant lost the panel decision and wanted to assert their right under a national law like the anti-cyber-squatting act in the US to appeal, you know, or, you know, the UDRP also allows for that type of legal action be filed while the UDRP is still pending and kind of removes it to the court.

And we know and strongly suspect, although we don't have the details on what's been worked out between the IGOs, the GAC, and the board in Paris that they want a process where any registrant appeal is internal and they don't have access to courts.

So one, I think we want the legal expert to say do they have any sound argument to ask for such a system. And, second, you know, I'm not sure that even if they could get a curative rights process that said that that a registrant in the US couldn't go to court anyway. I don't think any US court would say, well, this California nonprofit corporation has adopted a policy that, you know, says you can't come to us. But, you know, we're not going to be told by a, you know, corporation, you know, that you've lost your US legal rights.

So there's about, you know, the legal aspect, do they have a basis for what they may be requesting or what we've heard from them in the past kind of absolute sovereign immunity? And is that really enforceable against the registrant anyway? Although the registrant would have be worried that his registrar would go ahead under the DRP and transfer or extinguish the domain name or suspend it if it was a URS.

So that's kind of - I hope I'm not rambling too long but just wanted to talk about what the real world situation we're trying to reference with these questions.

Petter Rindforth: Thanks, Phil. Yeah, I think we may know more about that than claiming this specific dispute resolutions from time to time. Phil. Okay, Question Number - that is - no Number 3, to the best of your knowledge how do IGOs generally have a standard commercial contracted clauses concerning submission to a particular jurisdiction or dispute resolution method? I think that's pretty clear question that we would like to see the reply on with interest.

And then finally, Question Number 4, are there additional principles, nuances or other relevant information including your knowledge. I don't think your knowledge general principles used by states, I don't know if that's correct as written, but a relevant to work to find a solution and conclusion on domain name disputes related to IGOs.

At least what we tried to do that was even if it's final more general question it's important to keep it to IGOs and domain name disputes so that it's not too general. Okay, thanks for the input.

If we make the changes to Question 1 and 2, more of addition to 1 and 2, can we all accept this questionnaire to be sent out to the expert that we will find? So it seems.

And then it's time to go to the expert as such. We have a short list that was sent out and I also seen some comments especially when it comes to (John Bellinger) and (David Stewart). So what I see from ICANN from comments from our working group members, it seems that (John Bellinger), as of today, is the Number 1 possible expert. But we also have, as you can see, five persons.

And you seen there - the (unintelligible) specialists it has been sent out. So I open the floor for comments on these. And if you maybe have in the last minute any specific additional person that you think could suit this as an expert. I see, Phil, but leave it to Steve.

Steve Chan: Thanks, Petter. This is Steve from staff. And I guess I just wanted to clarify that I'm not sure that we have a lead candidate so far. I'm not sure that we necessarily have agreement that (John Bellinger) is the best candidate.

I think at least from staff's perspective, we're - we think that both (John Bellinger) and (David Stewart) are probably qualified at they're interested and they're available. At the same time we're also still in contact with the other three candidates, (David Ofterbeck), Dr. (Mir Curry), and (Michael Geist) just to see if they should also be included on the short list for consideration by the working group.

So I guess I just wanted to clarify that. I don't know that we're circling around (John Bellinger) quite yet. Thanks.

Petter Rindforth: Okay, thanks Steve. But these are the - as I read the list here we have got at least an initial note from (John David) that they are interested and available. When do you think we can get the same reply from the three others?

Steve Chan: This is Steve again from staff. I have a conversation scheduled with (David Opterbeck) this Friday. I have an email out to Dr. (Curry) to better explain, I guess, what we're looking for from the expert. And he's going to come back with his level of interest and his fees and other things.

And I - as for (Michael Geist), Mary contacted him as well. And we're awaiting a response from him.

Petter Rindforth: Okay thanks.

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

Petter Rindforth: Yes, go ahead.

Jim Bikoff: It would be helpful I think for each candidate to give us an idea of what they've done specifically in the sovereign immunity area. I think its one thing to be a domain name expert, its one thing to be an international law expert. But what specific types of cases or opinions or work or articles have they done in context of sovereign immunity issues?

Petter Rindforth: That's a good idea, thanks. Phil.

Phil Corwin: Yeah, thank you, Petter. Following up on Jim's suggestion I would suggest that we, you know, work toward, on this call, and maybe finalizing through some emails, a procedure going forward where we agree on the finalized briefing paper with questions, the one we just reviewed. We - all these folks are interested and I saw there's another potential candidate in the chat box, a Mr. (Kessler).

But send it out to them so they know what we're looking for. Ask them to respond by a date certain, I'd suggest something before the end of the month. Give them like two weeks or so to come back to us with, you know, if they want to apply to be considered with a statement with some detail on their expertise in the IGO sovereign immunity area and an estimate of what they would charge because staff is going to need that to get the funding cleared.

And then once we get those responses by the deadline we can review them as a group and, you know, indicate our preferences in order, you know, or if we think someone's not qualified we can note that too. And then I think staff would have what they need to finalize the funding arrangements.

So - but basically just let's set up a procedure whereby the end of the month we have responses with, you know, their expertise and a cost estimate and then we can go forward with this in early September hopefully and get the input we need to, you know, reach some finality on this issue.

Petter Rindforth: Thanks. Sounds good, Phil. And from a time (unintelligible) perspective I think that's a good suggestion. Let's - Steve had something to comment on this.

Jim Bikoff: Petter, can I add something to Phil's...

Petter Rindforth: Yeah.

Jim Bikoff: ...suggestions, which I thought I subscribe to what Phil said. But I want to add something. We should also, when we go out to expert candidates, give them an idea of when we need the written opinion because many of these gentlemen have active cases or are otherwise engaged in other projects so we should give them a time limit for the opinion and make sure that they can submit it within the time period that we think we'll need it.

Petter Rindforth: And before I put it over to Steve, I don't remember how long we waited for the initial expert comments. But I presume it would be enough to give them four weeks that also be long before Dublin have the reply. Yes.

Jim Bikoff: I - Petter, Jim Bikoff again for the record. I had indicated to (John Bellinger) that, you know, depending on when they make an appointment in this that we'd like to have it within a month.

Petter Rindforth: Yeah. Good. Steve.

Steve Chan: Thanks, Petter. This is Steve. First, I just wanted to say that I appreciate Phil's comments. I think it's good to have a target date for us to shoot for. But what I just wanted to clarify is that when I do contact and talk to these candidates we are doing some initial determination of whether we not we think that they have their requisite expertise. So these three other gentlemen I think we still need to make that determination.

So that's why they're still under consideration. I need to contact them and at least gauge their understanding of the topics at hand. And so I can't remember who made the comment. It is something that we are doing when we contact the candidates to make sure that we think that they can do the work. Thanks.

Oh actually just to add one other thing, (David Stewart), who I spoke to last - or maybe actually a couple weeks ago, he actually does have probably 30 years in the State Department and some very specific experience around international - or IGO immunity. So not to advocate for any particular applicant at this point but just to say that I - he's probably quite uniquely qualified. Thanks.

Jim Bikoff: Steve, I think both he and (Bellinger) appear to have the same amount of experience. (Bellinger) was also at the State Department at Legal Advisor and handled a lot of IGO issues involving - a lot of sovereign issues involving

the foreign sovereign immunities act. But I think whoever you talk to I would prefer to see in writing qualification rather than just have, you know, somebody say well I think they're qualified. I think we ought to see what kind of cases they've handled, what kind of opinions they've written, what kind of articles so that we have a broad view of what they've done on this issue before we select somebody.

Petter Rindforth: Petter here. We have two of them we have this initial (CV) bio, and I presume that's something that we can have a look at. But if I understand you correctly you also want to have some personal comments on this specific topic why they think they can do a good job on this.

Jim Bikoff: Yeah, I mean, I - this is Jim again. I think many bios talk about, you know, expert in international law, expert in international arbitration. But most of them, except for I think (Bellinger) and (Stewart), don't mention specifically sovereign immunity issues. Have they been counsel in cases involving sovereign immunity? Have they given, you know, opinions to different governmental organizations on sovereign immunity?

Have they written articles on sovereign immunity? These are things that I think all of the people in the working group ought to know and see so they can make a reasoned decision.

Petter Rindforth: Thanks. And Petter here. I see from the chat room also that Laurie can make an initial call with (unintelligible) and inform him that he can expect communication from Steve on this topic. Phil.

Phil Corwin: Yes, thanks. Yeah, I think Jim's suggestion finding out by when they can do it is critical because let's face it, we didn't have a single call in July because we've been stuck on this issue plus we thought we'd have a call with the folks from the GAC and the small IGO group and the board about what they agreed to in Paris and we're still waiting on that call.

You know, and the situation is I'm taking some days off next week. Petter's not available (unintelligible). So we get out the question so they can see exactly what we want. We ask them to give us detailed background on anything they've written or handled in the sovereign immunity area. And we ask them to get back by the last week of August and ask them if they can - once hired if they can turn this around within 30 days.

Because if they get hired early September we're talking about a report late September early October which is just a week or two before the Dublin meeting. I think we'd really like to have some expert opinion on this before we have to go back to Dublin and brief the GNSO on where we are with this working group. Thanks.

Petter Rindforth: Thanks, Phil. And it seems that we all agree with the suggestion that we can - the final information about these experts can be sent out to the group and then we can have a quick online discussion to finalize everything so that we will not (unintelligible) too much that we - two meetings here in August. Okay, Phil, would you - say something.

Phil Corwin: Sorry, I'll take my hand down. Just forgot to take it down.

Petter Rindforth: And from what I see from the chat that - to reach out to specific experts with the initial information. I see no one that does not agree to what we have concluded here on how to work further on this topic. So thank you all for all the excellent - oh, Rudi, I see you, sorry. Hands down. Thanks. And I can conclude that we are satisfied that this way to work on this.

That makes us to the status update on board GAC and IGO interactions. And I can inform you that both Laurie and I had some face to face discussions with Brian Beckham from WIPO after the last meeting where he just wanted to make some personal inputs and update.

And what he did was to refer to the June 15, 2007 issues report on dispute handling for an IGO names and abbreviations where especially it was pointed some comments and suggestions from WIPO why there is a need for a separate DRP.

And as we don't have the document here I'd just go through it very quickly. Point Number 1, the necessary dispute resolution procedure requires particular provisions, for example, there must be an appeals procedure that takes account of the status of IGOs as international treaty organizations immune to national laws.

Point 2, in a 2003 submission to ICANN WIPO provided draft model policy and rules for the protection of IGO names and abbreviations expressed as a modified UDRP procedure. This procedure differs from the trademark UDRP in that it added a unique type of appeals procedure.

Point 3, due to these differences and other considerations, the IPC, as well as other constituencies, willing to consider a DRP for IGO names and abbreviation protection have expressed a strong preference for such protection to be handled as a separate dispute resolution procedure, DRP, rather than as the modification of existing UDRP.

And finally, according to WIPO it is crucial to obtain the protection and an appeals procedure commensurate with the particular status of the IGOs. Is it likely that such a separate procedure would be acceptable to WIPO?

And as we understand we will not get any more official comments, replies to what we've sent out to IGOs so this is - as I understand it still what they think about and statement on this topic.

And then I leave it over to Mary - sorry, I don't know if...

((Crosstalk))

Jim Bikoff: Petter, can I interrupt for a minute?

Petter Rindforth: Yes.

Jim Bikoff: I wanted to say that as I mentioned I think in one of my emails, I did speak with Mark Carvel in the UK who I know very well. And he has agreed if we can get him - I had thought that the more - that the follow up list of questions to the IGOs had gone out and then Mary had advised me that it was still in draft form.

He said that if we can get him the questions that we want answers to he will try to see if he can help on that score by getting his contacts in the IGOs maybe to provide us with information.

Petter Rindforth: Yes, thanks. I saw that. And that's very good.

Jim Bikoff: But I need to have - he wanted the questions first. And I, you know, I told him that I would, you know, I called him again after I spoke to him the first time I said they're apparently not out yet but - and he said, well get them to me. He was going on vacation anyway but he said get them to me when you can and then I'll try to take some measures to see if we can get more response for you.

Petter Rindforth: Very good. Mary, the floor is yours.

Mary Wong: Thanks, Petter. I just wanted to follow up on Jim's intervention. And, Jim, I want to apologize, I think I misunderstood the set of questions that you were referring to. I thought you meant the set of questions to the legal expert which is the one that we were talking about today. But if you're referring to the set of questions to the IGOs that our working group meant as a follow up, those were sent to the IGOs I believe a couple of months ago. And if that's what you meant I will send it to you for forwarding to Mark. Thanks.

Jim Bikoff: Yeah, that's what I meant. Because the one I have has marginal notations on it and some, you know, notes. So that one can't be final so maybe I missed it. If I did I apologize but I - if you can just send me the one that went out I'll send that on to Mark.

Mary Wong: Will do. Thanks, Jim.

Jim Bikoff: Okay.

Petter Rindforth: Phil.

Phil Corwin: I think Laurie has her hand up first.

Petter Rindforth: Sorry, yeah, Laurie.

Laurie Schulman: Yeah, I did. I was just - you know, (Brian) and (Jonathan) both approached me after our face to face. And I know they approached Petter too. And I just want to convey to the group, and I just did in the chat a little bit, you know, that they felt that the group had been too dismissive of their concerns. And I pointed out again what I had pointed out on the record in the face to face that I was astonished that we didn't get any replies to these questionnaires because it didn't give the group any guidance without getting feedback from the IGOs.

And their position was, rightly or wrongly, but I think it's fair for me to at least convey it to the group was that they had done all this work in 2007, the recommendations were done and they felt like they were talking to a wall. And I feel like I need to share that without judging it. This was their opinion. I said I would listen and convey it back to the group.

I asked Brian to send me what had been written, what we apparently had been ignoring and that is what Petter had just read to the group. But Brian

had sent me an email that has all of the links to the different positions that were stated or the model, UDRP that they were proposing from 2007. The fact that I hadn't worked on the group in 2007 I don't know I could have been, but at a minimum I did say that I would convey this concern to the group without committing us to any outcome one way or the other. So I just did want to share that.

Jim Bikoff: Can I respond to Laurie?

Laurie Schulman: Sure.

Petter Rindforth: Please go ahead.

Jim Bikoff: It's Jim Bikoff. Laurie, having been a member of that working group also I think there were these discussions obviously. But at this point since this working group and this PDP is specifically on the very narrow issue of access to curative rights provisions the questions asked initially were answered by the IGOs in a very general sense like, yeah, we have sovereign immunity period.

And I don't think those answers really were helpful. And that's why the second detailed questionnaire was worked out by the working group and sent out. So I think it's - we don't think, I mean, they did answer but the answers were too general and they didn't give us - they didn't resolve a lot of the issues that we think need to be resolved before we come up to a final conclusion.

Laurie Schulman: Right, well I did explain that we were getting the expert opinions on sovereign immunity and those opinions would be critical to whatever we would recommend moving forward. But we don't have the opinions yet. So I felt like I really couldn't address anything that they were saying because we don't - we don't have the expert opinion yet and that's why we are moving forward

because, you know, of course their central concern is their being subject to foreign jurisdictions when they feel perhaps they shouldn't be.

And then on the other side of the coin are the registrants of domains who are not IGOs who don't want to have their rights curtailed in any specific way because the IGOs are participating in this universal system. So, you know, but, you know, they're IGOs, they're not necessarily going to see two sides of the coin here.

And when I explained that - and I did explain it in that terms, I said so how do you respond to this issue, you know, I think it is fair that if you - if a registrant loses any UDRP they should have the right to go court, that is part of the process, the litigation alternative. And if we take that litigation alternative away from them what, you know, what stands in its place?

And the only answer I got from either one of them is, oh we wouldn't let it get that far, we never get to court; we don't go to court. But that didn't answer the essential question about the right to go to court. So...

Jim Bikoff: No, I agree. I agree. And again I think for some reason, I mean, if we had had more detailed answers from them in the beginning there may not have been a need for an expert. I mean, I think the fact is that the generalities and the answers were what I think made a lot of the working group members reluctant to go forward with a positive recommendation because they were (conclusory) and there wasn't enough detail given. We know there's attention between limited sovereign immunity and absolute sovereign immunity.

And we, you know, at least some of the working group feel that there is a question in this context as to whether or not it's limited or absolute. I think more people think it's limited although I'm not going to speak for the working group. But I think that we didn't get enough ammunition to really help them because they didn't give it to us.

Laurie Schulman: Right. Well and I did mention that about, I mean, George has just posted in the chat that he mentioned the World Bank decision. I did mention that to him because I know we bring up that decision frequently as an example. And their response to that was well that's - there's only like one or two, it's very few. And the reason it's very few is because we just - we don't go there. So that's not helpful to me either if they don't have a study or they don't have any corroboration in a form that the working group can use.

I mean, I'm sympathetic to their cost, by the way, I mean, I am. But at the same time we have to do objective work. And if we don't have objective information I don't know how we can do the objective work.

Phil Corwin: Yeah, this is Phil. I'd like to intervene at this point on...

Petter Rindforth: Yeah, you're on the list so...

((Crosstalk))

Petter Rindforth: ...please go ahead.

Phil Corwin: You know, I'm fine with Brian and the...

Laurie Schulman: Jonathan.

Phil Corwin: Yeah, Jonathan, but, you know, to say that we've been dismissive - dismissive of what? They have stonewalled this working group and essentially refused to participate even though it's open to all, if they're trying to deny us legitimacy they can't, you know, and we have kind of bent over backwards in our work on Article 6ter to find a basis for - a legal basis for standing for names and acronyms that haven't been trademarked. We've felt - to say we've dismissed their concerns and don't want to help them.

But simply for them to simply - to not participate, to not provide meaningful answers and then to simply say we want a separate process and we want the counterparty to be denied any access to court appeal in that process, without providing any substantive justification citing court cases, citing any kind of legal basis for those assertions, it's, you know, it's very frustrating.

Let me go - so as far as the WIPO - so far as the 2007 working group that was almost a decade ago. The world changes, we have a specific charge and a charter from the Council and we're bound - we're not bound to follow, you know, the Council just said let's - the Council could have said let's implement what was recommended in 2007.

They didn't do that. They set up this working group and we're not just here to rubberstamp a work product of a different group from eight years ago. We have to carry out this responsibility independently based on the best analysis of the best available and current information. So, you know, we should take the 2007 recommendations into account. But they're not binding.

Now let me move on because I'm going to ask staff, where are we in setting up a call with the participants - the members who participated on that Paris meeting that we were - I will put on the record - were invited to but were not - Petter and I were not offered any travel support to be at what turns out to have been a very consequential meeting.

I'll be quite clear here. I'm extremely concerned - I think we need this call ASAP. And I'll even get on the call next week while I'm on vacation if I have to if it can be scheduled next week. But I'm concerned that that group has cooked up a political solution, not a solution based on politics rather than on substantive law and analysis thereof and that it's going to set up a collision course between what its recommended which Mary has informed us covers curative rights process for both new and legacy TLDs apparently.

And I also wonder what legitimacy that group has in terms of proposing policy. It's not a standard PDP. We are the standard PDP group. And I think that at least the chair of the Council needs to be given a heads up on this potential train wreck that could be coming up with two competing proposals on the same subject. One from is working group and a separate one from the GAC, board and IGOs, whatever they reached agreement on in Paris.

But I don't want to prejudice the discussion too much but the longer we go without the call with that group the longer we have no real idea of the details of what they're planning to propose. So can staff enlighten us as to where we are on getting that call set up? Because it should have happened already.

Petter Rindforth: Yeah.

Phil Corwin: Thank you.

Petter Rindforth: Thanks. Mary.

Mary Wong: Thanks, Petter. And thank you, Phil. Phil, before I address your question I just wanted to follow up on things that Laurie and Jim brought up to the group's attention. I think first it's important for us as a working group to, you know, maintain on the record as we have that a lot of the prior documentation has been reviewed by this working group. That includes the WIPO II process, the 2007 work that Phil referred to and a number of others. And that's all been documented.

So for our purposes I think this working group can say that we've been thorough and comprehensive in getting a sense of what's been done and how that can assist or not in our work.

Secondly, to Jim's point, I think it is also important for us to note on the record as he has done that this working group does have reasons that most if not all

of the members believe are good reasons to solicit an external opinion on very specific points of international law. And that is indeed what we're doing.

The third thing I wanted to say, which will feed into my response to Phil, is that from my understanding, where the IGOs are coming from is basically that this has in this incarnation gone on for two to three years. You'll recall that - two things, one is that our work here on curative rights is part of the larger broader picture of IGO protections and that includes things like the interim protections that are second level reservations as well as the ongoing discussions over the possible use of the TMCH for IGO acronyms. So that's kind of a longer history and a broader context.

The second thing is related to the first and that is that there are two GNSO processes that would likely be involved when the new - revised proposal is brought back to the GNSO. And that is the GNSO Council had been asked last year to consider revising those protections that had already recommended be adopted for IGO names and acronyms.

That of course does not cover the curative rights piece. But the second piece of course is the curative rights piece that this group is working on. So that's kind of part of the sort of broader tapestry and history and context of where they're coming from and where the NGPC, the board, the GAC and the GNSO as a whole is.

And on the GAC, the various GAC communiqués date back to, I believe, 2013 if not before that have either been fairly specific or not. But a number of them have acknowledged the work of this group as has the NGPC.

So that's all by way of background. And, Phil, in answer to your question, staff has been trying to get a time or times that work for Chris and Thomas Schneider because, as I noted to you all, they have both made a commitment to speak to GNSO representatives sooner rather than later. And those GNSO

representatives would include Phil and Petter because they are the chairs of this working group on the curative rights piece.

But also Jonathan Robinson and possibly Thomas Rickert. Jonathan, as GNSO chair and Thomas as chair of the earlier PDP working group that Jim and others were members of. I apologize that it's not been practical to maybe because Thomas actually is himself on vacation. So this has taken longer than anticipated.

So what I expect will happen is that Chris will reach out to Jonathan Robinson just to give him a heads up on where things are. And this follows from all the previous communications between the NGPC and the GNSO Council. I think we've highlighted some of them that includes the first NGPC proposal that was sent to the GAC that the small group has been working on that was in March of last year follow up correspondence between Jonathan and Cherine, the chair of the NGPC.

So this would be, you know, as we are trying to get a time for everybody starting with a time that works for Chris and Thomas, I think Chris will first reach out to Jonathan to give him a heads up on where things are with the whole proposal including but not limited to the curative rights piece. So, Petter, Phil, I think I'll stop here because we're almost at the end and people might have follow up or questions.

Petter Rindforth: Thanks, Mary. Well I have a direct follow up question so have you any ideas on when we - I mean, is it your note that they are still interested in setting up this informal practical meeting? And when can it be done?

Mary Wong: Petter, in direct answer - and I see Phil's got his hand up. Yes, they very much are. I did speak personally to Thomas and Chris - well Thomas before he left on this vacation and he's very clearly said that he is committed to that and he did mention in the meeting that he was very pleased with the meeting that he had with you, Phil and Mason in Buenos Aires. So I have no reason to

doubt that that won't happen, it's just that has taken a long time to try to get times that might work for the two of them that we can then send to all of you.

Petter Rindforth: Okay, thanks. Phil. Phil, I see your hand is up.

Phil Corwin: Excuse me for not unmuting myself. It has been weeks since we've been waiting to get this call set up since we got the messages they had reached some type of agreement which may encompass something on CRP in Paris. And, you know, there is this device that every other ICANN group uses called a Doodle poll to find a time that works for everybody. It's not that difficult to do it. So I don't understand why this is taking so long.

As I said, I'm on vacation next week but if - I will take 30 minutes or an hour out of my vacation to be on this call. I certainly hope we're not going to be told we have to wait until the end of August because Europeans take 30 days' vacation. We need this call.

And so far as Chris briefing Jonathan, I think that just reinforces my own thought that I need to give Jonathan and Thomas the perspective of this working group about the potential for a conflict between what was agreed to in Paris and what this working group may recommend. Thank you.

Petter Rindforth: Thanks, Phil. A final question back to Mary. I think it's a very good idea and very practical that was suggested. Is it possible to reach out to them and suggest that?

Mary Wong: Petter, I'm not sure what the suggestion is you had. I'm sorry if I lost the thread of it. But in response to Phil...

Petter Rindforth: The online schedule for a meeting.

Mary Wong: I can bring it up. I would just say that because I'm not the primary support for all of these groups there is some coordination that needs to be done. All I can

reiterate is that Chris and Thomas are very well aware and they are committed to that meeting.

And I think that Chris reaching out to Jonathan in the meantime if not to downplay the roll of this working group or of you and Phil, Petter, but really just to keep the momentum going because bearing in mind ah this proposal has been on the table since over a year ago and the GNSO Council has been briefed on it now and then that it just seemed like a good interim measure, at least I think that's what Chris is thinking. So we will continue to try and that's all I can say at this point.

Petter Rindforth: Okay. Thanks, Mary. Thanks all of you for meeting today. And as we decided you will see final proposals for the questionnaire to be sent out by email and also information about the legal experts.

And then as soon as we know something about - so that we can indicate when our next full meeting will be, we'll of course inform you. Thanks for today.

Jim Bikoff: Thank you.

Mary Wong: Thanks, Petter, Phil, everybody.

Terri Agnew: Once again the meeting has been adjourned. (Casey), if you can please stop the recordings?

END