

**ICANN  
Transcription  
IGO-INGO Curative Rights Protection PDP WG Meeting  
Thursday, 20 July 2017 at 16:00 UTC**

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Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the IGO, INGO Access to Curative Rights Protection Mechanism call. We're - taking place on 20 July 2017. On the call today we have George Kirikos, Petter Rindforth, Paul Tattersfield, Phil Corwin, Mason Cole, Osvaldo Novoa, David Maher, Jay Chapman, Nat Cohen and Poncelet Ileleji. I have no listed apologies for today's meeting.

From staff we have Mary Wong, Steve Chan, Berry Cobb, Dennis Chang and myself, Terri Agnew. I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn it back over to our cochair Phil Corwin. Please begin.

Phil Corwin: Yes thank you Terri and welcome all and sorry for the delay. I called in immediately after getting off a Business Constituency call that was held just prior to, ended about two minutes before. This was - it was a very long wait

today so apologies for the late start. Petter I believe it's my turn to chair today that you had chaired last week is that correct?

Petter Rindforth: It might be so although I - Petter here. I raised my hand because...

Phil Corwin: Yes?

Petter Rindforth: If I can do so just start with some very quick update on what is actually written in the agreement dispute policies when it comes to the court parts so to speak. I've followed the...

Phil Corwin: Sure. Go ahead.

Petter Rindforth: ...discussion and I also - actually some minutes yesterday to go through some of our old communication. And just wanted to remind everybody about when before we go into details when it comes to different kind of options that the first step is an old register agreements in these agreements you sign up for maybe not normally reading it through you click the box so to speak but in all register agreements there are some kind of sentence that refers to the profits, the main dispute dissolution policy that each domain, new domain holder agrees to be bound by. And that's as we have said before it's - this is more of a - more as a business agreement. I mean in order for you to actually be able to register a domain name in your name you have to read through this registrar agreement. And all in some way or another refers to dispute resolution policies for instance applicable to the domain name we have selected including the uniform domain name dispute resolution policy. And there's normally a link to that policy.

So everybody are referred to the UDRP or the URS depending on what kind of domain name you register. So that's the first actual agreement is you sign up for. And then when you start the dispute resolution procedure you - there's always also one of these boxes you have to click on and exact the (mutual) jurisdiction courts where the normal is the - any challenges that may made by

responding to a decision of the administrative panel to transfer a domain name or to cancel it can be taken to the jurisdiction of the courts at the location of the domain holders address. So that's both parties so to speak signed up at that part to accept it to - taking it to a court.

And then it's also in the policy as such stated fairly clear that if an administrative panel decides that a domain name registration should be canceled or transfer there's this business days waiting period. And that's observed in the location of the principle of this - of where they are informed by the applicable provider of the administrative panel's decision before implementing that decision. So where each party has ten days. And losing party has ten days, ten business days to actually start a procedure in a court.

And also of course there are already in the rules restrictions of possibility of set events or other grounds for termination. So if the parties provide the written notice to the questions and standard proceedings because there's a settlement or if they actually have started court action and administrative process it's up to the panel to decide if the panel wants to proceed with the process or to wait until the agreements decide between the parties or there is some kind of court decisions.

And it's also very clear that the - there is - once there is a decision the parties rights the complainants have the rights to seeking out a really in a court as provided by law. And it's no specific occasion on which kind of a court or which kind of applicable law that can be used. And the respondents writes if the complainant prevailed and the domain name has been ordered canceled or transferred the register will wait ten days before taking action. And within that period the respondent may begin the lawsuit in an appropriate jurisdiction against the complainant.

And what I also quickly emailed earlier today was when it came to the registrar's responsibilities these ten day period I mean if they got actually an information that the case is taken to a court within the ten days there will be

no transfer. And then the register will not implement the panel's decision and will not take any further action until the registrar has received other satisfactory evidence, a resolution between the parties or a satisfactory evidence that a lawsuit has been dismissed or withdrawn or a copy of a court order dismissing the lawsuit.

And when we talked about the possibility to actually if it is dismissed by a court to take to the next step for another arbitration I think here is also what we need to clarify so that if - otherwise I mean if the court decides not to take the case then the original decision would be the one. But to avoid the transfer we need also to put in some administrative process here so that the domain name still holds. So that's just a quick summary of the regulations already there when it comes to the second phase in court. Thanks.

Phil Corwin: Okay thank you for that intervention. Petter let me briefly comment on that and then get us back to our agenda. But that comports with the email I sent to the group yesterday which contained the transcript of the oral discussion between you and Paul Keating who unfortunately is not on today's call at our - on our call just prior to the Johannesburg meeting in which the - this issue was discussed and you and Paul had agreed that if in a situation which could occur today of an IGO prevailed in the UDRP domain registering appeal to a court of mutual jurisdiction IGO asserted a defense of immunity from the jurisdiction of that court notwithstanding its agreement to the mutual jurisdiction clause and there's no telling whether or not a court would exceed to that defense. We have no control over the IGO action or the court's decision. That would leave the - that would reinstate the UDRP decision if the case was dismissed per section - and I cited it yesterday. I have it in front of me. That's per section 4K of the UDRP policy which basically provides for reinstatement of the decision if the lawsuit has been dismissed or withdrawn or the panel receives a copy of an order from the court dismissing the lawsuit.

So the import there is that in the - oh I'm glad to see that Paul just joined us. That's great because that means Paul can get into discussion of his

proposals today. So the input is that if it happened today the domain registrant in that situation having lost the judicial forum would have no remaining appeal under the UDRP rules so the Option 2 we've been discussing would in fact represent an expansion of registrant protections by providing at least an arbitration forum adhering as closely as possible to the substantive and procedural rules of the forum of mutual jurisdiction.

So I would propose now given that we're 20 minutes into the call that we briefly review Item 2 which is just the updated text of the cochair's arbitration elements paper which as I explained on the last call was a paper based on elements that Paul Keating had identified that he would want to see addressed in any arbitration procedure that we might consider and in the aftermath to a judicial dismissal of a case based on an immunity defense. And but rather than spend most of the call discussing the cochair's paper I would just think we should note those elements and then get right on to agenda Items 3 and allow I know that both Paul and George Kirikos have other proposals they would like us to consider and I think would be better to use their time considering those and then circling back to the proposed Option 2 arbitration when we fairly discussed that? And I see George's hand up. Go ahead George.

George Kirikos: Hi, George Kirikos for the transcript. I noticed that there's some language in this updated document that I'd recognize as being part of the older document. But the second paragraph on Page 1 it says none of the elements described below in relation to an arbitration scenario precludes either of the parties from going to a national court at any point in the dispute resolution process. I don't understand how that section was brought in because the whole point was that the IGO didn't want to go to court and that you're stuck in this arbitration scenario because it was punted from the court. Thanks.

Phil Corwin: Yes good point George. And I hadn't seen this language or at least I missed that language. Maybe staff can explain that to it. I see Mary's hand up.

Mary Wong: Yes thank you Phil and thanks George and maybe we could have put it a different way. That particular sentence and the other I think two bullet points under preliminary notes were added by staff after the call last week and they were (unintelligible) to capture the pertinent points relating to this discussion paper as was expressed on the call. And our recollection is that on call someone - and I can't remember who so we haven't been used there that as we talk through these arbitration elements none of this is intended to stop a losing respondent from going to court. It may well be that as we go on with the discussion that we have an either/or option. But as of the status we had last week I think the idea was that A, this is something around the discussion and B this is not intended to take away the right to go to court unless of course there's an agreement to just do binding arbitration. So maybe you should edit that last part in but that's where...

((Crosstalk))

Phil Corwin: Yes I think well let's just briefly review this paperwork, going to have to come back and do more work on this because at least it's the understanding and intent of this cochair is that we are in no way contemplating requiring arbitration as an immediate follow-up to a UDRP decision. We're only discussing arbitration as something that results from a dismissal by a court of a judicial appeal brought - brought by a domain registrant if and when the IGO succeeds in asserting an immunity defense. So it needs to be clear that this is only would be contemplated in that very specific and narrow scenario.

On the second sentence there about implementation is option I agree we'd have to think about that but probably we'd have to suggest some language addition to the language of the UDRP and the URS policy if we wind up endorsing this arbitration option. And as to whether or not this should apply and I realize a lot of this language is not proposed final language for our report but just alerting the group to things we need to consider about whether this applies to all IGOs or I guess all entities that claim to be IGOs although if an IGO claims judicial immunity which would be a precursor to this arbitration

default it would have to prove to the court that it was in fact a genuine IGO and a domain registrant could challenge that claim in the court proceeding. But we, you know, I have to think about it. On one hand limiting this to IGOS on the GAC list would at least satisfy that concern of the GAC where they had a concern that some IGOs that were not IGOs would have - be treated in a special way under anything that we recommended.

On the other hand if you had an IGO that wasn't on the GAC list but that none the less convinced the court that it was a genuine IGO and has immunity by restricting this option solely to the GAC list IGOs you'd be depriving the domain registrant in that scenario of a meaningful appeal in after losing its ability to have a court hear its appeal. So I think we need to discuss that further.

On the panelists we did seem to reach some rough consensus last week that any arbitration in this scenario should be heard by a three member panel chaired by a retired judge from the relevant jurisdiction to assure that the panel was led by someone who had good familiarity with both the substantive or on procedural rules of the jurisdiction. And scrolling down to see if there's any other changes. I don't see any so again let's - my - unless there's objections my - I think I'd be better at this point to set this aside and come back to it but that since we have - and I'll hear you in a second Petter. Since we have Paul Keating with us today and we have George as he's generally with us and they have other proposals they'd like to vet with the working group that they - that the cochairs stand back from this proposal for now and we hear from our working group members with their proposals. Petter go ahead.

Petter Rindforth: Petter here, just two words. I think it's important that the arbitration face is closely connected to the immunity defense in the judicial forum so that we keep the cases as they are today with the call to action as the initial final step. But only if the complainant succeeds in their immunity defense there should be this second possibility to take it to an arbitration. Thanks.

Phil Corwin: Right. Right, thank you for that comment Petter. And Paul Keating I note in your comment about relevant jurisdiction how it would be determined. It be determined by the UDRP rules. For example if a domain registrant with a right to bring an appeal under the Anti-cybersquatting Protection Act US law filed a judicial appeal in the United States and the appeal was dismissed based on an IGOs immunity defense the arbitration would be determined under the substantive law under the ACPA and it would follow as closely as possible the federal rules of procedure. So we'd be trying to mimic a judicial process as much as possible but with the three-member arbitration panel rendering decision. That's the intent. But again I'd unless it's the desire of the working group to get into further discussion of this amended version of Option 2 I think it might be better to proceed to the proposals from our working group members particularly Paul Keating who is not always able to join our calls. And Paul yes it would be the jurisdiction which the action had been pending.

Paul Keating: Thank you Phil.

Phil Corwin: Okay. So we have a new document up in front of us. And the first option is - the first item on it is Option 3 to Recommendation 4 suggested by Paul Keating on our call of June 15. So Paul I'm going to give you the floor to explain your option here and what you think it's merits are and then we can as well as responding to any criticisms you might have received on it on the email list so far and then we can open it up to further discussion by the group. So Paul the floor is yours.

Paul Keating: Okay thank you. This is Paul Keating for the record. I apologize for any oral problems. I'm unfortunately sitting in a car next to the road. But to clarify I didn't receive any adverse comments to the suggestion at all that I know of that I saw anyway. But essentially it's summarized. ICANN staff and thank you very much summarized it very well is that it's essentially the NGOs so legitimate concern here is for a monetary - is to protect it from a monetary award as issued by a court of mutual jurisdiction. Any other determination



which is who owns the domain name post UDRP I don't see as a legitimate concern of the NGO because they in fact brought the complaint to begin with. So under my proposal the only requirement would be for a situation in which the respondents would be required as a as part of their response for example to waive any claim against the NGO over and above a declaratory relief as to the ownership of the domain name. It's kind of a simplistic approach to a problem which I see as statistically rare. And that is in which 's Geos are actually going to complain about sovereign immunity in the first instance.

I don't think we have come across one instance in which the - and NGO has in fact complained on the basis of sovereign immunity in any litigation - in any pending litigation in any jurisdiction. So that was my solution is kind of a throw the bone out to the NGOs and educate the respondents to understand that it really is of no significant consequence to waive the damage claim. Number one it's almost impossible to enforce such a damage claim given the current state of the law and the NGOs inability to pay generally and away. So with that I - I'll just turn it over to the floor. Thank you.

Phil Corwin: Yes thank you Paul and I think it's a very interesting proposal. Let me raise two questions and then I see George has his hand up. The first is, you know, I think this might be worth exploring with the IGOs. It might be attractive to them and to the GAC if they were only if they could limit their session to mutual jurisdiction solely to the question of control of the domain name and not be exposed to potential monetary damages. But let me ask one practical question and one policy question.

As a practical matter just as we previously decided that had we adopted the IGO small group proposal which would have only permitted an arbitration appeal, not an appeal to a court of mutual jurisdiction one of the reasons we rejected that was we question the effectiveness of doing that that there was no way we could prevent a domain registrant from invoking their national law rights where they have them and go into court anyway and putting a hold on the domain through a judicial injunction.

So one could this be effective? Could we prevent a domain registrant let's say under the ACPA from not just contesting a decision, a UDRP decision that their domain should be transferred but prevent them from seeking monetary damages under that mass national law? And I guess the related policy question is would it be proper for us to try to in any way limit a registrants protections under national law? So those are the questions that this - that arise with me effectiveness and whether it's sound policy to try to limit in some way a registrant's rights under a relevant law. So let me call on George now and then Paul can respond to both of us. I see his hand up. Go ahead George.

George Kirikos: George Kirikos goes for the transcript again. Yes just to step back I think the way this proposal arose was that IGOs were concerned not just with the money damages. They were also concerned that the language in the UDRP is likely to be construed as a general waiver of immunity. And so they wanted to make it a more limited waiver of - a general waiver of immunity would apply not just to money damages but the scenario where let's say an employee of WIPO a register as WIPO reallysucks.com and WIPO decides that they want to file a domain dispute. That former employee might sue in court not just based on the outcome of the domain name but they might counterclaim, you know, employment damages or whatever.

It's not that they were unable to do because of the IGO's actual immunity so WIPO and other IGOs would be concerned that find the UDRP would open the door to all kinds of other litigations that are unrelated to the domain name.

And actually there's this concept that's researching called Quasi In Rem and I'll type it into the chat room where you're kind of trying to limit the dispute just the domain name. And so it's kind of like limiting the property aspect of the domain name which kind of relates to the in rem lawsuits that I've been talking about and others have been talking about as other ways to affect the outcome of the domain name without actually suing the IGO in court. So to go

back to one of Paul's points though the limited form of the waiver by the IGO in the - in a new proposed UDRP that would be presumably language only agreed to by the IGO, you know, switching from the general waiver to a more limited waiver. It's nothing that the domain name owner would have to necessarily agree.

So this can actually still go to court and folks can still duke it out whether there's immunity or not on that issue. But all we'll be saying is that going into the UDRP the IGO only agreed to this limited waiver and it's still out for a court to decide, you know, what that waiver means. And the IGO could still argue immunity it may - which it may or may not have depending on, you know, the type of IGO whether it has functional immunity or absolute immunity, et cetera. So it goes to what the kind of express waiver is.

And this point is I assume that if we did Option 3 which could be tagged onto either of the other options, it's not just an either/or. It's kind of like a parallel kind of option to the other options then that we solidify the language making it clear that the mutual jurisdiction is in fact an express waiver of immunity but, you know that the IGO, you know, what have a much harder time trying to dislodge that immunity in other cases. Thanks.

Phil Corwin: Yes thank you George. And I tend to be in agreement with what you just said. I think this suggestion has expressed some questions about it but it has some merits and frankly besides being something that would ameliorate the GAC and the IGOs to some extent and if it's contained in a final report as you just observed it actually might negate further the possibility of a court totally dismissing the case if the waiver - if the acceptance of mutual jurisdiction by the IGO was limited to the question of the control of the domain name and thereby provide a greater likelihood that the registrant would have a day in a real court and not before an arbitration forum as Option 2 contemplates. Mary you had your hand up. I was going to call on you next before Paul. Did you have something you want to interject at some point before Paul speaks?

Mary Wong: Hi Phil. Thanks for noticing. This is Mary from staff. I think you and George has covered a number of I guess supplemental questions that we would need to examine if this goes any further. So the other remaining point I'll make is, you know, as George says this does not to be need to be in either option. It could be combined with say an arbitral option or something else. And so to that extent the question as to when the waiver has to take place that could be tied into any additional requirement of having to first agree to arbitration. So it may not be at the time when you register domain or when you file the complaint although filing the complaint may be the logical place to put it. In other words there's probably a way to do this where the waiver is clear. But this doesn't really resolve the other issues around it which is the immunity itself still has to be argued. Thanks Phil.

Phil Corwin: Right. Okay thanks for those points Mary. Mr. Keating please go ahead.

Paul Keating: Yes, thank you. Paul Keating for the record, put my hand down here. So I - in listening to these comments they're legitimate in terms of I - the way I see this. How do we get the complainant, the IGO to actually waive something in a concrete fashion? So I would actually take the concept that I proposed and I'd turn it on its head. So I wouldn't make the respondent be waving anything. I would make the complainants qualify the waiver.

So in other words if where acting on the assumption that the IGOs are concerned about damage claims as opposed to the possession of the domain name itself then if we could insert Mary this addresses your concerns - we could insert in the jurisdictional the certification in the rules in what is it 3B XII I think where the complainant certifies to the mutual jurisdiction you could state it in there that, you know, if the complainant is an IGO then for the purposes of, you know, the - an acknowledged IGO, okay then the IGO agrees not to assert sovereign immunity to any claim except - well this - it waives its right to assert sovereign immunity as to claims pertaining only to the possession and ownership of the domain name. But it may reserve any

sovereign immunity claims that it has as to non-possession remedies, in other words, damages. Right?

Then you've got the complainant coming in and clarifying that the extent of its claim of sovereign immunity at the get go when the UDRP is filed. The respondent George wouldn't have to do anything. So the respondent doesn't have to agree. The respondent can go to court afterwards. The IGO then asserts sovereign immunity. The respondent stands up and says number one, the sovereign immunity claimant's bunk because there's been a waiver.

And if that doesn't - or the IGO is not really and IGO. And if the respondent loses then - on those arguments the respondent is arguing alternatively that yes Your Honor but the case doesn't get dismissed. It's just the damage claims are not recoverable. And I can go seek other remedies if I have them. But you have to respond to the issue of possession and ownership of the domain name post UDRP under the normal rules of this litigation in this jurisdiction. So that's kind of how I would approach it given these very legitimate concerns and questions that have been raised during the call.

Now and I think that structurally that's very possible to do with a very minor modification to the UDRP rules, not the policy itself in which case this modification does not need to be embedded within the RAA, the accreditation agreement with the registrars or the registration agreement since both of those link back to the UDRP in its present form right as it may be changed over time. So I think that it's a simplistic version where it's just come in and we're addressing one small issue that reserves as much benefit for the respondent as possible but protects any legitimate, you know, concerns of the IGO that they may be held accountable to in a large damage claim right?

I do want to make it clear to the group that I am - I firmly believe that there is a waiver here and I firmly believe in our original position. That means so I understand politically that that's a hard swallow for the powers that be and I guess I'm kind of willing to offer this as an alternative. But this is as far as I'm

willing to go. I really do not - I would be tremendously opposed to creating a parallel arbitration system of any sort or nature right?

The last point I make is that - or I make two points if I can. One is response to George the example with the WIPO employee probably is not a great one because the WIPO employee has probably signed an employment agreement which obligates them to arbitrate right? So I don't think that those types of claims are out there.

The other point, the last point I'll make is a point that I raised in a subsequent email where I kind of had this Nirvana moment about what litigators would really do here personally as a litigator I wouldn't be so concerned if an NGO or an IGO rather successfully asserted a claim of sovereign immunity and I was doing a post UDRP action because in my actions the registrar is always a party to the action. The reason for that is because any court order has to be enforceable. And I want to make sure that the registrar is legally obligated to enforce the court order that I get. And so I make them a party to the action. I stipulate with them that I'm not seeking any damages from them and they don't need to respond. They just knew to agree that they'll abide by the court order.

And I think if I had that then if an IGO does escape on sovereign immunity grounds I can still proceed against the domain name and in rem action to seek possession and I have the registrar there is a priority to actually get enforcement. So in my life none of this will impact me as a practitioner. But I think that it's a good and a bone that I - we can throw the IGO's way and not complicate everybody's lives to any significant extent. And I'll take my hand down and go on mute. Thank you.

Phil Corwin: Okay yes, very useful further explanation Paul. Does any other member of the working group have any questions about this Option 3 proposal from Paul or any additional points they'd like to make in regard to it? And Mary I see your hand up again.

Mary Wong: Yes it was Phil. And if I may...

Phil Corwin: Sure.

Mary Wong: ...sure. I'd just like to ask Paul a follow-up question because I'm not an expert in any of these fields. And it's in relation to the very specific point that George made and Paul you followed up on about pursuing an in rem or as George (unintelligible) in rem action. It seems to me that that something that is possible under US law. I think we talk a little bit about the Anti-cyber Squatting Prevention Act. I don't know the extent to which that would be a realist realistic option in other jurisdictions so maybe we don't have the answers before us today. If Paul has some insight that would be helpful. If not is there something that we need to think a little bit further on? Thanks Phil.

Paul Keating: Okay Phil can I respond to Mary?

Phil Corwin: Yes please.

Paul Keating: (Unintelligible).

((Crosstalk))

Phil Corwin: And after you respond I have one further question for clarification for you.

Paul Keating: This is Paul Keating for the record. Mary it's a great point. In the US under the ACPA in order to assert in rem jurisdiction under the act you must allege and establish that you - that the court has no personal jurisdiction over the defendant. There are other things that have to occur as well. You have to bring that action in a jurisdiction in the United States in which the registrar or registrar - registry or the domain name resides okay? But the lack of personal jurisdiction is a secondary requirement. If you can't establish - if the court

does have jurisdiction over the IGO then you technically could not utilize and in rem action in the US under the ACPA.

The same is true is if you're bringing the in rim action in a jurisdiction in the United States in which neither the registry nor the registrar nor the domain name existed. That was - that's already been decided in the Second Circuit in Mattel - a case brought by Mattel. So that's pretty well-established.

The other question you have which is to what extent does in rem jurisdiction exists in non-US jurisdictions I frankly don't have the answer for you on that. I do know however that in very few jurisdictions that I've encountered is there actually a post UDRP cause of action for a respondent? In most jurisdictions that includes England that includes Australia. I've tried three times and not gotten it past - I - well we've chickened out and settled all cases before the final decision about it but there are very strong arguments that the court had no jurisdiction because there was no underlying legal claim.

In jurisdictions which are civil law nature there are frequently not civil statutes that would embody a post UDRP claim. We're attempting one right now in Luxembourg and I'll let you know whether or not that's going to proceed as prevail or not. But I think it's something that should be looked into.

But I do think that in any jurisdiction that I'd probably be able to convince a judge to continue the action and continue the claim even though the IGO was no longer a party as a result of sovereign immunity claims. And I think I could - I could - need to add the ADR provider as a defendant of the registry - registrar as a provider. I'd add enough parties to the action that the court will probably - I feel comfortable that the court would weigh in and say okay fine now we'll continue this discussion because it really doesn't have anything to do with the IGO. The IGO is not really a necessary party from a factual standpoint. Their trademark exists or doesn't exist. You know I'll...

Phil Corwin: Okay hey two quick questions I have Paul and then...



Paul Keating: Yes.

Phil Corwin: ...we'll get back to the other folks who might want to speak. Other than the US with the ACPA you seem to have broad experience in this. How many other nations provide - have some national law in which a domain registrant could proceed with an appeal from a UDRP decision? You seem to be saying it's extremely limited.

Paul Keating: Yes I don't know. Currently as I sit here I don't know of any of them. But that have a statute like the ACPA that's been recognized as allowing that claim I've not encountered any. There are very few jurisdictions that have the concept of declaratory relief which is essentially what the ACPA claim is.

Phil Corwin: Okay. So basically you're saying unless the domain registrant is a US citizen or as a non-US party which has used a US registrar you don't know of any other law that a judicial...

Paul Keating: Well that's not the basis of jurisdiction of the ACPA. I mean the ACPA is as long as you have any basis of asserting jurisdiction under the ACPA and you have a, you know, but the best part about it would be to have a domain name that's subject to US law by way of registry or registrar a registrant...

Phil Corwin: Right.

Paul Keating: ...then you can get under the ACPA.

Phil Corwin: Right.

Paul Keating: And if the complainant/defendant does not have a US trademark they're going to use automatically anyway.

Phil Corwin: Okay. So let me ask you this. And again we've been discussing - so one the circumstances were a domain registrant can bring in a PO are extremely limited primarily to if there's US jurisdiction through some so far as...

Paul Keating: Well I know...

Phil Corwin: ...you know.

Paul Keating: Can I jump in one second Phil?

Phil Corwin: Yes.

Paul Keating: When I said the UK doesn't recognize it the UK hasn't addressed this specific issue relative to the UDRP. In the Emirates case they addressed it in connection with a .co.uk domain name. And they found that there was no post DRS avenue for litigants to bring a claim in the UK based upon an assertion that the DRS was incorrect.

Phil Corwin: Okay.

Paul Keating: The nominate process.

Phil Corwin: All right. Here's my quick follow-up question. In a scenario where a domain registrant for whatever reason was able to bring an appeal from an adverse UDRP decision under the ACPA if the judge in that case notwithstanding the mutual jurisdiction clause of UDRP was convinced by and IGO that it was a real IGO and notwithstanding that agreement had immunity and dismissed the case would we need something like the Option 2 arbitration clause to provide some appeal to that registrant or do they have other in rem or other legal recourse where they could still protect the domain name if the ACPA suit was dismissed?

Paul Keating: But if the ACPA suit was dismissed and that was the mutual jurisdiction I don't - I wouldn't see an avenue of remedy for the respondent...

Phil Corwin: Okay.

Paul Keating: ..the plaintiff. I wouldn't see it because there would be no claim. Under the existing language of the UDRP there would be a dismissal of the action which caused the delay of the enforcement of the UDRP decision. Therefore the UDRP decision would basically be carried out right because that's a, I don't know what paragraph of the policy it is. I think it's Paragraph 3...

Phil Corwin: No it's 4K. We just went over it before you got...

((Crosstalk))

Paul Keating: Well 4K allows for the mutual jurisdiction within the ten days but then there's another section up above that that says the registrar will transfer the domain name...

Phil Corwin: Right.

Paul Keating: ...in the following events and that is three - I think that's in Paragraph 3 but I'm not sure. And so in my viewpoint if you - if the underlying action was dismissed as opposed to a party in the action be dismissed if the underlying action was dismissed I think the UDRP decision would then be carried out. And that's why I was in favor and I proposed originally the concept that in the event - in that event - and in the event the dismissal was the result of the NGO's assertion of sovereign immunity than the UDRP decision became (unintelligible).

Phil Corwin: Okay.

Paul Keating: And that was the fair give and take out of that scenario for me.

Phil Corwin: Okay, thanks for that clarification. George go ahead.

Paul Keating: Sure.

George Kirikos: George Kirikos for the transcript. Just to go back to the ACPA usually the ACPA in rem is brought by the trademark owner and not necessarily the domain name owner. The trademark owner is trying to assert their ownership of the domain name. However the fact that you can rely upon the ACPA in rem provisions doesn't mean that you can't apply general, you know, common-law reasoning for in rem lawsuits as long as the property is located within the courts reach. So if it's at the location of the registrar or the location of the registry.

So for example let's say an IGO goes after a domain name owned by an Australian domain name owner registered at a Australian registrar kind of a worst-case scenario given the judicial history of Australian challenges to the UDRP. Though the IGO has agreed to the mutual jurisdiction of the Australian courts because those are the only options nothing would preclude the domain name owner from finding a court case in Virginia, you know, the location if it's a .com the location of the VeriSign registry in order to assert a cause of action in rem against the domain name itself because that's where the domain name is located and that's where a court would have in rem jurisdiction over the property. So I think there's still avenues that are available that aren't all accounted for.

And not to, you know, rip the debate before but while the UDRP itself delineates one mechanism of challenging the UDRP (unintelligible) that isn't the only option. One could use all their means to challenge that decision without involving the IGO (top) as the counterparty. And so as long as those court cases are alive the registrar who holds that domain name is going to keep that domain name under registrar lock. And while any action against the

IGO might have been dismissed that doesn't mean that the matter is fully resolved until all pending litigation is also exhausted. Thank you.

Petter Rindforth: Phil I had a comment.

Phil Corwin: Yes. Thanks George. Petter next.

Petter Rindforth: Thanks, Petter here. And I actually have an additional question to Paul so it's good to see that he's just (unintelligible). But it's what you said if I understand it correctly when you have a court action you also involve the registrar. But isn't it so that in the majority of the registrar's agreement they have a general clause that they say that they will act or sometimes they will only act with the domain name that they are responsible for based on the court decision. So that means that they don't have to be part of the - they don't have to be sued. They - I mean you can only just show their court decision and they will act according to their agreement based on that. Thanks.

Phil Corwin: Okay thank you Petter and Paul back to you.

Paul Keating: Okay Paul Keating...

((Crosstalk))

Phil Corwin: ...discussion here.

Paul Keating: Paul Keating for the record. Petter I'm going to answer yours first because it's a faster one and then George I get back - I get to yours. Yes you could - you don't have to name the registrar. You can rely on their contractual promise to abide by the court order that I'd prefer not to because in that case I've got a judgment and now I'm trying to enforce it against the party over whom the court - the issuing court had no jurisdiction. So now I have to then file lawsuit in Australia if it's Fabulous for example and I have to sue Fabulous to seek enforcement of a judgment that they contractually agreed to abide by and that

they have all the defenses under their contract for not having done so including the fact that they were not parties to the action.

So I prefer not to go that path. It's I understand from a European standpoint we're used to relying on statutes. But in this case there is no underlying law to the domain space. This is all based upon contract. The only impact that the law has here is in the remedy side right? And that's only in some instances. But the rest of this whole environment that we're involved in is all contractually based. So that's the first thing.

The second thing so now George in terms of in rem yes I can proceed in any jurisdiction. I can find that the court has jurisdiction, personal jurisdiction of the litigants. And to the extent that I cannot establish personal jurisdiction of the litigants then that litigant's going to be dismissed. If that dismissed litigant is considered to be a material party to the litigation court may well dismiss the entire action.

Now the only thing that prevents me from going - let - give you an example, if I have a domain name, a .com domain name that's registered with Fabulous and the complainant who happens to be an IGO certifies to mutual jurisdiction that the principal address of Fabulous which is in Queensland Australia I could actually forgo the entire process and file an ACPA in rem action and any other kind of action in the United States. But in doing so I'm forgoing the 0 day automatic conjunction that of applies, the ten business day injunction. So that if I don't - if that ten days lapses and I don't provide Fabulous with a copy of a complaint that was filed in the mutual jurisdiction Fabulous can transfer that domain name tomorrow in which case now I'm fighting to get back the property that's in the possession of somebody else and they subsequently transfer it.

My only other remedy would be to run in really, really fast into a different court that say I wanted to commence an action in Virginia as an in rem action as opposed to the mutual jurisdiction in Florida - in Australia I'd have to get

an injunction, a TRO from that court directed towards Fabulous to prevent them from transferring the domain name notwithstanding the fact that I didn't file in a mutual jurisdiction. So that's the risk that you run in your scenario. Does that answer the question?

George Kirikos: George here or George Kirikos here. Just reading the text of the law. It could be a jurisdiction. A competent jurisdiction doesn't necessarily have to be the mutual jurisdiction where one sues.

Petter Rindforth: Agreed, agreed George. But if I sue in a court of competent jurisdiction and I don't sue in the mutual jurisdiction I do not benefit from that automatic ten business days stay okay? So in other words the - once the ten business days is gone if I don't separately present the registrar with a TRO or other injunctive order that domain name is gone. On day 11 at that registrar's going to - they're going to transfer that domain name according to the UDRP decision. So it imposes if I don't want to use the mutual jurisdiction I want to use some other competent jurisdiction that's fine. But that's almost an impossible burden to sustain as a respondent to find - to get a lawyer, to prepare the complaint to get an expert hearing before a judge, to issue a TRO and then serve it on the registrar in a foreign jurisdiction all within that ten day period would be very, very difficult to (unintelligible) and very expensive.

Phil Corwin: Hey...

George Kirikos: Oh, go ahead.

Phil Corwin: Yes thanks for that Paul. I think we're learning a lot more than we ever knew those of us who don't litigate on the - so that's a practical - the practicalities and the details and the challenges of effectively litigating these domain cases in very complicated scenarios. So George did you have further comment on proposal - this proposal? If not I want to raise a procedural issue.

George Kirikos: I was just going to make a quick point that, you know, as a practical matter when there's a lawsuit it's probably in competent jurisdiction the registrar's going to still hold the domain name and maintain the status quo regardless of whether it's in, you know, whether there is a UDRP panel decision, you know, it could be a completely separate lawsuit. But they're just going to freeze the status quo and hold the litigation; Well I actually talked to my own registrar about that today just to double check. Thanks.

Phil Corwin: Okay. All right. Let me note know that we are one hour and five minutes and we'll go at least past its scheduled start time. I'm not counting the delay we had because the operator promised. Okay we've got 25 minutes left. We've covered the first proposal on this paper which is Paul's. The second one is George's and then the third one is another one of Paul's.

Now I'm noting I want to share and we're going to have a complete discussion of both of these remaining options. But I'm noting as a practical matter the Paul sometimes has difficulty joining these calls based on his other attorney responsibilities that will George's I can't recall a call where you weren't done with us George.

So I'd like to ask Paul whether he contemplates if we don't have - we may only have time to discuss one more of these proposals in the remaining 25 minutes. Paul do you contemplate being able to join us next Thursday? And if you're not I would then ask George whether he would be chagrined if we let Paul present his other proposal while giving George full assurance that at the next call if we don't get to it today he'd have as much time as he needs to present his proposal which is here as Option 4 to Recommendation 4. So let me ask Paul do you think you'll be on the call next week or is that dicey?

Paul Keating: No, no. I will be in the call. I've cleared the schedule for Thursday. That's not a problem for me. So I would like to hear George's but I also - two quick points. One is I did preview the third one as part of the comments that I made in the second one the first option. But more to the point is I'd like an option -



an opportunity to further draft out option one in light of some of the comments that I heard today which is how to make it an effective waiver on the complainant side. So what I would like is if I could say today and tomorrow and then provided I send it out on Monday maybe we could tee that up either Thursday coming or following with respect to revising my option one to make it a waiver, a conditional waiver on behalf of the IGOs...

Phil Corwin: That - so as far as this cochair is concerned that'd be welcome. We'd welcome your further refinement of the proposal based on today's discussion. And we could return to discussing because it seems to have some, you know, possible merits for a number of reasons. So that'd be great. If you can do that and we'll assure you a full opportunity to vet that revised version in a future call.

Paul Keating: Okay excellent. And then this other...

Phil Corwin: And my cochair Petter just checked off on that as well.

Paul Keating: Okay excellent. Then George you - I leave the floor to you. Go forward.

Phil Corwin: Yes George go ahead and proceed on please present your Item 2 on our - this document which is Option 4 to Recommendation 4 and lay it out why you think it has merits and address any concerns you've heard about it so far and then we'll open it up to full discussion.

George Kirikos: Okay just quickly. Oh yes George Kirikos goes the transcript. Just quickly to go back to Option Number 5 for procedural aspect Paul had raised it on the mailing list last week and I actually already countered it with regards to it missing the supplemental rules which cover the missing - the language that he thought that wasn't there. So I don't know whether he still wants to put forth that proposal at all. It seems to me that it's not going to survive a bunch of scrutiny. I don't know if you saw the email already sent to the list but they kind of poked a, you know, serious hole in that proposal.

Phil Corwin: Okay well let me ask Paul. Your alternative proposal three on this document which you said in some way related to the one we just discussed. Is that something you want to have discussed? I think you just indicated you did want to bring it up at a future call. Is that correct?

Paul Keating: Well this is Paul Keating. Are we talking about - so George are you - I'm confused. Are you saying that your Option 2 is no longer an option?

George Kirikos: George Kirikos here. No, no, it was that second option regarding the clean appraisal where you thought that we could do nothing because the complainant...

Paul Keating: Oh.

George Kirikos: ...made a certain certification but the respondent did in. I actually sent an email to the list last Friday which said that the respondent actually does make the identical certification. They don't do it under the UDRP rules itself. They do it under the arbitration providers supplemental rules. So I don't know whether you still want to put forth that proposal but the underlying premise of it was actually incorrect.

Paul Keating: Okay well (unintelligible). Okay I'm sorry I must have missed that one. So I'll go back and look through that again George so...

George Kirikos: Okay it's all in the supplemental rules so if that disposes of that discussion we can have that discussion now but I can go with Option 4 either today or next week. I'll be on all the calls...

Paul Keating: No I'd like you to proceed with yours because I'm not ready to address yours - the question you just raised I'm not ready to address it so please go forward with your alternative proposal.

George Kirikos: Okay.

Phil Corwin: Just let the cochair and I mean Paul you're going to go ahead and review George's email response and your other proposal. And it's your option whether you want to present it on a future call. You're not foreclosed. And George the floor is yours to present Option 4 to Recommendation Number 4 which is Item 2 on the documents before us.

George Kirikos: Okay so - George Kirikos again. The full Option 4 is on the mailing list and I found a link to it on the - in the Adobe chat room. There's a kind of edited version on the pod that was missing some of the details. But basically the idea is that back when I proposed it there seems to be a division within the group. And we might split 50-50 between Options 1 and 2 and not achieve actual 100% consensus in either scenario. So my thought was is there a way to bridge the gap so that we can actually achieve a full consensus or 100% of the working group can back one single option?

And so I came up with a hybrid solution which says, you know, your grandfather existing domain names going by creation date and those would go under Option Number 1. So it doesn't take away the legal rights to access to the courts for domain name registration. So it doesn't change the rules in the middle of the game.

And then for all domain names after the implementation of the policy say in year one 2018 or whatever the appropriate date is then we could go with an Option Number 2. However combined with that is that the provision that it's a stronger Option 2 than had been presented to that day so it had the open court principle. And actually we call it the open court principal in Canada but in the United States you might know it is the open justice. So if you go to the wiki PD article on open justice it's describes the exact same thing for court documents that are available to the public to review and a transparency affords great protection against bad things happening in the courts.

Anyway I have that stronger version of option number two it only applied to the newly created domain names. Furthermore they'd be a tracking system for all those cases that went through Option 2 so that there'd be a mandatory review after either a certain number of cases had happened or after lapsed amount of time so that we go back and see, you know, what actually happened under the Option Number 2 because all too often ICANN implements a policy that has unintended consequences. And this system would have built-in review that, you know, there's no barrage of new cases trying to take advantage of a procedure that wasn't fully implemented properly, or that had loopholes, or whatever or the arbitration providers didn't, you know, provide an equivalent level of due process then, you know, was present desired to mimic, you know the courts.

And so that mandatory review would be a condition of the implementation of Option 2 for those new domains. And there'd be a safeguard which isn't actually in the pod but it's actually in the emails I sent. I didn't number it but I sent it to the mailing list. And, you know, should that review not happen in a timely manner then there's, you know, a safeguard that there's a soft termination clause. And, you know, the default would be that it goes back to Option 1 and all domains would proceed until, you know, there's a future review by ICANN that, you know, ensure that the system was operating as intended.

I see Mary has a question. George can you repeat the rationale for limiting these options to new registrations? Yes sure. It's just a matter of grandfathering existing registrants because we're - we want to not experiment with their rights and play with, you know, what their expectations are in terms of their registrations when they acquired their domains. And so it's, you know, not changing the game midstream. It's, you know, guaranteeing their access to the courts which I think even the event the UDRP from - (unintelligible) intended them to have.

And we have the precedent which were identified on the mailing list of the IGO reserve names policy which just completed its comment period where reserve names that exists on a list don't apply to all existing domain name registrations. They're all grandfathered. And I sent a link to the mailing list to that public comment period.

So that's the general scope of it. And, you know, we could refine it but the idea is you try to have the best of both worlds and not have everybody completely happy, not have everybody completely sad but hopefully receive - we took the consensus of 100% or at least a strong majority of the group whereas, you know, without this kind of middle proposal, you know, we risk having a 50-50 split, or reaching no consensus, or having, you know, a minority report by people who are saddened by whatever decision is actually recommended.

And another justification for grandfathering is that the whole reason we're having this PDP is that IGO names were protected under a reserve list that was created due to the New gTLD process. And so we're only having this debate because IGOs had repeatedly lost in the past in prior debates of this nature and thought that well, you know, with the delusion of New gTLDs we need this protection. So this whole thing was premised on New gTLDs, not existing domains. My proposal actually would apply to legacy TLDs too. It's just a matter of whether it's the domain name being before a certain creation date or accurate creation date regardless of TLD. Did anyone have any questions, concerns? I see Mary has her hand up.

Phil Corwin: Yes go ahead Mary. I've got some questions too.

Woman: May I follow-up too?

Phil Corwin: But you go ahead first.

Mary Wong: Thank you and thanks George for the explanation. So none of this is any comment from staff on the options and the proposal. You know, the substantive questions there have to be reviewed by the group. From our side and the staffs side we're just trying to work out how this might work. And since this is the first time we're talking about it I apologize in advance when you said of half coherent thoughts that are going to come out of my mouth in a minute.

Obviously the question that I asked you've already answered in terms of making a distinction between, you know, new registrations and the ones that came before. I think what we're looking at in our minds is because the UDRP is consensus policy it applies to all gTLDs, you know, whether legacy or new are the ones to come. It's a little different from the URS because the URS as we all know only applies to the current round of new GEs and presumably the ones to come unless there's change, not the ones before.

So I think in my mind we're trying to figure out how this would fit. And even for the grandfathering for the IGO implementation that you highlighted there was a process if I recall correctly where the beginning, you know, those registrations would not be effected for the reasons that you've noted but should they be dropped or, you know, deleted at - pending delete at some point then there is a process that sort of brings them into the fold. So I offer that as one possible thought further down the line as in if we go into this we might want to consider some kind of - I don't know even know the right word or not remedial process but equalizing process if you like.

And the last comment I'll make again for folks to think about and to consider is that in between the adoption of a consensus policy and our PDP would hopefully (confer) on consensus policies even if it's to do nothing or to do very minimal things there is an implementation phase. And then the new policy is announced. Primarily this is going to go out to registries and registrars. And optimally it's usually with at least a six-month lag. So to the extent that we need to ensure that folks with the existing registrations

understand that something's going to change there is the possibility and some time to do that. And thanks Phil. Thanks George.

George Kirikos: George Kirikos, can I quickly respond to that?

Phil Corwin: Yes, go ahead George. And then I've got a couple of questions to kind of probe this a bit. But go ahead.

George Kirikos: (Unintelligible) the last point first. Existing registrants, you know, aren't necessarily going to see a change. It's just going to be, you know, Option Number 1 now because the nullification option is - it went to dispute. It's more going to affect new - newly created domain names not already existing domain names.

And for the point about what happens under deletions I agree that it could follow the existing proposed procedure or sorry the proposed procedure for that IGO reserved list. But if the domain name is deleted it then becomes freshly created at some later date that's after the implementation of this new proposed policy. So let's say a domain name gets deleted on January 1, 2020 than it would go through the Option 2 route under the, you know, scenarios that we've been talking about instead of the Option Number 1 route for a domain name registered in you know 1994 or 1996 or whatever.

So that would be very consistent with - and then that's actually already consistent with what I proposed because it goes by creation date. So that handles the situation of transfers, you know, transfers unaffected, either transfer of ownership as well isn't affected. It's only deletions because that would cause a new creation date. Thanks.

Phil Corwin: Okay, this is Phil. I'll be brief because we're down to the last eight minutes here. Mary let me just ask you this. I agree the UDRP is consensus policy. It applies to both new TLDs and legacy TLDs. The URS for now is a implementation detail for the new TLD program and the question of whether it

should become consensus policy is currently before another working group, the one raising all RPMs and all gTLDs. And we don't know yet what they're going to recommend on that.

But just focusing on the UDRP I suppose there would be a way to differentiate based on registration date in the UDRP between treatment based on registration date. But would you agree that that would require some substantial amendment of the policy itself to do so? That's what I'm thinking.

George Kirikos: George Kirikos again.

Phil Corwin: I was asking. Could we have Mary answer and then you can speak George? It's a question to Mary and then you can speak. Mary?

Mary Wong: Thanks (unintelligible).

Phil Corwin: I'm not hearing you Mary.

Mary Wong: I don't know that I'm in a position to - can you hear me now?

Phil Corwin: Yes, here you now.

Mary Wong: Okay great. Sorry I was moving around a little. I don't know that I can provide a complete fair answer Phil. It strikes me that when we were first talking about these options that there would need to be some kind of at least an addition to the existing policies in this case the UDRP. So there would be some form of amendment in the form of an additional provision.

And I think that's what caused me to ask the question as in when we do that, you know, we would then have to be very clear in the language that this only applies to registrations, you know, made after a certain date. It's not impossible. It seems a little I think awkward at this stage but it's something that I think we should flag either on the policy phase before the



implementation phase because I just don't know what sorts of feasibility, or communication or understanding issues it might create for registries and registrars for example.

Phil Corwin: Okay. Okay, thanks for the answer. George go ahead on that point and then I had one or two additional questions.

George Kirikos: Yes, George Kirikos. This isn't conceptually very hard. It's not affecting, you know, why WIPO, or NAF or any of the UDRP providers at all. It's only affecting the registrars what they're supposed to do when presented with this, you know, scenario dismissal by the court. So it's a very narrowly defined set of instructions, you know, what to do in that scenario.

You know, the way we're going with Option Number 1 or number two we're already telling - we're already going to be advising them what to do. All we're doing is saying creation date before X, Y before a certain date do this, creation date after certain date do that. So it's absolutely a trivial implementation.

Phil Corwin: Well yes George I wasn't saying it was as proposed it is fairly black and white. I was just saying to affect it if we were to agree as a working group to go this way what would be required to affect it. And I'm thinking we would probably have to add some new language to the UDRP itself to do this. But that's all I was probing with on the point I'm just...

George Kirikos: George Kirikos here. It - we have to add language to the UDRP regardless of whether we go Option Number 1, two, three, or four. Like all these are requiring slight amendment somewhere to implement. I think there's like an option number five or six will Option Number 5 or six or number six- well Option Number 5 Paul Keating is kind of do absolutely nothing which I guess is the only one that actually requires no modification to the UDRP itself but every other option is making minor adjustments not to be - not to the legal

standard of how a UDRP is decided by the panel but how the registrar responds to various scenarios. Thanks.

Phil Corwin: Okay. George let me ask you why did you go with creation date? Let me ask a question that would probably arise immediately. Why should we grandfather - and I'm not sure grandfathering's the right term because I believe this contemplates being done in concert with something else but I'll get back to that a second. Why would we not subject domains transferred after the effective date whatever it turns out to be? In other words if there's a change in registrant what would be the justification for continuing with the - what you describe as grandfathering?

George Kirikos: It's the - George Kirikos again. It's the exact same rationale that applies to the grandfathering of all, you know, two letter dot coms, one letter dot coms which are actually registry reserved and can't be reregistered if they were actually deleted. So it's - those domains can all be transferred to same for the IGO reserves names list. The idea is that this is a contract and anybody should be allowed to assign that contract to somebody else, that's all.

Phil Corwin: Okay, so - just so I understand it when you say grandfathering I believe you contemplate doing this that is implementing Option 2 which would be the post dismissal - this would apply. Option 2 would apply in cases where a judicial appeal was dismissed for a newly registered domain that was dismissed based on a successful assertion of judicial immunity by an IGO. But that this will be combined with Option 1 in our original report which was the recommendation that where an IGO succeeds in successfully asserting immunity that the original UDRP should be vitiated rather than enforced which as we've discussed would probably be the result under the current policy. Is that correct?

George Kirikos: George Kirikos here. Yes, I think Mary didn't like the word vitiate and so the word nullify might be better. But yes the existing - that means they're already

created would be nullified under that scenario instead of going to the arbitration under Option Number 2.

Phil Corwin: Okay. And I'll stop. I see Petter's hand up. The last thing I want to say on that not to beat a dead horse but I have expressed my personal opinion based on my interactions with the GNSO Council in which I serve for the Business Constituency and with members of the board that our original Option 1 would not make it through the remainder of the process and become ICANN policy.

And that would in effect free up if that results in the rejection of our entire report would free up the IGOs to work with the GAC to pursue their original desire which is an IGO a specific CRP in which registrants have no judicial rights which I don't think any member of this group would want to see implemented. With that I'm going to - Paul I see your - Paul Keating I see your hand up and then Petter. And we're at 1:30. I'm going to allow those two final comments and then we'll adjourn. And - but I do want to say I think we've had a really productive and constructive discussion today and we'll continue it next week. But with final comments now from Paul Keating and then my co-chair Petter.

Paul Keating: Thank you. This is Paul Keating for the record. George I had a question which was centered around the concept of the transfer versus expiration. And specifically given the current environment in which expired domain names go through this pending delete period was that they're technically expired. They can be recovered. There's a redemption period. Then there's pending delete.

And then somewhere in there there's this kind of gray area where the domains are put out to auction or they're captured by the registrar in a the sister entity or some such. Would those domain names be - I guess at what point would you consider domain name to have been expired for the purposes of the grandfathering provision to lapse? Given the - given what happens in reality in the system?

George Kirikos: Yes, George Kirikos here. It goes - you know, it would need to be strictly deleted. So any named that's, you know, going through like SnapNames or NameJets for an auction in the - and that period it would still be - it still would not change the creation date. So it would still be just like any two letter dot com that's grandfathered or any other IGO or reserve named that's grandfathered. It would not go into the Option Number 2. And I think Petter had a question.

Phil Corwin: I guess Petter you get the last word today. Go ahead.

Petter Rindforth: Thanks Petter here. Yes. First I echo Phil. It has been a very good meeting with a lot of interesting points. I just want to say that personally even if I have some difficulties with two. I think there are two points there that I presume that we can agree upon. And that is to - for ICANN to collect information about all the IGO disputes and to have it as official as possible at least with the partners involved and their specific domain names.

And also to something that we could actually add into our final suggestion or comments to have within five years or as you stated after ten disputes yes, it might be the same time limit there in practice to actually have already new set up a specific timeline where we will - or another working group will look at this new system to see how it worked. Thanks.

George Kirikos: Can I - George Kirikos...

Phil Corwin: Yes.

George Kirikos: ...can I quickly comment on that?

Phil Corwin: Go ahead George, brief.

George Kirikos: Yes, just wanted to - yes thank you for, you know, liking that suggestion because, you know, it was a sincere effort to try to reach across the aisle so

that we get, you know, the best policy outcome that we can all accept. So that if that helps to try to achieve that full consensus that, you know, people that are backing Option 2 can move behind and then that's a step forward because otherwise, you know, we'd be a divided group that's not going to reach any consensus.

I'd just take one other quick point about, you know, whether it goes through the board or the GAC I post a link about the dot Amazon decision. And, you know, while, you know, the GAC can play it's politics, you know, not necessarily the alpha and omega as to what happens at ICANN. You know, it's a grassroots organization bottom-up. And we're the bottom and we're the ones that are doing the hard work. And for them to, you know, want to engage in machinations that undermine our work is not something that we need to engage in ourselves. It's our job to do the hard work. Thank you.

Phil Corwin: Yes, and two quick comments George. One in regard to the GAC I did - actually I'm working with council right now on a response to the GAC communiqué advice on IGOs contained in the Johannesburg communiqué. And I noted to fellow councilmembers today the Amazon decision which specifically found that the GAC position in that situation was not based on sound law or policy concerns. And I think there's some similarities here. But I'm more concerned about council rejection and having three years of our work not go forward through council.

I'm glad that Petter brought up the data gather, support for the data gathering. I meant to say that. I think that provision of your proposal has great merit because we're finding in the RPM Review Working Group that we're having considerable difficulty reaching decisions on some of the issues before us because ICANN is not doing a very good job of requiring data to be gathered on policies and their implementation. And we need to do a much better job of actually tracking discrete issues so we can see how the results of our policy play out in the years after they're adopted and implemented.

So we're going to be meeting again one week from today, same time, same channel. We'll continue in a discussion of - we'll discuss Paul Keating's amended version of his limited waiver. We can continue doing discussion of George's proposal. We'll leave it to Paul to whether he wants to present his third proposal. Then we'll get back to the updated chairs discussion paper on Option 2 arbitration elements. And we'll continue to march towards hopefully working toward a final report early this fall that can be delivered before the ICANN meeting in Abu Dhabi at the end of October at least could be issued before then.

And I want to note for the group I will be on next week's call. The following two weeks I'll be on vacation. I'll be up in Maine. I may or may not be able to join the call depending on my plans for those Thursdays. But if I am on the call I may only be on the chat room because the cell phone service where I'm staying is close to nonexistent and there's no landline in the cabin that I'm staying in. So just want to put our notice on that. And thanks again to great staff work and thanks for hanging in on this call and we'll talk to you all next week. Goodbye.

Man: (Unintelligible) bye.

Terri Agnew: Thank you. Once again the meeting has been adjourned. (Darren) the operator if you could please stop all recordings. To everyone else please remember to disconnect all remaining lines and have a wonderful rest your day.

END