

**ICANN  
Transcription  
IGO-INGO Curative Rights Protection PDP WG Meeting  
Thursday, 21 September 2017 at 16:00 UTC**

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Attendees:

George Kirikos  
Mason Cole  
Paul Tattersfield  
Phil Corwin  
Jay Chapman  
David Maher  
Petter Rindforth  
Poncelet Ileleji

Apologies:

Paul Keating  
Osvaldo Novoa

ICANN staff:

Mary Wong  
Steve Chan  
Berry Cobb  
Dennis Chang  
Terri Agnew

Coordinator: Recordings has started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening and welcome to the IGO-INGO Access to Curative Rights Protection Mechanism Working Group call on the 21st of September 2017.

On the call today we have Petter Rindforth, George Kirikos, Poncelet Ileleji, Mason Cole, Paul Tattersfield, Phil Corwin, and Jay Chapman. We have listed apologies from Osvaldo Novoa and Paul Keating. From staff we have Steve Chan, Dennis Chang, Berry Cobb, Mary Wong, 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 co-chair, Petter Rindforth. Please begin.

Petter Rindforth: Thanks. Petter here. Welcome back. So we'll start with the traditional question, any new statements of interests? And as normally, I see no hands up. So let's proceed directly to maybe the main point of today's discussion, a review of provisional agreement for recommendation four options. And well this was discussed deeply last meeting and I'm pretty sure that we got some further inputs on that meeting.

I haven't seen any comments from those that are actually listed as members of our working group but normally are not participating in our - on our meetings. I don't know if staff has seen any inputs or emails. Mary, please.

Mary Wong: Hi, Petter and everyone. This is Mary from staff. We can confirm that we have not seen any emails or received any from any working group participant, including those that have not been very active. And as you know, we've been discussing with you and Phil how we may reach them to ensure that their views are reflected in our discussions and of course the final decision.

Petter Rindforth: Okay thanks. Yes, let's - I'm sorry for those members but also for the full working group, because it's important to have this question and issues solved within short - and we have been working on this for a long time now. And I think also that we are, even if we're not everybody 100% satisfied with our -

what we tried to finalize here, it's - we also have to open our eyes and see the reality that we have to come up with a suggestion that could be acceptable by all related parties.

And so here we have the feature panel and they'll say what's new. I'll do first the UDRP and we have more clearly can see the option two and option three and six. So the registrant is notified that the UDRP is filed and in option three and six the complainant can - the complainant and respondent can mutually agree to limit scope of appeals to ownership of the domain name.

I'm not 100% sure if - well this is of course a question that is on this initial state but I presume that it still means that the UDRP will go on. So then the UDRP is concluded in favor of the IGO and there's the option that the registrant can elect to go directly to arbitration. And then there's a very important note, at that point during the proceedings, this is the current policy, either party, registrant or complainant, can seek external remedies and judicial actions and arbitration.

And if it starts during the process, as it is right now, it's up to the panelists to decide to proceed with the UDRP or to stop the proceeding and wait for the court action. And as I think I've stated before, if the parties are going to negotiate with each other, then it's definitely the best way to just hold the line and not proceed with a UDRP process to see what's coming up on those negotiates, which sometimes can make the case to take a little bit longer but it's always good to see if the parties can come to some kind of agreement.

But if a court action starts, then it's a little bit more of how long the process, the UDRP process, and I'm talking for my own personal point of view as from a panelist experience, to conclude the UDRP process or to wait for the court action.

And I see that Mary's comment here. The working group guidelines requires we continually assess their representatives and that of the composition of the

working group, and as the active participants on this one are few, it's something we will probably need to work on more as we move forward to a consensus call.

Yes, I agree with that. It's good if we can, in this group on those that are active here, can come to a conclusion together, but as the topic is very important also for certain groups of interested, I would appreciate to have more comments from other active working group members.

Okay. So then I scroll a little bit too quick here. So the registrant filed suit in court of mutual jurisdiction and the IGO successfully asserts immunity in court of mutual jurisdiction. And there's the possibility that the IGO does not assert immunity. And as we saw initially when we went through how the practice of the policies of some IGOs, my conclusion is I remember from this that some IGOs are more prepared to always claim immunity, whether other IGOs are more free and may also think that starting a process like this they already stated that they will not call for their immunity.

And there's also a court of mutual jurisdiction that rejects immunity defense, as we saw from our expert and summary of how different kind of courts depending also on where in the world they are situated, how they can look on the immunity question. And of course also both parties may have agreed to limit appeal to ownership of the domain name. That may be also a very practical way to deal with it because I presume that in most of these cases, that is the ownership of the domain and that is the main part and not to claim any specific damages.

And as I said, in the penalty on this administrative procedure, both parties have always the possibility to try to take the case to a court and claim whatever they want to have in addition, and then it's up to the court in the first instance to decide how to deal with.

So IGO successfully asserts immunity in court on mutual jurisdiction and the registrant then files an arbitration action. And then of course the possibility could be that the existing UDRP decision stands or it could be resolved via a binding arbitration. And again, it could be limited a solution of just the domain name in question and no monetary damages involved. Or if the IGO does not successfully assert immunity, the decision will be solved in the court of mutual jurisdiction and that's the end of the story.

That's actually when we talk about the possible way to deal with this and the recommendations, we have to have in mind that what we have as a first step if we don't come up with a conclusion that the parties can agree to go directly after the UDRP to an arbitration. So the recommendation one is still there. So what we're talking about is if the IGO actually are - have a positive - for them a positive decision when it comes to their immunity.

So this is what I understand what we discussed also last meeting and as the staff pointed out, when it comes to IGOs, Kristine Dorrain at the I think it was the September 24, 2014 -- so that also show how long we have been dealing with these issues in our working group -- she made a presentation on the IGO-INGO experiences with the UDRP and the URS.

And when it comes to the question on the Article 6ter, she noted that the panelists have accepted status and treaties as sufficient evidence of IGO standing to file. And on the mutual jurisdiction, she also noted, based on the cases that have been there, that any recommended changes to this clause may - that affect only certain types of complainants, should take into account the ability of providers to check that the complainant does indeed have the status as an IGO.

Okay, so this is as it looks right now, and what we have done during - yes, Steve?

Steve Chan: Thanks, Petter. Sorry. I think you may be are just getting to that. I was actually going to just volunteer to put up the e-mail distributed by the staff a day or two ago about the provisional agreement, but I think you might be getting to that right now anyway. Thanks.

Petter Rindforth: Yes, please, you can do that. But that was sent out both for our active members but also what we wanted to see more input from members that have not been activated, and that's from the last meeting, some questions to further discuss, some limitation of the court review or arbitration to this position of the domain name require mutual agreement of the respondent and the IGO or should we recommend that limitation for one or both appeal forums. Phil?

Phil Corwin: Yes, Petter. Can you hear me okay?

Petter Rindforth: Yes.

Phil Corwin: Okay. Yes, I just wanted to comment as we move on to addressing the questions that I think the strength of the approach we seem to be moving toward is that it's a very light touch approach that is quite defensible in that ICANN is limiting its role to a very narrow and proper role and not getting involved with the legal issues which are the province of courts.

We've - ICANN has is not deciding, and we should not decide, after being informed by Professor Swaine on the variations of views on IGO immunity, that they have blanket immunity upfront and that therefore registrants should be deprived of access to courts. Likewise, we're not deciding whether or not an IGO's assertion of immunity in a judicial form should be expected or rejected. Again, we're leaving that in the proper forum. That's the court.

We're not even deciding who's a legitimate IGO, if that becomes an issue in the court where the registrant challenges an IGO's assertion of immunity. That's - ICANN is sticking to its narrow role, which is to make sure that a

balanced process where trademark owners, and those are the only rights we found, the IGOs have not been able to provide to us or the board any other basis for rights to be protected in any special ICANN-created forum. ICANN's role is to provide trademark owners with an alternative, a faster and less expensive alternative, for defending their trademark rights.

Likewise ICANN is trying to make sure that registrants have a fair shot in that forum and that if they have claim to further judicial redress if they're dissatisfied with the decision of the UDRP panel, if they have that access under a national law that they have a meaningful appeal. And the one change we're working toward recommending is that if the court route to appeal is foreclosed because of a successful immunity defense that they still have - get a decision based on that national law.

So I think, again, as we anticipate potential opposition on whatever we finally come down with and defending a final report in all the decisional forms that are going to address it, the GNSO Council and the board and even the GAC, that we have a very - because we've been so consultative and narrow in our approach, I think that's a great strength to what we appear to be coming toward. I just wanted to share that thought with the members of the working group before we move on to the questions. Thank you.

Petter Rindforth: Thanks, Phil. And I perfectly agree that we have - what we're now discussing is a solution that make small changes of practice but, as I see it at least, is a benefit both for IGOs and for the domain holder in a dispute to actually have the case decided and concluded by - in the final step, another neutral group of panelists.

So I don't know if you want - George if you have any general comments or if you can wait until we go into the specific questions here.

George Kirikos: George Kirikos for the transcript. Yes, I just wanted to re-raise the issue that was mentioned on the mailing list. I disagree with some of the language in

this document that's on the screen right now. I don't think the working group has provisional agreement on anything and it says in the language of this document, you know, the working group agreed and so on. I don't think the working group has agreed on anything.

What we've had before this call, and going back several weeks ago, was the realization that perhaps none of the six options on the table had reached - well would reach a consensus. And so the idea was that perhaps option two might be tweaked to incorporate options three and six, and that would create a new option, you know, let's call it option number seven. That could be put on the table as an attempt at a compromise, but all we've been discussing is how we can formulate that option number seven.

That's my understanding, at least, and so this is not an agreement on anything, it's an agreement on how to create option number seven, and none of the other options -- well perhaps option number five has been kind of discredited at this point -- but none of the other options have been dismissed yet, and so at some point there's going to be, you know, a mechanism to go through all the active options, including option number one, option number four, option two and try to achieve a consensus. And so I just want to raise that point.

And just on another note, at some point we're going to have to decide on a mechanism to reach consensus. I don't know if the PDP procedure manual specifies a mechanism but we might want to consider what's called the single transferable vote, and I think it's been used in the past in ICANN elections. So I'll post another link to the chat room. And if you do a Google search of ICANN single transferrable vote, it's been used. There are a bunch of matches and used in Canada, it's used in Australia.

And basically it requires ranking the different options. I kind of ranked them in my e-mail to the list earlier this week, from my point of view. But that might be a way to kind of form a consensus through a ranked ordering system, which



would eventually declare a winner. Mary notes in the chat room that there's no voting in working groups but, you know, I don't know how you can gauge consensus without surveying the members or participants in some manner. Thank you.

Petter Rindforth: Thank you, George. I hope you agree that even if we still use the initial recommendation numbers, this is - what we're now discussing is in fact a variation where we have put in comments, not too fill out your own comments to further develop this recommendation.

But I think what we - and also I mean talking about how long we have been working with this issue and we have - we had a lot of recommendations added in the last couple of months, but when we went through them, as you also agree, there were some topics, some suggestions in those that did basically fit into the original recommendations.

And whatever we call these recommendations, the numbers of them, in the final part, this is in fact a mix and a mix that I think is the one that could actually be accepted both for the domain holders, the IGOs, and also for the council and to decide to come up with a final proposal on this topic. So. But thanks for your input. I also saw your note in the e-mail list, where you referred to the previous topics.

Okay. So we had a question if the working group were to recommend that court review be limited to ownership of domain name, it appears unlikely that ICANN policy would prevent a court of mutual jurisdiction from (unintelligible) that it has access to. However, parties could be encouraged or at least be made aware that judicial appeals could be limited to ownership of the domain name. And we anticipate that the respondent by following its ability to seek monetary damages or (unintelligible) could reasonably expect that the IGO, the complainant would forego its ability to assert a defense of judicial immunity.

And I propose that or I think that George has some comments on this but this is actually as I see it input from some of the other options to solve this specific question. So, George?

George Kirikos: George Kirikos again. I just want to go back to that point. Are you saying that this is the only option now on the table? Because, you know, I want to be clear about this because I know for a fact that at least three people in this room have option number one as their first choice, and so to say that this is what the working group is only working on is not correct. So I need some clarity before we, you know, delve further into this because...

Petter Rindforth: I would say rather than that we - what we are trying to do is to...

George Kirikos: (Unintelligible)

Petter Rindforth: ...put in the new comments and suggestions into these original options to see how we can come out with an option that is workable for both parties and is possible to be accepted by the council and such. So we're still working on this. I'm not saying that this is the final. You clear with that?

George Kirikos: George Kirikos. Yes, I'm still not clear on this. Phil has hand up and might want to weigh in as well.

Petter Rindforth: Okay go on.

George Kirikos: And I see Jay is kind of typing something in the chat room. I don't know whether he wants to add anything besides - beyond the e-mail he already sent earlier this week.

Petter Rindforth: Sorry, yes. Phil?

Phil Corwin: Yes thank you, Petter. Yes, just my view and in response to George's question, we have not yet taken a consensus call of this working group.

Therefore, anything we've discussed as a possible option is technically still on the table and I think when we take a consensus call, which is coming very soon and will come after the co-chairs (unintelligible) ascertain which are the listed members of the working group have at least been continuing to monitor the details of the work and can make an informed judgment on the consensus call.

So in that sense everything's on the table. What we're doing now is further refining potential combinations of option two with other ideas that have been brought to the table and trying to consider the various issues they raise and come up with the strongest possible combination of option two with other options.

But option one is not - we haven't formally rejected it yet. I'll be frank, and I've been frank in the past, I believe option one is the Thelma and Louise option. It's going off the cliff. It will not - it is not likely to be accepted by council, much less the board, but I think for us the main game is council, is producing a report that can get majority support in council, and that would be an unfortunate waste of three years of everyone's time and would give IGOs and GAC an opening to assert that the PDP process has failed and to try to get a different answer through other means. So I think that'd be unfortunate.

But in response to George's question, everything at this time formally remains on the table and when we take a consensus call, no choice in my view should be foreclosed. I know which one I'll be advocating for but we shouldn't tell anyone that anything has been decided yet because we haven't had a decisional call yet. So I hope that's helpful in terms of my point of view on where we are in the final step of this process. Thank you very much.

Petter Rindforth: Thanks, Phil. And I'll note George in the chat, we should not call this the working group agreed. I think there could be something like the working group discussed or concluded when it comes to this option, something like

that, so that we can see that it's the result of the further discussion on this specific option.

And I also - I have to say that the organization I represented in IPC when we made the initial comments, we actually supported option one as the simple and easy option, but having read the expert's reports and went through all the comments and documentations and the legal realities, I also have to say that I don't see that option one is a possible solution that would actually solve the problem for any of the parties or that could be accepted.

So yes, Phil, your hand is up.

Phil Corwin: Sorry, old hand.

Petter Rindforth: Okay. Yes, so we're still talking about this. We have the first question there was should limitation of the court review or arbitration require mutual agreement on the respondent and IGO or should we recommend that limitation for one or both appeal forums? I don't know if any of you if we talked about this possible way to solve it. I think, and now I'm talking from my personal point of view, I think that it requires mutual agreement of respondent and IGO, just to be sure that both parties have accepted a different way to proceed.

And then we have the question two, should a respondent be permitted to choose to go directly to arbitration rather than judicial appeal, if it wishes so? The working group agreed that respondents should be allowed to file an arbitration action. It's concluded that in the IGO's favor if it wishes to avoid the costs of a judicial appeal. However, the working group also discussed and is now posing the following question: in addition to the previous allowance, should respondents also be permitted to file an arbitration action before or during the end of pre-decision of UDRP, should such pre-decision filing require mutual agreement on the IGO complainant.

And here again I'm not so sure if I understand the question here to be different from the organizations as they are today, because in the current UDRP the parties are free to take the case to a court before the case starts and during the procedure as well as after. But I would say that both respondents and the complainant should be allowed to file an arbitration if the parties agrees to that.

And what we've seen from the IGOs they seem to be more in favor of going directly to an arbitration rather than to take the court action. But, again, we cannot and ICANN cannot make any regulations for local court all over the world to decide if they could take the case or not. So here, again from my point of view, I say that both parties have to accept to skip that part and then go directly to arbitration.

Okay. So this was the two questions we had there. So staff, what is the next step? We have also the other recommendations of course, the recommendation number one, the non-applicability to INGOs, and the original recommendation five, feasibility of cost subsidiary as a matter of ICANN - for ICANN and not for this group. So they remain unchanged. And the original recommendation number three, using the latter subsections of Article 6ter, (unintelligible) bad faith, is deleted.

Do we have any other - yes, Mary?

Mary Wong: Hi, Petter. So just catching up with you here and we're assuming that you wanted us to move to the document that you now see in Adobe and I just want - if that's the case, I just wanted to explain to the working group members that this is the current draft text that staff has been working on for the draft of the final report. So it's still a work in progress but we shared this with the chairs and the chairs thought, as you see on the agenda today, that it may be a good point for us right now to do a high level overview of where we are with even those other recommendations that we had discussed in weeks previous.

Petter Rindforth: Thanks, Mary, for that clarification. So yes, if we - also we haven't - not discussed that we have concluded since a long time that there should be no changes or specific process created for INGOs on that recommendation. And I don't think that, but please put your hands up if you want, but I haven't seen any discussion about this for a long time so I presume that we can say that we agree about this.

And then recommendation number two it's the one that we also discussed, an IGO may elect to fulfill the requirement that the complainant must have standing to file a complaint under the UDRP and the URS by demonstrating that it has complied with the requisite communication and notification procedure pursuant to Article 6ter.

And here also, based on what we have seen before on domain disputes where IGOs are one of the parties, the panelists have and are free to accept other references to identify the complainant as an IGO. So Article 6ter is one example of how to identify. So for avoidance of that, the working group emphasizes that the this alternative mechanism for standing will not be needed in the situation where an IGO already holds trademark rights, of course, and as the IGO would in such case proceed in the same way as a non-IGO trademark owner, at least when it comes to the identification of the rights.

And whether or not compliance with Article 6ter, as we see here, the decisions are based on the facts of each case, which is also I want to note specifically that each complainant, whatever case it is, actually has to provide some kind of evidence and references that support their name rights and whether it's in a traditional UDRP case, there are sometimes complainants that states that well we had a well-known trademark and this is the trademark but they don't provide any evidence with certificates or registration of those. That cannot be accepted.

So it's the same as for trademarks owners, especially those that have actually made an UDRP case in a successful way claiming trademark rights in a non-registered trademark. They need to provide some specific extra documents to make it clear that they actually are the holder of that name right.

So this recommendation is not intended to amend or affect any existing grounds. As I said, it's not just - it's not limited to Article 6ter. That's one example on how an IGO can be identified. There could be other possible ways that also have been throughout the history been accepted in both URS and UDRP cases.

So this recommendation is significantly different from the working group's preliminary recommendation, where we focused on Article 6, but as I said, as we have discussed during the meetings, we have seen that there are other ways to identify ideas that are actually accepted.

And also I would say the panelists are from time to time, even if this is a quick dispute resolution system, are from time to time may have to consider national law when the complainants claim name rights. So it's not unusual for a panelist to look at documentations stating that they provide that they could be accepted as evidence for some kind of name rights. And it's up to the panelists to decide in each case to accept that documentation or not.

Recommendation number three in relation to the issue of jurisdictional immunity, which IGOs may claim successfully in certain circumstances. And the working group recommends that in here we have something that we have discussed briefly and will proceed on, where a losing respondent has filed proceedings in a court of mutual jurisdiction and a relevant IGO has succeeded in asserting jurisdictional immunity and from that point forward the decision rendered against the losing respondent in the predecessor must be brought before. This is the initial suggestion we had with putting the name of some arbitration entity. Yes, Mary?

Mary Wong: Hi, Petter. Sorry to interrupt but in view of the comments in the chat by George, I just wanted to clarify for the transcript for members who are not on the call that these are not just still, you know, working text in progress but that specifically in relation to this recommendation that you are just covering, it really is just placeholder text. And as noted in the chat, the - all the options under discussion for this recommendation, you know, which we've termed one through six, those have been listed and described in a separate document.

So the placeholder text here is not meant to advocate for any particular position but really to capture where we are in the current discussions of what George I think has rightly described as option seven. And so where this recommendation fits in the terms of the text, we've tried to put the placeholder text within the sort of framing language that we had for the original recommendation.

And so really where we are with the placeholder text would be what under this recommendation three would be A, B, and C, as you've just read. In other words, the other things are based on what we already had. I just don't want anyone to get the sense that the staff particularly are pushing any particular direction. I just wanted to be clear why this working text is currently in the form that it is. Thank you.

Petter Rindforth: Thanks. Before go over to Phil, I also see George's comment in the chat that we have not fully discussed how an arbitration provider would be selected. Well we have actually discussed that and what we I think we haven't done yet is to identify exactly that arbitration provider, but we also stated that it could not and it should not be someone that actually was - could be also seen as an IGO representative and it may even be so that we should not use any of the traditional dispute resolution providers but something more experienced in traditional business arbitration.



Phil?

Phil Corwin: Yes, Petter. Can you hear me?

Petter Rindforth: Yes.

Phil Corwin: Okay. Yes, first I think there's a mistake in recommendation three. A is correct, 3A is correct that where the losing respondent has filed proceedings in the court of mutual jurisdiction and the IGO has successfully asserted jurisdictional immunity from that point forward, the decision rendered against the respondent in the UDRP or URS must be brought before an arbitration entity.

But then in C, C is where I think the mistake occurs, that where it says that the mutual jurisdiction court rules for the UDRP and URS should be amended to provide that in the rare case there's successful assertion of immunity, the parties have the opportunity to mutual consent. That's the part that bothers me. As I understand it, what we're discussing is that where the IGO successfully asserts immunity, the respondent domain registrant has an absolute right to a determination in arbitration forum if they wanted and proceed to the arbitration forum.

And we're going to have to address that technical issue as to how many days do they have from the time of court decision to make that choice. But the way C is written it seems to create the possibility of a situation that was never envisioned, where an IGO could successfully assert immunity, get the court's suit dismissed, and then refuse to agree to an arbitration and end the possibility of the registrant getting a decision at variance with the UDRP decision. That's not what we ever intended.

I think the places where mutual consent might be required or other things we've been discussing of going directly to arbitration either during dependence to the UDRP or as an alternative to the court after an adverse

decision for the registrant or in limiting the scope of the arbitration to just the position of the domain name.

But the way C is written it would seem to create a situation where the IGO could win on immunity and then block access to an arbitrator, and I would object to that. I think it's at variance with what we've envisioned. And then briefly addressing George's chat on the who would do the arbitration, I agree. While some of the details of that are best left for implementation, we have to make some broad recommendation.

I haven't thought this all the way through but I think we should, while recognizing the difficulty ICANN might have in getting arbitration organizations to agree upfront to hear a type of dispute that's probably going to be quite rare, that they should go through the effort of at least accrediting one or identifying one that's available globally or at least - or identifying others that are available in ICANN regions but then have a catch-all provision where the registrant can pick any arbitration body that meets certain basic qualifications and is willing to take on the case under the conditions we've been discussing, which would be based on the national law, following national law procedures, three-member panel with at least one retired judge, et cetera.

So I think we haven't filled in the final details on that so I commend George for bring that up. It is something we need to not engage in a full implementation exercise but at least give some policy guidance before we take a final consensus call. Thank you.

Petter Rindforth: Thanks, Phil. And I also think that's a good example of this is not yet 100% our final recommendation and we still have - we have things to discuss and decide upon. But, as I said, we - well we have already discussed specific quality points for that arbitration court, so to speak, and I think it could be good for - to be clear to both parties if we can also come to some conclusion in our final report with some recommended arbitration place.

But it may be that we have to stick to our list of what that kind of final arbitration place should have, how it should (unintelligible) and experience, et cetera. But we have already also discussed and concluded that at least it cannot be or should not be someone that is also could be identified as an IGO.

Mary?

Mary Wong: Thanks, Petter. This is Mary from staff. And thanks, Phil, for pointing it out. I will say that when we did this, the phrasing of C was probably based on a previous iteration, or maybe even two iterations ago, of Steve's process flowchart. So obviously, as noted in the comment, the actual text here is still pending and is a placeholder text.

In terms of the details, should we go down the path of recommending some consideration of arbitration, the intention, I think as you noted too, Phil, is that, you know, the elements that we had discussed before that was based on initially the list from Paul Keating as fleshed out by Petter and yourself, that would find its way into the report.

The important point to note as well is that it - with the GNSO reports, what normally is included in the executive summary would be something like the text you see here, so the very bold text of the recommendations. Obviously they will then be explained, fleshed out, and details added in another section in the report, which - and I think the title for that is, you know, working group deliberations and recommendations. And that is where most of the background and the detail is included.

So in terms of the arbitration elements, those would be included in that part of the report that I've just described, and it may be that the working group can also include some text, possibly even as part of a recommendation, to say that, you know, additional details should be worked out in implementation, you know, possibly in consultation with, you know, either working group or an

outside expert or something like that. So the path is still open for us to add the elements as well as discuss what specific recommendation we might want to include if that is indeed the implementation oath following the policy. Thanks, Petter, and thanks, Phil.

Petter Rindforth: Thanks, Mary. Phil, is that a new hand?

Phil Corwin: My mistake, sorry.

Petter Rindforth: Okay. So as Mary said, maybe that we add one or two more points here just to make it clear and also as you can see this is actually made by the recommendation four that we have mixed together with the comments we have gotten from working group members and therefore now called recommendation three.

So recommendation four in respect of GAC advice concerning access to the curative rights process for IGOs, the working recommends that ICANN investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS at no or nominal cost. This is not something for us to decide upon but we've seen that IGOs want this to be more or less no cost. And what we can do is to recommend ICANN to further investigate and see how the cost aspect can be solved. But it's nothing for us to decide upon.

So recommendation five, yes, this is I don't think (unintelligible) recommendation on the points of the working group submission report. And, yes, George?

George Kirikos: George Kirikos. So for that last note, it says note on recommendation number five, I think it did mean that this recommendation is identical to the original - sorry, it did mean that the new recommendation number four is identical to the old recommendation number five, is that what this document is trying to say or was that renumbered? Like, the wording on that is misleading.

Petter Rindforth: Yes. Exactly. And then we come to I think to the possibility to have additional public comment periods. And I'll leave the floor open for comments. We have looked at our time schedule before and although I still hope that we can finalize this before the New Year, but again also we have not received so many further comments and inputs from members that are not traditionally on our meetings. So thanks again those of you that keep the things open and participate in our online meetings. It's very good to have your inputs continuously.

So the question is do you think it's - we should conclude that we can actually proceed within our working group as it is today to make some final recommendations or shall we reach out to get additional public comments?  
George?

George Kirikos: George Kirikos here. Personally I think the only public comments that actually would matter are the ones from the IGOs but the IGOs have consistently refused to participate in the process. So I'm not sure, you know, what the impact of any public comment period would actually be at this point. But we can continue to invite them to participate. But as long as they continue to refuse, we, you know, we're fully aware of what their position is given their submissions to the GAC, et cetera.

You know, it seems like we just waste and additional three or four months and the report would probably be the same. We've been this at, you know, three years. That's just my personal opinion. I'd love to hear how others feel about this issue. But at some point we have to make a final decision. Thank you.

Petter Rindforth: Thank you, George. And I must say, I agree with that. We have reached out both publicly and also discussed with IGO representatives in between our meetings and at our ICANN meetings to ask for inputs on specific issues and it seems that each time we get inputs and comments, it's more or less a

reference to what they stated during the years that we need to find a solution where IGOs can be treated in the way - in a special way that they are identified.

Mary?

Mary Wong: Thanks, Petter. And actually, you know, this was one of the reasons why we had, as staff noted to the working group some weeks ago, that it is an option for this group to post the draft final report for public comment. It's not a mandatory requirement under the GNSO rules. It is an option that the working group decides.

One thing that - well, two things that we wanted to highlight here as the working group makes its decision is that when we did publish the initial report for public comment, we saw that the GAC as well as the US government and a number of IGOs did actually submit. So this may be one forum where we could get very useful feedback.

Obviously it's not a given and I certainly don't have any particular knowledge about whether this would be something that any of the previous commenters would be interested in participating in. But it wouldn't necessarily be, you know, in fact it wouldn't be giving them any special treatment because a public comment forum is an option and we all know how to run it.

That said, the other thing to consider is that we are about I think five weeks or so out from ICANN 60. And as you'll recall, the idea was that our group would present whatever our final recommendations are to the community for discussion. So there's another opportunity for the IGOs and other interested community members to provide feedback.

So in other words, the working group has various options and it may be worth thinking about a public comment period, bearing in mind what Paul Tattersfield also said in the chat about reaching out to IGOs, and we can do

that either through public comment, through direct solicitation, presentations, and discussions at ICANN 60, or some or all of the above. Thank you.

Petter Rindforth: Thanks, Mary. And I'm glad you mentioned Abu Dhabi because, as I said, we will have a meeting there where everybody that has interest in this topic could be active and be part of the discussion and come up with any comments that way. And personally, I think that could be perhaps a more active and efficient way rather than to spend some extra time to send out for further public comments. But.

Phil, please.

Phil Corwin: Thank you, Petter. Yes and Mary echoed my own thoughts in some ways. A few minutes ago I looked at the calendar on my laptop and noted that five weeks from today I'll be on an airplane heading for Abu Dhabi. So in view of - and maybe it's good to have that pressure because I think we're at the point where we're just about ready to make some decisions.

I don't know that we can practically file a final report prior in the next five weeks. I do believe we can reach the decisions on what's going to be in the final report, even if we haven't filed it formally by then. I think we need to be in a position to say all right this is where we're coming out and we get to Abu Dhabi and have that open forum, open working group meeting, this is where we came out and we invite any feedback.

So far as a comment period on the final report when it is formally submitted, I'm of mixed minds on that. I'd like to hear from other working group members. Most working groups don't put out a final report for comment but the option is there. Given the sensitivity of this issue within ICANN, it might be wise to put it out.

But I think I'm feeling right now that I'm still on the fence about whether we should have a final comment period. But if we have one, it should be narrow

in scope and in time. I think much of what's going to be in the final report was in the initial report and just like in our discussion of the comments received, we limited our consideration of comments that presented new arguments or new facts.

The main difference if we go with the arbitration option and whatever final details that carries with it, I would say if we're going to have comments, the comments should be invited particularly and exclusively on what's new in the report, which would be the arbitration option, if that's the will of the working group -- I hope it is, but we haven't decided that yet -- and that the comment period should be something like 21 days. I don't see any need for a full 40-day comment period.

But since the arbitration option, if we present it, is going to be something that was not even hinted at in the initial report and is going to have a lot of background details on how that would operate, it might be prudent perhaps to have public comment just on that. So those are all personal views. That's where I'm at right now.

But the number one message is that I think after this call it's incumbent for the co-chairs, working with staff, to do aggressive outreach to everyone still listed as a member of this working group to ascertain if they've been following the discussion and are ready to make an informed choice on the options before us and then to decide on the elements of the draft final report so that even if we can't file one in advance of Abu Dhabi we've essentially decided on what's going to be in it and we'll be in a position to discuss that with the ICANN community when we get to Abu Dhabi. Thank you very much.

Petter Rindforth: Thanks, Phil. So that's perhaps something we can sort of discuss and make a decision about our next meeting when we have a little bit more of the details.

Okay. We still have some more minutes of this meeting but we are also have more limited participants so I'm not sure that there is any more topics that



could be useful to discuss today. I suggest that we bring with us what we have seen and work on what kind of closer to a final suggestion, a final report that we can come up with by the next meeting next week.

Thanks for today.

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

Terri Agnew: Thank you. Once again the meeting has been adjourned. Thank you very much for joining. Operator, (Dan), if you could please stop all recordings. To everyone else, please remember to disconnect all remaining lines and have a lovely rest of your day.

END