ICANN Transcription

IGO-INGO Access to Curative Rights Protection Mechanisms Working Group

Thursday, 25 May 2017 at 16:00 UTC

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Audio may be found at: https://audio.icann.org/gnso/gnso-igo-ingo-crp-pdp-25may17-en.mp3 **AND** https://participate.icann.org/p4b9arbzl24/

Michelle DeSmyter: Well good morning, good afternoon and good evening to all. Welcome to the IGO INGO Access to Curative Rights Protection Mechanisms Working Group call on the 25th of May 2017. On the call today we do have George Kirikos, Paul Tattersfield, Petter Rindforth, Osvaldo Novoa, Mason Cole and Jay Chapman. We do have apologies from Phil Corwin. From staff we have Steven Chan, Dennis Chang and myself, Michelle DeSmyter. As a reminder to all participants please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will turn the call back over to Petter Rindforth.

Petter Rindforth: Thanks Petter here. So let's start with if there are any statements of interest? Seeing no hands up let's proceed to the main agenda for today. And I'm glad that you let on the line could participate today. I know that some of us have been - just been traveling and some are still on their way home from NTIA meeting. So but we thought it would be good to try to have a meeting today anyway just to discuss further the pros and cons of options one and two to one how to possibly just to proceed a little bit quicker on the remaining topics. And thanks George for I saw you sent a list of your comments. And I will let your voice be heard in a moment but let's start in general just a reminder we see the paper on Recommendation Number 4 where we had two specific options as we could not find the majority when we sent out the initial proposal or at least we wanted to have comments from both of these possibilities.

And as you know option one is when an IGO succeeds in asserting its claim of jurisdiction and immunity in a court of mutual jurisdiction the working group recommends that in that case the decision rendered against the registrant and the predecessor UDRP or URS should be negated.

And Option 2 was that the decision rendered against registrant in the predecessor UDRP or URS may be brought for and here we still have to if we choose Option 2 to put in a preferred arbitration entity for de novo review and determination. And we have got pros and cons and comments both from members of the group and of course also from the open comment period. So let's have a look at just I go through the Option 1 and Option 2 first and then I leave it open. But if you take Option 1 the benefits that is noted let's see if we have - where we have it?

So the benefit was that the court decides case on de novo basis as this is not, strictly speaking, an appeal from a panel determining possible disadvantages. What would be the advantage of mediating the initial panel determination in such a case? Does this mean that the registrant can transfer the domain once the lawsuit is filed? And benefits quite certain T4 losing

registrant in terms of the consequences of filing a complaint in a national court. I'll make a comment on that later on.

And disadvantages what are the implications of saying that merely filing a court complaint means and otherwise (legal) a valid panel determination is now void and has no legal effect and what can must a registrant do in such an instance? And still the benefit the same UDRP URS process applies all the way through the initial administrative proceeding, no special treatment or process just because it is IGO name and an acronym at issue.

And disadvantage is that the risk that serves the mutual jurisdiction clause remains unchanged. The court could rule that an IGO has already waived its immunity by agreeing to the mutual jurisdiction clause in the first place. And when it comes to Option 2 having the benefits it's consistent with the request from the GAC and the IGOs. And it's inconsistent. This is (unintelligible). It's inconsistent with the current UDRP URS. And here we have also if we choose Option 2 there's a need to discuss if a specific administering institution as well as a specific (unintelligible) arbitration rules should be recommend. And we have noted before that it may not be the best if the administering institution the arbitration stood for this would be an IGO just to make sure that everything is done in a neutral way.

The benefits again it's familiar and commonly used in commercial translations including many of the IGO contracts. Disadvantages thus recommending binding arbitration as a final decision from an initial panel determination effectively remove a registrant's right to have a national court determine the issue or is this equivalent? And here sorry stuff like I noted that is said to be a need to review WIPO secretariat 2003 paper on minimum requirements assigned to ensure adequate protection for (unintelligible) robust process. I have to admit that I couldn't find that document and it's perhaps something that we could look at further after this meeting also.

And then finally another benefit of Option 2 would be that does not trigger difficult legal questions about the legal implications of mediating a panel decision per Option 1. And now I'd just like a couple of comments, let you know when they are my personal summarize of what we have discussed and what it is what I personally see from Option 1 and Option 2. If we talk about the benefits of Option 1 I just noted that it says that it creates certainty for losing registrant in terms of the consequences of filing a complaint in a national court.

I am not so sure that is the fact. It - if the IGO will have the - if the judicial appeal is asserted the court agreed to that yes it's good to know that you can take it to a court but you never know if the case will actually be dealt there. So I would say in that respect Option 1 may not be the perfect option for any of the parties in that kind of disputes. And disadvantages does it mean that the registrant can transfer the domain once the lawsuit is filed? I perceive that there could be one possibility or risk.

When we come to Option 2 the question there does recommending binding arbitration effectively remove a registrant's right to have a national court determine the issue or is this equivalent? And in my opinion yes it is equivalent. Also after a general view on Option 1 and Option 2 I've seen that some of those organizations that initially discussed the reply to and prepared for their public comments and our initial view when we started this working group may have for just simply comparing it to the common domain name disputes that they have seen that Option 1 would be the most natural way to proceed. But having gone through all the comments and also having a view on the possibilities for our working group to actually come out with a suggestion that could be accepted both by the council and then by the board and as I see it by representatives from both parties I'm moving on to that Option 2 is the best way to move forward.

You have all seen the comments that is in support of Option 2. I will not re-phase them here but I would say that if in idea today brought in UDRP and

one and then on an additional appeal asserted immunity and the court agreed and dismissed the case then the stay on the transfer ordered by the UDRP panel will be listed and the domain would be transferred. So Option 1 as I said worse for IGOs but the current theoretical practice making it even more vulnerable to attack if we accept that as a system. And then the domain registrant would actually benefit from Option 2 because it would at least provide a non-judicial arbitration forum to decide this appeal. So it will not be just thrown away stating the neutrality.

But it will actually be dealt with. And I presume it will be determined under the national law in which the appeal was based because doesn't this (unintelligible) of the court case would leave it with no forum in which the appeal could be heard. So Option 2 is likely as I see it personally the one that would be most easy to promote and would also be acceptable for both parties. But having said that as my initial summary and comments I open it up for comments from your participants. And I - as I presumed George you're on the line.

George Kirikos: George Kirikos for the transcript. Yes I submitted a comment to the mailing list, take a few moments to go through what my thoughts were on there. There's several statements in the document which don't make sense or firstly false so I'd go through them. For Option 1 the disadvantage with the first item what would be the advantage of initiating the initial panel determination in this case? Does this mean that the registrant can transfer the domain name once a lawsuit is filed? Initiating the UDRP decision would only take place if the IGO actually successfully asserted immunity thereby terminating the lawsuits so initiating the UDRP decision just simply maintains the status quo as if the UDRP had never been filed. And that doesn't necessarily end the process because of the IGO still has options. They can look for other forms of relief. They can either, you know, either ask for a voluntary arbitration, voluntary remediation or they can even, you know, involve the national authorities to try to intervene. If you know there's illegal behavior, obviously the appropriate relief is to seek the involvement of legal authority, is to take criminal action

against the registrant or registrant could - obviously would have to fully identify themselves as to file a lawsuit.

The second part of that statement didn't make sense. That about the registrant being able to transfer the domain name once the lawsuit is filed. The registrars would necessarily keep the domain name on registry lock or sort of registrar lock or registrar hold pending the outcome of the lawsuit and any applicable appeals. So simply, you know, having that option doesn't do anything in terms of the initiation of the lawsuit. It would, you know, still need to go to its full conclusion. As to that second point what indications of saying that merely filing a court complaint means an otherwise legally valid panel determination is now void and has no legal effect? What can or must the registrar do in such an instance?

The mere filing of a complaint doesn't do anything. You know, it's the IGO has to make a decision, you know, they could decide they might not want to assert immunity. That's always been their choice or they can assert it and wait the court's determination as to whether to accept that defense of immunity. And as we know they probably won't given that the mutual jurisdiction clause can be seen as a waiver of the immunity. Then the registrars still have to wait until there is the file determination before it actually does anything so I don't think these are disadvantages that are being pointed out.

And then a third one is fairly incorrect. It says the risk that since the mutual jurisdiction clause remains unchanged a court could rule that IGO has already waived its immunity by agreeing to the mutual jurisdiction clause. That risk exists for both Options 1 and Options 2 because we're not changing the mutual jurisdiction clause so I think that that disadvantage should be removed from both options because we're not obviously changing the mutual jurisdiction clause so that could be totally removed from the document.

In terms of additional benefits the most, you know, one important benefit is that the people that are interpreting the law and under Option 1 are actually the most qualified people namely active judges in the national courts. In arbitration, you know, it's a, you know, random in terms of the quality of the panelists. And obviously the same kinds of panelists that are hearing UDRP's are probably the same kinds of panelists there one would get in an arbitration given those are considered the most knowledgeable about domain disputes. And we know from history that their decisions are routinely overturned. So it's better to get the most qualified people who know the national laws of each jurisdiction, namely active judges.

Another benefit of Option 1 is that it discourages forum shopping by IGOs and we've seen in the past all they show of complainants choosing the most appropriate - sorry, the in the most beneficial forum for their cause. And so Option 1 eliminates a lot of that game playing. And we already take into account things that, you know, the IGO can file using a licensee, assignee or agent to file the case so that, you know, they still have the choice even under Option 1. So and lastly in terms of Option 1 the most important benefit is that this ensures the supremacy of the courts. ICANN has to follow the law and not make up its own laws that replace the courts such as anything but Option Number 1 creates a very dangerous precedent that will encourage other people to come to ICANN to create policies that are inconsistent with and that override national laws.

And, we've seen other policy instances where ICANN does, you know, follow local and national laws like European registrars for example are very concerned about Whois and privacy. And ICANN goes to the extent to make sure that those registrars cannot opt out of the various laws relating to Whois and ensure that their local laws are followed. Similarly, you know, registrants would want to make sure that they have the benefits of all the national laws in their countries and would not be in favor of Option Number 2. Option Number 1 is the only option that preserves their full legal rights. Then it goes on to Option Number 2 the benefits and disadvantages. The statement that it's

consistent with the request of the GAC and the IGOs isn't necessarily a benefit. It's more of a political stance. You know, if we're going to call that a benefit then, you know, should offset that by saying that Option Number 1 is preferred by registrants because it preserves their rights so we shouldn't be claiming a benefit in terms of a, you know, political expediency. It's not a legal benefit per se.

The second claimed benefit was that it was familiar, that the arbitration was familiar and commonly used in commercial transactions. I don't necessarily see that as a benefit either that because lawsuits are obviously very familiar with registrants as well so albeit that as it is. The third point claiming that does not trigger legal questions about the legal implications of officiating a panel decision. I'm not sure what that statement meant at all because the legal implications are pretty simple. You know, the status quo is preserved, the UDRP decision is ignored and the ball is in the IGO's court in terms of seeking recourse based on, you know, whether the - they want to, you know, file a legal complaint or have somebody else file a legal complaint on their behalf, et cetera. So I don't understand what the claim legal implications are from that third point.

An important disadvantage of Option Number 2 that wasn't discussed was that there is a lack of full public scrutiny and transparency and accountability because most of the arbitration documents are kept secret. Unlike real courts which operate under the open court principal, you know, you can go to the courthouse ask for copies of the documents and they'll be supplied unless there's a sealing order or publication ban which is, you know, very rarely granted.

Furthermore decisions under Option Number 2 would create no precedence that can recite in national courts unlike real court cases where they're built upon court precedent and important cases can be cited by others. And, you know, that's how the law evolves. People sight precedence and judges build upon those.

So any disputes that are triggered under Option 2 or Option 1 are going to be very high value domain names, the ones that are most vigorously contested. And so that's where there's the most potential in creating precedence for others if and when they're contested in the course. So Option 1 is - has a public policy benefit of ensuring that that takes place in public and creates precedents for other people in - not involved in IGO disputes in regular cases.

Another disadvantage of Option Number 2 is lack of multiple appeal level that exists in national courts. If - I mean Canada I can go to the port of first instance might be the Provincial Province of Ontario Court and then the next level would be the Ontario Court of Appeal. And very, very rarely but does happen that some cases go to the Supreme Court of Canada. The same exists in the United States where somebody might have a case in Virginia then might be the Court of Appeal for Virginia and then very rarely it can go to the national - sorry it can go to the Supreme Court of the United States. And we've seen some of the important cases between Samsung and Apple and those have gone to the Supreme Court.

And even, you know, there was an important case that went to the Supreme Court and was cited last week about all the intellectual property litigation that was held in Texas. And so, you know, these important issues are decided in - with multiple levels of appeal, not just one arbitration, that can be a toss of - a coin toss in some cases. Another very important disadvantage of offering two is that the UDRP, URS test in a sense would become de facto law and as would the remedies namely, you know, transfer cancellation whereas a court has a much great latitude to, you know, select other kinds of remedies in terms of, you know, money damages or injunctive relief to stop a particular use without transferring the domain name or decide things based on a different legal test. And, you know, in the United States for example there's the ASPCA which has, you know, $100,000 damages for reverse domain name hijacking.

So each, you know, each jurisdiction has their own priorities in terms of what the law is. And so it would replace all those with some worldwide standard which some people might like but I think from a registrant's point of view they would want to have the law determined by their own national laws not by some rule created by ICANN which is there is very obviously very politically influenced as we know from the GAC and IGO lobbying on this issue.

And another disadvantage of Option Number 2 is that it actually takes away rights from, you know, existing rights from domain name registrants who have already registered a domain name. And so if Option Number 2 was only applied to new gTLDs or to domains with the creation date after the implementation of any policy changes that would be something that would help, you know, ameliorate or sort of reduce the disadvantages but that's not being talk about because the whole impetus of all these demands from IGOs was the new gTLDs program. But instead of just limiting their desires to changing the policy for new gTLDs I would have the protection of the reserve list at present. They actually want to go after the legacy gTLDs which I in my case - sorry in my opinion is a big overreach.

Have they limited this only to new gTLDs there would have been a lot less controversy although obviously there would still be controversies over the presidential effects that this would have. But, you know, if Option Number 2 is going to be the way forward, you know, the limited to new gTLDs or only domains with a creation date after, you know, 2017 or 2018 whenever this gets through they're not effective existing registrants or existing domain names who, you know, would have the rules changed in the middle of the game.

At least with Option Number 2 only applying to, you know, new registration somebody who registered a domain name would know the rules prior to registering the domain name and they'll have it, you know, changed midstream. So those are my comments and I pass the baton to whoever's next. Thank you.

Petter Rindforth: Thanks George. And I cached the comment you said about having these if we choose Option 2 to (unintelligible) new gTLDs that's something that could be actually worth to further consider. When it comes to secret yes arbitration is not (unintelligible) it is a secret a process but again we have a number of domain disputes procedures that are also non-official like the URS. And not even possible for panelists to look at their own prior cases to find a way to deal with the same issue in sort of speaker redline. So I - that's nothing new when it comes to domain disputes. Again I think it's clear. It has a benefit if we talk about Option 2. It has a benefit for both markets because then the domain holder if the case is not taken to a court and the court proceeding will start without accepting the immunity claims then at least the domain holder can be sure that the case is dealt with in a way not just or is not decided then not possible to further proceed with if the court, a national court except the immunity claim.

And I presume that somewhere all parties have the possibility to take the case to a court and claim actions and so even if there has been a decision also in an arbitration court although that national court will, of course, not - probably not accept to take the case with them. But as I said the - if the arbitration is feeling that it they will have both parties that will have the possibility to comment and have to comment and raise the both voices heard in that case.

And talking about forum shopping as I said we - when it comes to the arbitration there will likely be a list either with official recommendations or a list of what can be acceptable as arbitration forums. So of course if you have the possibility to choose between you can call it forum shopping but still I see that an arbitration procedure there are neutral experts on a specific legal issue. And I don't know if we choose a process if there will be domain, traditional demand panelists that will say that without arbitration procedure or if we choose someone else. I agree with that it could be not could, it should be good to have people selected that have experience, a long experience of

domain name disputes in order to have also the experience to listen to and understand both party's comments and sights of the same issue. So just let me check on the chat list.

Yes is that George Option 2 final decision well less transparency yes but as I said we already have when it comes to some kind of dispute procedures the decisions are made with the parties involved and the panelists and nothing is official. But that's obviously a contractual dispute resolution procedure that is acceptable for some kind of some specific part of the new gTLDs. Jay Chapman said, "Would Option 2 have the effect of preventing a registrant from going to a court of (mutual) prior to the rendering of a UDRP decision?" Frankly I don't think so. Then of course it's up to the court to make an initial decision on whether to take the case or not based on what kind of case it is and what the agreements are between the parties.

As I said looking at the main disputes also outside the US there are many parties that have tried to avoid the dispute resolution procedures. And even if they have an agreement of it and taking the case to court and it's up to the court to decide again if they agree with that or not. So George your hand is up.

George Kirikos: Yes George Kirikos for the transcript. One point I forgot to mention that Paul Keating raised last week is in terms of countering the benefit, the first benefit which was the request from the GAC and the IGOs is, you know, what's so special about the domain name industry? You know, we don't have the IGOs getting a special policy with regards to, you know, disputes over US trademarks or Canadian trademarks or anything like that. There's no special procedure for that and there's no special procedure for IGOs in any other venue that they could identify. The only scenario that they bring up are where there's voluntary contractual agreements, you know, not third-party beneficiaries but one on one contracting with an IGO where they, you know, usually specify arbitration. But whenever there's a third party, you know,

there's no such scenario that they even could identify under existing laws where people could be compelled to arbitration.

So, you know, I asked this question again, what's so special about the domain name industry? What's that it doesn't exist in, you know, the trademarks or any other intellectual property? If anybody, you know, has an example, you know, we've been at this for three years and nobody has identified it. Same for, you know, even within the domain name industry we don't see it in the .us dispute resolution policy or any of the other country codes. You know, why are we creating a new law just for domain names?

And certainly they have disputes in other areas of their activities. What's so special about the domain name industry? Thanks.

Petter Rindforth: Thanks. My first comment on that is that well what's so special about trademarks online? Why don't we have a trademark clearinghouse when you file a trademark application? That's all the PTOs are reaching out to a list of trademark owners and stating to them that, you know, someone has filed a new patent trademark application you can feel free to stop it. So I mean it - no - let's say but we're talking about the Internet and we are used to specific policies even when it comes to trademarks that we cannot see each time based on the traditional trademark protection. And also when it comes to domain disputes so we can see in some ccTLD procedures that have actually listed also these kind of protections and other kind of name protections that you could raise as a base for to forming a dispute for instance when it comes to the .EU disputes where you have all kind of name protections within the European Union that's in the Europeans Union system that you can actually refer to.

And then we have the same in Sweden, not just the possibility to refer to your traditional trademark rights but also to name rights in general. And I'm not saying that we should add that to the UDRP or URS but we should stick to

trademark identification. But that's I think we have already decided upon that when it comes to (unintelligible) as the search.

So the first stage we could identify an IGO protection as some kind of unregistered trademark protection where you could refer to some specific use or registrations and Article 6 Tier is one of those that you could show to identify that you have an unregistered trademark protection. But when it comes to the second phase they need to record. Also again based on what we can see from some ccTLD practice there is a possibility to get the case to a second phase not to get it to a corporate but actually to go to an arbitration procedure and they will take the URS procedure for instance. I mean they have specific steps already in the procedure itself not taking the case outside the (unintelligible) special procedure.

So this is not a specific new issue. And again of - yes there are pros and cons on both options. But in order to find something that I think could be accepted for both possible parties involved in that kind of dispute Option 2 is the one that I personally prefer. So I'm sure trademark holders want all the protections of the court and wouldn't agree to proceed procedure changes that reduce the rights simply because an opponent is an IGO. Okay any hands up? I see the comments from the chat. Okay if an IGO wanted to challenge an issue trademark in the US for example yes it - and what I think we - was a good discussion on this topic today and of course we need to reach out to the full group and also added some benefits and disadvantages on both options.

But again I hope that we could reach an agreement in our working group rather than giving a couple of options to the council to decide upon and further communicate and perhaps then again reach back to us or if we make some kind of - how many people are in the full working group? Yes that's actually good. I don't know if Steve has that list?

Yes as noted on the chat there are so many on the meetings. But I hope that if we can send out a specific questions to perhaps the side or vote on after I suggest that we further discuss this on the next meeting that when we hopefully are more in the meetings but then to actually get some kind of decision on this point. Steve?

Steven Chan: Thanks Petter. This is Steve from staff. A comment about what we think might be helpful is first is we could update this benefits and disadvantages document based on the conversations today and as well as the email from George. And then also a suggestion that may be helpful. I'm not sure. The working group can consider this.

So in looking at this staff thinks that, you know, not all benefits and disadvantages are equal. So what may be helpful is in conjunction with these benefits and disadvantages perhaps we could put into effect some level of our risk assessment so that you can try to determine the likelihood and impact from the risk. I'm not sure exactly how that could be done but that I'm not sure that would be useful but it's maybe something for the working group to consider to try to maybe input some level of qualification of the benefit and disadvantages. So just a suggestion, thanks.

Petter Rindforth: Thanks Steve. Petter here. As I said, I think it's a good suggestion. And let's talk about that off-line, how we could do it in a more - in a practical way so that it could be sent out and then we can make a proposal until - for the next meeting and hopefully set it up and get some more comments and yes and nos than be - also from the more inactive participants. Okay we had if time permitting a discussion on a separate dispute resolution process. And I suggest that we at this place take just a couple of minutes also to go back to that issue.

And what we are talking about there is the - when we started our work in the working group we had a look at the draft text from 2007 for a possible IGO dispute resolution procedure. And we - I think we discussed it briefly last time

we had a meeting. And again without going forward your comments but I think we can agree about that this is not a specific proposal that we will have. I haven't seen any supportive your comments for that for taking that work up again. But it's we need definitely to actually rephrase on what was proposed at that time and what perhaps further comments we have got from during the comment period. And even if we voted that there's no need for as separate dispute resolution procedure for IGOs we need to make decent comments on that so everybody can understand why we do not suggest that. So George quick.

George Kirikos: George Kirikos. Yes I remember the proposal from September 28, 2007 writing about it. If folks can scroll down to Page 6 you could see that it was a very one-sided rewriting of the UDRP. It was like very, very bad.

If you go to for example 4A1 it says the registration or use as a domain name of the name or abbreviation of the complainant. So did they change the entire nature of the UDRP test which used to have registration and use in order to prove bad faith to registration or use. And then if you compare this task with the other task that's like, you know, very, you know, later standard, different standard. And so it's no surprise that problems didn't go anywhere. And you can't even see in bottom of 4A it says the complainant must prove that any of the any of the elements is present. So it's like a very, you know, one-sided dispute mechanism for IGOs. And, you know, that's, you know, one of the reasons why a different therapy was not desired because, you know, it would be gamed and you could see the kind of gaming they tried ten years ago so thank you.

Petter Rindforth: Thanks George. And yes you're perfectly right. It is not that similar to the UDRP. And the user registration or the or word is one specific example of that. Perhaps I mean that possible change how the UDRP has been discussed for some years and it may come up next year or within two years when that working group deals with the dispute resolution procedures in

general the overview of the UDRP will - phase two will start. But that's not for us to suggest.

And I've made some other also interesting notes that I think there was the same clause that you referred to registration or use. It states when it comes to definitions it states that IGOs means organization with an international legal personality established by international agreement. However characterized creating enforceable rights, et cetera, et cetera, and referring to protected under Article 6 Tier of the Paris Convention. So Article 6 Tier is actually mentioned here.

But then on the because to point four the proceedings taking on the ground that the registration or use as a domain name of a name or abbreviation of the complainant protected under an international treaty more or less the terms of that treaty. So there Article 6 Tier is not specifically identified. And I'm not sure if it should be read that Article 6 Tier or if it's could also be some other national or international treaty identifying IGOs. But even if we don't create a specified comment on this proposal today. I think that we can agree upon that the 2007 draft text may have been a possible way to solve it at that time although as I said it was acceptable then by the council. But for the procedure that we speak of today and with the additional practice that we had for the last ten years when it comes to domain name disputes this specific draft is not the most practical one if I say it in a diplomatic way.

And what's also interesting is that when I have spoken of during the ICANN meeting to do some IGO representatives on what they think about that draft and what they think about especially WIPO that has - that wanted to have a separate dispute resolution policy my - and it's still unofficial comments back but what I've learned from that is they rather see something that is very similar to the current UDRP just making a few differentiated identification issues. So I presume that if such a specific dispute resolution procedure was to be created it would only be a few words but have to be amended to identify that this is about IGOs and how their name protection can be identified. And

then again Article 6 Tier is one of them that could also be other kinds of identified. But my personal view of creating a separate dispute resolution process is that I think that we have find even if it's - we are not yet decided on the two options we discussed further today but I think that we have found a possible and workable way to solve IGO disputes without having to create a specific additional dispute resolution procedure that's probably not be used more than perhaps one, two times a year.

And so it's I think we have found the more practical and also more acceptable way also for registrars that or registries that don't have to rephrase their agreements too much and have a look on new dispute resolution procedure that these with this kind of on domain name. And it's going to the chat well Steve?

Steven Chan: Thanks Petter and this is Steven Chan from staff again and had a quick comment or perhaps suggestion in that perhaps the - a similar document to the Recommendation 4 in the options maybe we could do a benefits and disadvantages document for the topic of a separate DRP mechanism. So a suggestion perhaps. Maybe that's something that you guys would want to see.

And then just another additional comment in that this text that's up on the screen right now of a proposal from 2007. I'm sure everyone knows this but it's, you know, it's merely a suggestion and a model that we can take a look at but we're not beholden to take this in its entire form or any other course as well. So, you know, if there's certain parts that the working group disagrees with but there are many parts that they would disagree then, you know, it could be leveraged but we certainly aren't beholden to take the entire document at face value. Thanks.

Petter Rindforth: Thanks Steve. And yes. I agree with that we could - actually and we may actually also refer to some of the lines in that suggestion. One is possible ways to actually identify the protection of an IGO. They've talked about Article

6 Tier but it could also be if we - if you use the current UDRP and URS if you use that as dispute resolution procedures also for IGOs we need a way to identify their sort of in use trademark protection and Article 6 Tier is one and there are also other possibilities to identify a domain use maybe not registered trademark because if an IGO has a registered trademark they can use the current UDRP based on that.

So yes do pros and cons and then we have to make a summary on if we still agree about that. Why we don't think it's a need for a separate dispute resolution procedure? But also I think it's a good idea to recognize that the - this draft and original proposal have considered IGOs in disputes and have some formulations of the identification that we can actually use for our recommendations. And George I see you have other comments on the chat. So I give you a couple of minutes perhaps if you want to - yes your hand's up. You read my thoughts. Go ahead.

George Kirikos: George Kirikos for the transcript. Yes I actually wrote a blog post back in 2007 about the staff report. And it, you know, raised a bunch of comments by other commentators. And one of the points they made was how, you know, the bank of international sentiments raised such great warnings about the dangers to the Internet if the .biz proposal was accepted. And we, you know, have seen millions of .biz domain names registered. And I don't think a single person other than, you know, the Bank of International Settlement itself thinks that that TLD is, you know, confusingly similar with, you know, BIAS for Bank of International Settlements.

So I think, you know, we've got a lot of scaremongering going on with the IGOs and it's, you know, been going on for, you know, almost 20 years now. So sometimes, you know, their concerns have to be, you know, weighted accordingly. And I think, you know, Steve's suggestion earlier, you know, where we try to analyze, you know, not numerically but quantitatively the magnitude of the risk of each of these things should perhaps be considered a good point because, you know, if a certain claim disadvantage is, you know,

very, very minor then, you know, that would point to perhaps Option Number 1 ne standing out once you eliminate some of the fud that's out there. Thanks.

Petter Rindforth: Thanks. Just so Petter here again. I just thought that struck me I'm turning back to Steve when it comes to the pros and cons list for a separate dispute resolution process. Just we need to have in mind that that line is not specifically referring to the 2007 draft cycle that it's generally if we should create a new dispute resolution procedure for IGOs. So the 2007 is just one example. And it's, well it's the example we have from such a draft procedure that has been created in the past but we also need to put some pros and cons and are finalizing related in general to the issue on why we should not - why we think that it's not needed to create a new separate dispute resolution procedure. So I just wanted to point that out so that we're not just focused to this draft text even if of course some of the comments could be related to that because it's a document that's in fact existing and has been considered by all groups of interest in the past. George?

George Kirikos: Oh yes quick question. There does exist that other small group mailing list that both you and Phil, you being Petter and Phil Corwin are on with the IGOs and some of the ICANN board members. And so I was curious whether they've actually come up with any other proposals or are they still talking about, you know, hiring a legal expert or what's going on in that group? You know, is there anything going on that might impact our work in terms of if they're coming up with a new proposal or anything like that? Thanks.

Petter Rindforth: Thanks George. Well frankly we haven't had any meetings recently and it was still discussed at the last meeting if we should actually also reach out to a new external expert. And we have as we see it right now we will continue independently in our working group to come out with hopefully don't know if we - we'll have time to do that. But we hope to have some kind of at least to our final proposal before we're going to South Africa or at least we will have a

session there to make the presentations of what we have come up with so far.

And we should not wait on specific final request for additional external expert. And I think but it was more as I see it now non-official comment on that but as I see it, it was more of a way to discuss it if there's a need for it. And some people needed to give some minute to discuss the possibility of an external expert. But in fact we also had comments from IGO representatives that this topic has been dealt with for a long time and they really wanted to have a decision on it. And they also noted that if we're going to have set up a specific time for an additional external expert we will definitely not come up with our final proposal until maybe the end of or at least late autumn this year. And at this time, you know, stated that we hope to finalize this work quicker than that.

So it was merely a long description of no. There has been no further procedure from on in that small group that we need to lay back to consider. Our work is to go on with what we do so far. Thanks.

Okay then we have as I see it actually we have gone through basically the two options for today and to further prepare for added pros and cons and both for the - for the both topics of today. And is there any and I'll turnover to Steve. Are there any other specific questions, topics? Nothing okay. Then thanks to you and for once we can end just after 75 minutes and hope that you will have the possibility to attend next week and that we also will have some more members that have retired in time to their offices and can participate. So I - well thanks for today and I'll drop it off. Thanks.

Michelle DeSmyter: Thank you. Meeting has been adjourned.

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