ICANN68 | Virtual Policy Forum – GAC Discussions on RPM and WS2 Recommendations
Wednesday, June 24, 2020 – 13:00 to 14:30 MYT

JULIA CHARVOLEN: Tech support, could we start the recording please? Thank you very much. Good morning, good afternoon and good evening. This is Julia Charvolen from the ICANN GAC support team and I am the remote participants manager for this session. Welcome to the ICANN68 virtual meeting with the GAC rights protection mechanisms followed by the WorkStream 2 recommendation discussions sessions on Wednesday 24 June at 5UTC for 90 minutes. We will not be doing a roll call for the sake of time but GAC members attendance will be noted and available in the annex of the GAC communication and in the GAC minutes. In order for a GAC member to speak you need to be identified as a panelist. In order for Zoom to do this automatically GAC members need to either log in the Zoom room with the GAC mailing list e-mail address or join with an individual link sent to them via e-mail from ICANN RP titled panelist for ICANN68 GAC sessions. You can see the e-mail displayed on your screen at the moment. Thank you, Gulten. In case a GAC member does not have the ability to raise their hand or see the names of other panelists we advise you to leave the room and join again using the individual link sent I e-mail. GAC members recognized will have the ability to rename themselves.   By entering the participants name. Surname. Country or delegation. If you have used a different e-mail address you will not be promoted and be able to speak. If you would like to ask a question or make a comment please type it by starting and ending your sentence with question or

comment. To allow all participants to see your request. Of please be mindful the session leaders may not be able to address all comments and questions slides during the session. However they will remain part of the permanent session record. Interpretation for GAC sessions will be conducted using both Zoom and remote simultaneous interpretation platform operated by Congress Rental Network. Attendees are encouraged to download the application following the instructions in the Zoom chat or from the meeting details document available on the GAC agenda website page. Your microphone will be muted for the duration of the session until you get into the queue to speak. If you wish to speak please surveys raise your hand in the Zoom room. When called upon by the lead you will be given permission to unmute your microphone, kindly unmute your microphone and take at floor at this time. When speaking make sure to mute all your other devices, including the CRN application. Please state your name for the record and the language you will speak if speaking a language other than English. Please also speak clearly and at a reasonable pace to allow for accurate interpretation. The session includes realtime transcription, and to view the realtime transcription click on the closed caption button on the Zoom tool bar. Finally the session like all other ICANN activities is governed bier the ICANN expected standards of behavior. You will find the link in the chat for your reference. With that I would like to leave the floor to the GAC chair, Manal Ismail. Manal, please.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Julia, and welcome back everyone to reconvene our GAC discussions as Julia mentioned. This session is scheduled for 90 minutes, 30 for an update on rights protection mechanisms and an hour for discussing Work Stream 2 recommendations. So starting with the rights protection mechanisms and the recent IGO protections work effort that was approved by the GNSO council under the umbrella of the existing RPM working group as we mentioned during the opening plenary, we have our topic lead Brian Beckham from WIPO, so allow me to hand over to you Brian for the presentation, please.

BRIAN BECKHAM: Thank you, chair.

MANAL ISMAIL, GAC CHAIR: Yeah, okay.

BRIAN BECKHAM: Brian Beckham from World Intellectual Property Organization. I wanted to just cover 2 items here this morning. The IGO topic and the rights protection topic generally. With regard to the slide that you to see on your screen the IGO curative RPM status a quick refresher. For a lot of you we've gone over this for a number of years and it won't be new but a reminder that IGOs are organizations such as the OACD. The World Health Organization, the UNESCO. UNHCR so as you can see by the way I'm speaking sometimes we refer to those as their full

name in the instance of the World Health Organization, other times IGOs are known by acronym in that case WHO so because of the way international trademark law works under the Paris convention IGOs typically would not seek trademark protection in national IP offices. They would actually -- they enjoy under international law something best way to describe it is something like -- is that better? Something like a negative right to prevent others from using the consumers and users aren't confused. And those are recorded at WIPO. And IGOs because of their nature, because they are meant to be independent from member states so that they can conduct their work member states without interference. they enjoy internationally recognized privileges. And this was all captured in most notably a 2016 letter from the United Nations secretary general to member states which we can provide a copy of if that's useful to GAC members. So based on those 2 factors IGOs are unable to avail themselves of what we know mostly as the main trademark protection mechanism the URP mainly because that requires trademark rights and that requires the applicant of that mechanism to submit to court jurisdictions so that is not really a viable option for IGOs because of that, when new gTLDs were launched initially IGO names and acronyms were reserved for reservation and that initial reservation remains in place. With respect to full names IGOs have been working with ICANN staff to compile a list of IGO full names in 2 languages that would be permanently reserved and there's one question which is a little bit of an administrative detail as to who owns that in future. The GAC or ICANN or IGOs or some combination. So just to note that for update with respect to the second part which is that curative rights protection so

supposing someone registers the name or acronym of an IGO or something that's confusing to users that plays on that IGO how long an IGO address that in the DNS so the idea was to take something like the EDRP but make some small changes to it so that we could get past the trademark rights and court jurisdiction issues so the GNSO counsel convened a process to look at that question. That took a couple of years and it was it was a contentious and highly criticized process, and in the end came out with 5 recommendations. Some of which were approved by the council and one key recommendation was not improved by the council, but was parked to be addressed in a future policy effort, and so that brings us really to where we are here today, which is that over the last couple of ICANN meetings we've had positive interactions with the GNSO council on that idea of rechartering that work to address this problem that. Work was undertaken and currently we are looking for a chair, and I think mainly what's happened is you know we had in the last meeting in particular, the last 2 meetings really in Montreal I think was where we made the most progress recently -- obviously intervening events have gotten in the way so we haven't been able to go further with that work, but I just want to say from IGO's perspective we are able to devote resources to the effort and we are grateful for the effort and think it's important one. I think it goes without saying especially in times like we are facing nowadays organizations like IGOs you know because they are protections so that consumers and users of the Internet really welcome aren't confused and if there are bad actors out there to register domain names that seek to do that then IGOs can, can have a vehicle to address that.

So with that maybe I can pause there briefly. That was really the update on the IGO side, and then I did want to update the GAC on the broader rights protection issue which was an interest an issue of interest to the GAC going back to before the new gTLD program launched. Are there any questions? I don't see in if I in the chat or the Q and A pod on the IGO topic. I know early remember interior this morning the question was raised whether it was something that was -- that would be useful to include in the communique. I perhaps we can discuss off line, I think the advise still stands as I've noted in the update we've made good progress with the council, and there's simply been intervening events that have gotten in the way, but certainly the idea of rechartering work for this curative mechanism is you know, I think we've made good progress and have no doubts that that will continue in its goods time. So maybe with that I can move to the next slide, which is a brief update on rights protections generally.

So if GAC members and observers recall, prior to the launch of the new gTLD program -- maybe I'm sorry, if we can skip ahead to the next shied -- I jumbled the order somehow -- the question was basically with, with already known brand abuse in the DNS -- seem to -- maybe back one? Maybe we missed a slide in between there. In any event I have a copy on my screen so I can speak to that, so basically the idea was that the GAC asked prior to the launch of the new gTLDs for ICANN assistance to mitigate the negative impact of cyber squatting while the DNS scaled up to ensure the burden for business stakeholders was big and small was minimized. And there was particularly there was the trademark clearing house which was created to allow brand owners to deposit their trademarks into a centralized database. There

were concerns raised by the GAC. The relation of that trademark clearing house national IP trademarks and proving use and different trademark registration regimes in different national offices, and so the main idea was that ICANN establish a level playing field for all brand owners to access that trademark clearing house. That was done and basically all trademark owners would have to require -- would have that show proof of use of the their trademark to get into the trademark clearing-house and this the the GAC called for an independent review. You may recall in Hiderabad(sic) we had a presentation on that and also I would note there's working group that's been under way for 4 years now which has been reviewing trademark clearing house and other rights protection neck mechanisms through the discussions and other ways. Mainly to note those are taken place and can be ticked off if you will. The other us what the uniform domain name dispute resolution policy. That was mentioned both in the Los Angeles communique and in a September 2011 letter from the GAC to -- I don't recall if it was ICANN or the council but the message was that it wasn't the right time then to look at the EDRP but if ICANN was going to do that it should look at the impact for example on ccTLDs and dispute resolution generally. Excuse me to make sure that the one mechanism that brand owners did have to turn too in the DNS the EDRP which has been running for 20 years that any changes made to that would be taken cautiously. So we've been to the present slide we've been look agent this for a couple of years now. It's a topic of great interest in the community. There are quite a number of active members. A number of co-chairs and we've been at this for a few years. As you can see on the slide you know

there haven't been a tremendous amount of suggestions or improvements. We've spent a lot of time going over well worn ground covering policy positions that some people think trademark rights protection go too far. Others not far enough and at that produce bit of a stalemate. Next slide please. So here I wanted to just put this on the GAC as radar. The review of the EDRP we are expected to conclude the first phase of the rights protection review shortly in the coming months hopefully by the next ICANN meeting our plan it produce a report. I'm one of the co-chairs of the plan is to produce a report for the council and it looks like we are well on track to do that. We've actually been making good progress recently. Of the next phase is to review the EDRP and this I think is important to get on the GAC's radar because as I mentioned earlier this is the the longest standing ICANN consensus policy. It was borne out of a recommendation from WIPO 20 years ago on the basis of almost 20 international consultations. It's been working well. Obviously over the years there have been suggestions for improvements or things that could be you know changed but you know really the question is you know, what impact would those changes on 20 years of juris prudence and experiences and message really is to take that carefully. Next slide please. The -- so this is really just a quick snapshot of the nuts and bolts of the EDRP. It really deals with the intersection of trademark rights and domain names mainly because in terms of trademarks there are different jurisdictions. Different classes and also the you know, the confluence of dictionary words so domain names that are dictionary words can be valuable and there can openly be one domain name whereas there can be multiple words or trademarks in different jurisdictions so it

really helps to address that problem of the intersection of domain names and trademarks. As I mentioned it's been running for 20 years, there have been tens of thousands of cases so and it addresses all sorts of behavior on-line. It's we understand tip of the iceberg or a drop in the ocean, if you you will, but it deals especially nowadays, we've been having record volumes of cases in the past 5 years, every year we look back and we break the new record. We've actually been extremely busy in the past couple of months we've had a lot of cases filed some of which relate to the current crisis. Others which is are just normal cases that would have existed anyway. We see nowadays a lot more cases involving really phishing, malware you know really bad acts besides you know in the past a lot of paper clip websites and things like that but nowadays the domain names are being used for more sophisticated fraud so we really believe that this is an important tool that is worth really taking any review of this slowly, and not you know messing up a good thing with good intentions. The next slide please. So this is the last slide for me. Really, it's safe to say that you know, people around the world appreciate what the EDRP has done both brand owners consumers, registries, registrars and even some registrants of course some take some issues with that, but by and large, I think it's widely considered a success, and so we've -- as I mentioned earlier, both in the IGO curative working group and in the current RPM phase one working group things have been a little messy, to put if one way. And we also know wear we are in the new phases of PDP 3.0 and ICANN and like with the IGO one of the recommendations from some years of work didn't you know pass at the council, there was a recognition that there was a need to recharter that work, we

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think with respect to Phase 2 of this work which looks at the EDRP there's need to rechart they're aspect of the working group's work to really you know, plant that message of taking it cautiously and not messing up a good thing much one of the reasons I mentioned that is in the current iteration of the working group Phase 1, we've spent probably the best part of a year,ing if you look at things all together, arguing about charter questions and which direction we should be going, so we think that you know, it's really important to get this right from the beginning, and there's plenty of you know, levers to pull in the ICANN bylaws and operating procedures to really firmly start on the ground of you know expert review. Expert advice. There's at WIPO we produce the juris prudential overview. There are a lot of articles written so there's wealth of information to start from. We are not starting from scratch so that's really the message from us on this is that you know, we think it's important to take the time to get this right. It's important this is on the GAC as radar and for council's perspective you know we think this you know getting the charter right from if the beginning is the best way to start. With that, I'll turn it over to the chair, and see if there are any questions or comments.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brian. So, any questions or comments to Brian? I see none.   But I thank you very much Brian for this informative background, and update on recent developments. I'm sure this came very timely, and would help even new GAC colleagues to catch up with this longstanding process with its different phases, also I would like to

bring to GAC colleague's attention the brief, the GAC brief on this topic may be helpful as well, as Brian mentioned it's a bit complicated, so, I think this would help everyone to catch up. And Brian, I appreciate your continued efforts, and keen follow up of this work, and for keeping us all updated, I really look forward to drawing this discussion to a successful conclusion hopefully soon. So, I think if we have no questions or comments to Brian, maybe we can stop here in terms of rights protection mechanism. Any final comments Brian from your side?

BRIAN BECKHAM: No, no, thank you. I will remain available obviously there's the GAC e-mail list where I can be contacted for any questions. These can be somewhat detailed topics so I know there was a lot to digest. It's really a quick overview. So perfectly happy to answer questions off line.

JULIA CHARVOLEN: This is Julia. We have Kavouss who has his hand up.

MANAL ISMAIL, GAC CHAIR: Kavouss, please. Go ahead.

KAVOUSS ARASTEH: Yes.

MANAL ISMAIL, GAC CHAIR: Thank you, Julia.

KAVOUSS ARASTEH: Yeah thank you. I come back to the question that I raised during the review of communique, I suggest that it would be beneficial and useful to mention that in the communique under the current situation of IGO. To indicate where we are, and then what we expect. It would be good, and also, I request colleagues from WIPO, if there are some useful link would give a summary similar to what presented now, it could be also referred that the people look at that one, not searching in the hundreds of documents here and there. So that is a suggestion, as I mentioned in many organizations outside the ICANN, the issue of IGO will be discussed on the agenda, and people ask it is better to give a precise up to date information. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss. And Brian, would you be willing to provide us with a couple of sentences updating, or reflecting the update we have received here, and where we stand on the topic?

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BRIAN BECKHAM: Of course.

MANAL ISMAIL, GAC CHAIR: Excellent. Thank you, Brian, and thank you, Kavouss. Any other questions or comments? I see none. So with this, I thank you all, and thank you very much again Brian, and to everyone please stay in the Zoom room we will be proceeding directly with the following session on Work Stream 2 recommendations. Julia, please confirm to me when we can get started.

JULIA CHARVOLEN: Thank you very much, Manal. We will be starting in a few minutes, if that works for everyone since the session starts in 5 minutes.

MANAL ISMAIL, GAC CHAIR: Sure, no problem.

JULIA CHARVOLEN: Thank you.

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