

Transcription ICANN Buenos Aires IGO INGO CRP PDP WG Update

Saturday 20 June 2015

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Jonathan Robinson: All right, that closes the first session. Are we good to go with the next session? Okay, so next session this morning -- and just to remind you to welcome anyone who's just joined us and anyone is -- the purpose of these meetings that we run over the course of the weekend least these meetings are convened by and organized by the Council in its capacity as Policy Manager within the GNSO but they're open to everyone, of course.

But in particular they are intended to facilitate interaction with - throughout the GNSO on the matters that are being brought up by no relevant to the two members and published in the GNSO so feel free to come up to the microphones, make any points, questions, comments -- whether you need to understand more or whether you'd like to contribute.

So the next item we cover is the work of the - on the PDP Group working on the IGO INGO access to curative rights and I think we're going to hear from Philip Corwin this morning.

Philip Corwin: Thank you Jonathan and good morning everyone. If we can have the next slide please. Okay, this Working Groups been going for a while since last fall. We've gotten very good staff support from Maria Wong and Steve Chan. Peter Rudeforth is the Co-Chair of the Working Group. Peter is not here this morning. He's arriving tomorrow for this ICANN meeting.

Early on in our work we look - the original charter asked us to look at international intergovernmental organizations as well as nongovernmental organizations. We dropped the nongovernmental organizations because there was no need to address their access to the existing curative rights processes or the UDRP and the URS because if they have a trademark they clearly have standing and there's no solid immunity.

It should be because they're not in any way connected to governments since they're nongovernmental organizations. We - key question we focused on is whether the existing procedures need to be modified and if so in what way where if we need a new process for the IGO's. Where we are -- we've reached a preliminary conclusion that the standing to file a complaint should depend on an IGO exercising its rights under Article 6th Tier of the Paris Convention.

That gives IGO's protection in national trademark systems of all nations that are signatory to the Paris Convention as long as all nations that are members of the world trade organization and all they have to do is file a notice with WIPO and then that notice goes out to all the member nations of those two groups I just referenced.

And that - we decided that would be the basis for standing because that is the system that's been set up by governments for these organizations to avail themselves a protection in national trademark systems and we're talking about curative rights processes which are related to trademark protection. We felt that simply having a dot into domain name was insufficient to confer standing and since the barriers to getting standing are so well, just filing that

notice with WIPO there was no problem for any IGO that wanted to get to the standing position.

So the more - the final remaining issue we're grappling with is whether - is to determine, "What is the scope of sovereign immunity for IGO's?" And the one instance in which sovereign immunity would become - would become an issue would be the extremely rare instance where an IGO withstanding saw the UDRP -- and we're not talking about URS because there's no appeal right to national courts in the URS.

If the URDP if it went in favor of the complainant, IGO, and if the registrant wished to appeal that they have a right under the existing UDRP rules to appeal to a court of national jurisdiction. So the issue is if that occurred -- and it would be a rare instance we believe would be brought into a national, court -- violate the scope of sovereign immunity for IGO's.

Now we have found several instances where IGO's have availed themselves of the UDRP. They've had no problem withstanding and apparently they haven't cared enough about the sovereign immunity issue to defer them from exercising their rights under the UDRP. So far as feedback from the GAC and the IGO's -- and I want to thank Mason for his efforts in this regard -- we've finally about a month or two ago received a response from the GAC to a number of questions that we had posed several months earlier and I must say that we found the answers not particularly useful to our work.

For example, the GAC, I believe out of the L.A. meeting, had asked us to create a system that was a phenomenal cost to IGS and we did point out that our Working Group has no capacity to create any subsidy mechanism whereby filing for a UDRP or URS would be free to an IGO but we asked the GAC, "Well the existing fee for a URS is \$500, the existing fee for UDRP is \$1,500, is that, in your opinion, nominal? Does that fit your definition of nominal?"

And the response we got back was a nonresponse. They really didn't get in there. So we've given the GAC and the IGO's opportunity to give us guidance and feedback. We've gotten a little bit from the GAC which has not been particularly helpful and quite surprisingly we've gotten zero feedback from the IGO's which is somewhat surprising since they are the ones who asked us originally - asked the GAC to have us look at this.

We're hoping to have a meeting here in Buenos Aires and with some people from the GAC and from the IGO's if they wish to show up but we're doing what we can. So next slide please. I'm almost done here. I know you're finding all of this fascinating. We're going to continue to engage with the GAC via Mason and with the IGO if they care to interact with us to get their perspective on the policy and international law issues relating to our work.

We're working with staff right now to identify an expert in international law who can give us some guidance on the scope of sovereign immunity for IGO's to see whether that rare instance of an appeal in the UDRP to a national court would violate this -- the proper scope of their sovereign rights.

We prepared draft questions for that legal expert and we do expect to - we hope to certainly complete our work before Dublin and to file an initial report for public comment before the Dublin meeting in October -- so that's where we're at and I'd be happy to answer any questions about the substance of our work or what's left before us to get to the final draft report stage. Thank you.

Jonathan Robinson: Thanks Phil. Any questions, comments, or issues arising on this? Avri?

Avri Doria: Thank you. Avri Doria speaking. The question I had is -- and I'm not sure whether my memory is correct on this. Is this one of the issues or GAC felt that we didn't necessarily have a role to play in making these decisions and is that perhaps connected to their lack of response or do we think the lack of response is just they're too busy?

Philip Corwin: Let me respond and I invite staff to add to my response. I don't believe that's the case. In fact I - my understanding is that the GAC wanted us to address this and the GAC has been wanted - they're answers were not particularly helpful in terms of guidance.

They have responded and they have issued two communicators which spoke to the work of this Working Group -- so they're aware of it, they have an objective to it, and - so I don't think there's going to be any issue that we're operating outside our proper scope by issuing a report so far as the GAC is concerned.

Jonathan Robinson: Any other comments, questions? So do you - at this stage you don't have a confirmed meeting with the IGO's at the ICANN 53?

Philip Corwin: I defer to (Mariam). She's working on the logistics.

(Mariam): There is an informal meeting between Working Group Co-Chairs and certain GAC representatives. I don't know if the IGO representatives will be there. Mason will certainly be there to facilitate the meeting. It will happen during this week.

Jonathan Robinson: Good, that's encouraging. Okay, any other comments or questions -- issues? Okay, thank you Philip and (Pate) in his absence and the rest of the - you working on that group. Let's close that session then. If we could just ask for a signal, lights -- were ready to go.