

**Transcription ICANN Singapore
IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
Friday 13 February 2015**

Part 2

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On page: <http://gns0.icann.org/en/calendar/#feb>

(Chris): Okay, so we're back, have we got everybody back on remote here? Great, so I thought just straight after the break it might be helpful (Phil) if you could summarize where we are and where think we could still get to on this issue before we move on, on the agenda.

(Phil): Okay I will try as best to summarize what we've accomplished so far today and then we can move on to the next topic, which I believe is discussion of whether we're talking about possible potential amendments or clarifications rather of UDRP URS versus creating an entirely new curative rights process for IGO's.

I believe we have general tentative consensus that Article 6 Tier creates sufficient protections within the trademark system to provide the basis for standing to bring an arbitration action without an IGO being required to take the additional affirmative step of actually registering a trademark in their name and/or acronyms.

What we still have to look at is whether we want to simply produce a report that says we're just clarifying that that standing already exists or whether without any guidance language in the WIPO guidance to examiners or whether we want to suggest the possibility of such language.

We want to make sure that we're not creating any new rights that don't exist already. I think Kathy's comment was useful that common law - I think we might want to stick to just Article 6 Tier in our interpretation of what it confers in the way of protection rather than this reference to common law.

Trademark rights because Article 6 Tier is an international agreement that's recognized globally and she pointed out that common law trademarks are not a universally accepted concept among all nations and there's certainly no treat on them.

And we've also - we've been focused on the UDRP, we've noted that we have to address any distinctions between it and the URS and discuss that at some point down the road.

Ad we've only been discussing standing we have not been discussing if you have the standing we need to compare the language, the existing language for a complainant required for a complainant to prevail in a UDR PDRS versus the scope of protection provided by Article 6 Tier and compare the settled distinctions between those similar but somewhat different language.

And decide whether to prevailing once an IGO has standing without affirmative trademark rights is the requirement for prevailing the same as for any other registrant, which would be a trademark owner or should it be keyed to the subtly but distinct language of the scope of protection provided by Article 6 Tier.

I think that covered everything. Have I missed anything, have I mischaracterized anything? So we've got a good, you know, not a - we got to make we're (unfriendly) but we're at - but I think we have a good consensus on standing but we have some work left to be done on it.

And so we need to note that down the road we're not done with the subject but we have gotten over a major speed bump. I'll stop there.

(Chris): Thanks (Phil). (Peter).

(Peter): (Peter) here, just wanted to make one, they're also on the initial general description in the current UDRP I point two stating to domain holder your representations by applying to register domain name or by asking us to maintain or a new domain name registration.

You're here to represent the warrant to us that A, the statement you have made in your registration agreement are complete and accurate and here comes the first one.

B, to you knowledge the registration of the domain name will not infringe upon or otherwise waylay the rights of any third parties. It doesn't state anything about trademark specifically, other rights generally.

C, you are not registering the domain name for an unlawful purpose and D, you will not knowingly use the domain name in violation of any ethical laws or regulations.

It is your responsibility to determine whether your domain name registration infringes or violates rights. So these are actually already kind of general reference within the UDRP.

And then of course later on when the rights as they are specified today both in the rules and regulations says - both in the policy and the rules says, trademarks or service marks.

But it's interesting to note that initially talking about others rights so, which if they can't compute the Paris Convention.

(Chris): Thanks (Peter). Are there any last thoughts or - we have somebody on the bridge, who is that? George, George could you come in please?

George Kirikos: Yes George Kirikos speaking. Just to go back to (Peter's) point about Paragraph 2 of the UDRP that he was remarking. That's actually called the octogen analysis put forth by Professor (Andrew Christie) and a couple of other panelists.

That's actually been an approach that's been rejected by most UDPR panels and so it's been kind of a hotly debated topic. So I wanted to - thought to get the impression that that's sort of the consensus view of WIPO.

(Chris): Thanks George. Anybody else have anything that we should add to this discussion? If not we will move on, (Phil).

(Phil): Just for my clarification, George what is - could you explain in a sentence or two what is the octogen analysis that you believe is not accepted by most panelists? Just so I'm clear on that I don't want to let this point pass and not have a full understanding of it.

George Kirikos: George Kirikos here again. Basically there is a preamble to the UDRP that says that when your domain registrant is registering a domain name they agree to various things and doesn't actually form part of the UDRP tasks. But some panelists look to that preamble and said ah ha we can use that language perhaps to say that, you know, a domain name can be renewed in bad faith and then it doesn't constitute a registration.

And do they kind of did a lot of, you know, legal gymnastics in terms of their reasoning to try to use that paragraph against domain registrants. And there was a lot of debate amongst various panelist decisions.

But if you go to Google and do a search for, you know, octagen which is spelled in the chat room O-C-T-O-G-E-N analysis UDRP there are a lot of articles about it and most panelists reject that analysis.

(Phil): Okay so just following up, yes just stating for the record most panelists will get the actual requirements for prevailing say that UDRP, which is that the registrant had no legitimate rights in the domain name they registered.

That it's identical or confusing similar to a trademark that's owned by the complainant and that the registration and you said then they've both been in bad faith, right?

George Kirikos: George Kirikos yes that's right.

(Chris): Mary.

Mary Wong: So this is Mary from staff and so just to clarify and maybe for those who haven't looked at the UDRP I've pasted the language from Paragraph 2 in the notes pod in Adobe chat that I think (Peter) that's the paragraph that you were reading out.

(Peter): Yes.

Mary Wong: And that's the paragraph that George was talking to. And (Phil) I think what you just noted is what is Paragraph 4 of the UDRP, which is some of the language that we were talking about in our thought exercise.

And for those who again are unfamiliar with the UDRP, Paragraph 4 that we were talking about earlier sets out this re-substantive (grant) to fill this. And so I thought it would be helpful to make that clarification.

(Chris): Thanks Mary.

George Kirikos: George Kirikos here.

(Chris): Go George.

George Kirikos: I posted a link to the chat room with the domain name (Lyer) article where a lot of the octagen analysis is dissected in a long UDRP decision. And so I think that's kind of formed a consensus at the moment that the octagen analysis was a dead end.

(Chris): Thank you, I'm looking around the room and I'm looking in the chat room, nobody there. Great, can we move on and regard this issue having been completed for today.

Okay not completed but for today. It seems on. Great thank you, we - then we've got a second back on the agenda and which (Peter) or (Phil) would you like to summarize one sentence from the discussion?

(Phil): Well it's not before us but I think the what I was hearing is we're supposed to commence discussion on the merits of amending you UDRP URS versus new dispute resolution policy at DRP.

And so let me kick off a discussion, it seems that up to now in discussing the standing issue we have generally agreed that the most we might want to do with the UDRP, we haven't gotten to URS yet although it probably won't be that different is that it would be to clarify some - the UDRP through some additional language in the guidance to examiners that's published by WIPO.

We haven't even been discussing any amendment to the actual language of the UDRP. So it would seem to me that if we're not even willing to discuss minor amendments to the UDRP that we're probably not going to be in agreement on creating an entirely new curative rights process.

And to add further I think the only reason we might even think about that would be if when we get to the sovereign immunity issue we find that the existing appeals mechanism within the UDRP, the availability of appeal to a

national court creates an insoluble problem that cannot be solved within the existing arbitration system.

And to me that would be the only instance in which we would even begin to think about a new curative rights process. So I'll stop there but that's kind of where I'm at and where I think we're at on the issue and I'm not sure what to talk about but I'm not sure it's going to take an hour and one-half to really cover the CRP) if it's a general consensus among the group that we don't even want to consider it at this point and won't consider it unless the sovereign immunity issue requires us to down the road.

(Chris): Sorry (Peter) and Mary.

(Peter): (Peter) here yes, I agree to that and I also think that the - when we had our initial informal discussions with representatives for IGO's around this to what was preferred, the preferred way to go to amend URS UDRP or create new separate DRP.

I got the impression that the main reason why they wanted to have separate DRP was to avoid opening up the UDRP for this small amendment that would lead to probably even other proposals for amendments and additions.

And well by the way the UDRP will be checked out and generally sooner or later anyway but not for us to start to open it up. But if we actually come to the conclusion that there is no need to make any additions or changes in the regulations as such.

As you said thereby there is no reason to discuss amendments or a separate policy but draw the two to find a good way to inform and to clarify where the Paris Convention will be suited in this as related to trademark or compared to trademarks, thanks.

Mary Wong: Hello this is Mary from staff again just a couple of points. One is that there is nothing to stop our group under (Chris') direction from moving the order of topics around.

So if it would make more sense to postpone this discussion and plunge into sovereign immunity that's something we could consider.

Secondly, because if you go back to the charter of our working group I think (Peter) you just pointed out that that's what this group was directed to consider.

Whether to amend the existing procedures one or both it's not whether a new DRP might be more suitable that therefore two things. One is that we did look at the draft text that was brought forward in '07 and secondly, that's why we looked also at the thought exercise while amending the UDRP that (Peter) provided.

But that will be important going back to our charter to be able to document for the GNSO council the reasons why this working group decided or will decide whether or not to proceed down a certain path.

And (Phil) to your point that there's a sense that we don't want to go down the path of a new DRP. I think it might be helpful to at least try to set up those reasons.

And one of those reasons may be what (Peter) had said that the UDRP may be reviewed in due course. And so if there are others it would really be helpful to have those on the record and hence this particular slot.

(Phil): And (Phil) again, yes responding to that if we - if it's our and it is our tentative general consensus now that IGO's covered by the Paris Convention have standing to use the existing UDRP to brand UDRP action.

If they can use the - it seems to me if they can use what already exists why would we think about creating something entirely new again unless when we really get into the sovereign immunity issue we find some insoluble issue there.

And just noting for the record so far as general review of the UDRP my understanding of where things are at is that there was going to be a staff report on the efficacy of the new RPM's right protection mechanisms for the new TLD's.

It was supposed to be delivered by March 30. Staff requested of the GNSO a six-month delay in the delivery date for that because there was ongoing research and projects and surveys that would contribute to that staff analysis.

And the GNSO granted that six-month extension, which moves the deadline for deliver to October 30 late this year. And that once that staff report is received and discussed it may lead to a motion to establish a PDP on not just perhaps revision to some extent of those RPM's but review of the UDRP.

But that's something that's not - no one is going to get into it until probably first half of 2016 at the earliest. So we know it's coming up on the horizon but for our work it's down the road, it's much broader and it really doesn't interfere with it or really overlap with what we're all going to, which is a very narrow issue of can IGO's using the existing arbitration procedures.

(Chris): Thanks (Phil) and Mary. (Phil) I'm just and (Peter) I'm just thinking would it make sense to then move onto the sovereign issue before perhaps (unintelligible) back to this before the end of the day?

(Phil): I think so but I am noting that in the block for what we're supposed to be discussing there is a parenthetical code including possible quote on quote mechanics for IGO filing for George K's suggestion.

So while we're on this I think we want to move quickly onto sovereign immunity but since George is online with us and it's getting late in the, you know, geographic region where he is, to ask George whether he had anything he wanted to say about that suggestion to remind us of what it is and see if we want to discuss that for a few minutes before moving on to sovereign immunity.

George Kirikos: Hi, George Kirikos speaking. I was planning to be here until 4:00 am so don't worry about my schedule. I did want to note that in the timetable we have the 1:30 to 2:15, which is to discuss the list of qualifying IGO's, GAC list versus Article 6 Tier database, which is kind of more related to standing.

So we might want to move that up in the schedule and then push everything down to discuss sovereign immunity after that item or we could just keep it as it is I don't really care but it seems more logical to have the list of qualifying IGO's earlier since it's more related to the standing issue where we've already kind of formed a consensus.

(Phil): Yes George actually I think that's - we kind of just touched on that before the break about the difference between IGO's covered by Paris Convention and other IGO's, which are in (unintelligible) on the list we got from the GAC.

But before we get - so I think yes I think your suggestion makes some sense. I don't know what others think but before that did you want to say anything about that suggestion about IGO.

I think your suggestion was that government's file on their behalf and I don't know if you wanted to get into that and bring it up at this point or leave it for another time.

George Kirikos: Sure, George Kirikos speaking again. There is an echo. Sure I could go over and that and it will just take maybe three or four minutes to go through the

background and what the actual idea is and what the other idea is. Is that okay or?

(Phil): Is that okay with the group if we have George bring that up for a couple minutes and maybe discuss it a few minutes and then move on to the Paris Convention coverage versus the other IGO's, which continues kind of in the standing area and then we can move on to sovereign immunity either before or after lunch? So yes go ahead George people are nodding their heads around the table here.

George Kirikos: Okay, George Kirikos speaking again. So this is somewhat conflated with the immunity issue so I'm going to talk about that as well. Before this workgroup even convened I thought to myself, you know, what are the deep issues of this work PDP going to be.

And to me the standing issue wasn't that controversial I thought we would get past that. The real I think stumbling block in my opinion was going to be the immunity issue.

And so I said, you know, what are the possible outcomes and the first option - somebody is going to enumerate these on the side bar perhaps, is to take a hard line and say that, you know, there's not going to be any change to mutual jurisdiction.

And you can advocate that that's, you know, a reasonable outcome because, you know, IGO's already waive their immunity when they're registering domain names.

And we have the (UNIFEM) State Department, sorry the U.S. State Department letter in the (UNIFEM) complaint where, you know, United States State Department said, you know, you go and force your rights directly don't involve us, you know, we're not going to do anything.

And so in the offline world, you know, IGO's would be expected to enforce their rights and they wouldn't be able to avoid these immunity issues. They'd have to waive immunity in order to enforce their rights as a sword.

So immunity is really a shield, which prevents the IGO's from handing over their assets if somebody makes a complaint against them but they can't really use the immunity in order to compel somebody else to go to a certain dispute resolution mechanism outside their national court.

So bottom line, the hard line route, which is the option number one is no change in mutual jurisdiction, no change in the UDRP whatsoever. However that hard line might be politically incorrect because people might expect, you know, some accommodation for the IGO's given the sympathy that they seem to get amongst some parties with the ICANN community.

So the second option, which would be a total kind of cave in to the IGO's views and which is what they've kind of advocated for is to create a new dispute resolution mechanism.

Where instead of the court system having the ultimate authority over a dispute I - if there was an appeal in a UDRP case or whether there was not necessarily an appeal but a court case that was even brought during a UDRP, which suspended the UDRP entirely, which is how for example in my (pupa.com) UDRP the complaint was handled.

The WIPO panel suspended or sorry terminated the UDRP and let the court take over and other people have done the exact same thing. (Matt Cohen) did it for the sdt.com.

But anyhow the IGO's in that scenario would say, no the courts wouldn't have jurisdiction anymore we would let some international tribunal have ultimate authority and so the national courts would stay out of things. And in my view

that would be a very, very substantial change to the UDRP for a variety of reasons.

First the - there was a brand bargain that was made when the UDRP was being negotiated and perhaps Kathy can speak to this later. It said that, you know, we're going to provide this mechanism, which is in a sense opted in on both sides.

You know, there's the complainant that opts into it and the respondent in a sense opts into because they can go to court afterwards so they can totally disregard whatever the UDRP panel says.

That grand bargain would be overturned if instead of being an ultimately binding decision it became - sorry ultimately non-binding decision that it became a final decision without any recourse to the courts. So it would violate that grand bargain that led to the UDRP in the first place.

The second point was that, you know, it would basically turn the UDRP into a, you know, a contracted adhesion, which is totally against, totally one-sided in favor of complainant's.

And various jurisdictions around the world including my own the Province of Ontario have rules against that, laws against that for example the consumer protection law in Ontario says that, any mandatory arbitration clause is non-void.

So people always have a recourse to the courts in Ontario and I think that is a case in other jurisdictions including perhaps California and some states in the U.S. because we've seen the horrors of the arbitration system and national arbitration forum, which says UDRP and URS arbitrations is not immune to that.

They were forced out of credit card arbitrations due to complaints by the Attorney General in their home State of Minnesota. And so that's the second option, which would be to given in to the IGO's and create this international arbitration system that is final with a recourse to national court.

Now I spent a lot of time thinking about this and there is a third option, which would be a slight tweak to the UDRP and this was based on our thought experiment kind of how (Peter) was doing.

What would happen in the real world if there was, you know, if there was a violation of the Article 6 Tier rights so, you know, UNESCO or another IGO if you opened up the UNESCO Restaurant.

My thought experiment told me that UNESCO would complain to the national government or the police in that person's jurisdiction and the police would bring the complaint against the alleged violator of those rights.

And so that led me to thinking that instead of having the IGO bring the complaint for the UDRP you can simply change the complainant to the police or somebody else how is not concerned about the mutual jurisdiction clause.

So that the police or not the police the Attorney General or the Minister of Justice or whatever in the relevant jurisdiction of the registrant would be the natural person to act as a proxy for the IGO.

So for example if it was UNESCO they'd go to the Attorney General for Province of Ontario if it was a restaurant in Ontario or a domain registrant in Ontario who registers unesco.food or whatever.

And so that proxy registrant - sorry that proxy complainant for the UDRP would have no problem whatsoever with the mutual jurisdiction clause because they are obviously located in that jurisdiction and are not concerned with the jurisdiction of the courts in their own system because you can

obviously sue the government, you can sue the Attorney General to challenge an inappropriate arbitration ruling.

And we do have a precedent for that in a sense with the (Unitaid) UDRP decision. There the proxy wasn't - sorry the proxy complainant wasn't a government but it was a law firm who was assigned the trademark rights by the IGO.

And so instead of the IGO bringing the complaint the law firm brought the complaint. So it's the exact same idea. So the tweak to the UDRP then would be to allow for that proxy registrant - sorry that proxy complainant. And I thought that was a somewhat elegant solution to this whole thing, issue of the code restriction and immunity of IGO's.

However there was another solution, which is option number four, which was (Paul Keating's) suggestion, which said that if you keep the current UDRP however you clarify the mutual jurisdiction so that instead of being an unlimited waiver you have basically a limited scope to the waiver of their immunity.

So it limits the scope of an IGO's (unintelligible) liability from agreeing to the mutual jurisdiction clause to that of the domain itself. The purpose of IGO immunity is to protect the IGO assets from being seized by third parties it's just a shield.

If the IGO's provide the limited waiver so that the only downside for them involves the domain name itself and that's no incursion on their other assets then that should be, you know, a sufficient accommodation for the IGO's concerns.

So the court action only takes place to block the domain transfer so the domain name was never in the IGO's possession in the first place even if the

ERP decision favored the IGO. So that kind of limited waiver would be another accommodation.

So basically the third and the fourth options are kind of ways to accommodate the IGO's concerns, accommodate the GAC with limited downside for registrant's right who could still appeal to the courts.

And so I think those are the big four options but perhaps other people have further thoughts.

(Phil): Yes I have - (Phil) here. I have two continuing the thought experiment kind of playing devil's advocate a bit. On the last one with the limited waiver I guess we could look at that.

That would require some amendment of the - is it the RAA that gives rise to the language in agreement that registrants sign with registrar's where they agree to be bound by the UDRP? Does that arise from the registrar accreditation agreement?

I'm not sure but it may require if we think it has some - if it's something we want to explore it possibly would require some amendment of some contractual document between ICANN and registrar's.

That would then be reflected in the agreement that registrants, the standard agreement that all registrant's sign when they, you know, enter into a business relation with a registrar.

On the other one am I correct in that you're saying George that if the national government will be asked to bring the action on behalf of the IGO would be the one in which the locale in which the registrant resides? Is that what you said?

George Kirikos: George Kirikos here, yes that's what I suggested however - there's an echo again. However it would also work in, you know, we allow a general proxy to bring forth the complaint.

So it doesn't necessarily have to be the government we could use the (Unitaid) precedent to allow a law firm to do it but they don't necessarily have to modify the UDRP in that case because we could just point to that (Unitaid) precedent and say, you know, we don't require any UDRP amendment because here's a way for the IGO to do it with amending the UDRP.

That would suggest (unintelligible).

(Phil): Who brought the action in (Unitaid)?

George Kirikos: Their law firm.

(Phil): Okay well maybe that has some viability although that would require extensive legal costs although they're probably going to bring any arbitration through what you did - through a law firm or counsel anyway or, you know, but sometimes they might want to rely on in house counsel it depends on their (unintelligible).

I have to say I don't think the notion of asking the government or the registrant's jurisdiction to do it. I mean let's say you're UNESCO and the registrant who one, are you able to identify where the registrant resides, have they given correct Whois information, have they used privacy proxy protection.

Can you even make that determinant but let's say you find out and the registrant's in Vietnam or in Belarus. What are the odds that the government of those nations is going to devote personnel and financial resources to bringing an action in an ICANN arbitration action on behalf of a, you know, an IGO.

And they may not, the national may not even be a signatory to the Paris Convention or a member of the World Trade Organization. So I have to say I don't think that one would really work just because - and I'm not sure that would be well received.

And the GAC would be saying, our proposed solution is to impose costs on national governments to bring legal actions on behalf of IGO's. But that's my immediate reaction I don't know if others have reaction to it.

(Chris): Let's to (Peter) and then Mary.

(Peter): Yes (Peter) here, I just want to say that I fully agree with (Phil's) conclusions here. I think that there would be more risks and don't make the (unintelligible) that should be, thanks.

Mary Wong: This is Mary from staff and not to support or not support the suggestion but noting for the group that in the (Unitaid) instance that George has linked to and that we have on the Wiki as well.

This is goes to (Phil's) point that because it was UDRP complaint concerning trademark rights and that particular instance (Unitaid) and it's law firm had what we call a fiduciary agreement where the law firm registered the national trademark and held them for the benefit of (Unitaid).

So to the extent the group goes down the route of looking at mechanisms or potential mechanisms that could make it easier for IGO's under whatever system there would be some issues with something like that.

That's not to say there might not be others but as (Phil) pointed out if we're looking at 6 Tier, which is a negative block as we said earlier, we might need to be a little creative about what those mechanisms might look like.

(Peter): (Peter) just a quick proposal. There's a difference between when you have, already have legal agreement where you are allowed to represent as an attorney but actually to represent for good or for worse in legal actions in your own name.

Frankly from my part of the world in Scandinavia it's a little bit hard to see which law firm will actually sign up for that with all their risks also. But I know that I presume that in the U.S. for instance it's more maybe natural to do that. But also one thing with local attorney but as you said I don't think it would work with if you put on the responsibility to the local regime, local authorities for at least not for some of the countries in the world.

And also as in some of these disputes the - you have to lead with someone that is recognized in Whois as the holder of the domain name but frankly, you know, for some reason that this is not the person, the person or the company, someone in another country but the they have chosen to register officially their domain name in someone else's name.

And that will force you to go to a specific country with additional legal problems to deal with in the courts.

Mary Wong: George has his hand up and then if I may get in the queue behind George.

George Kirikos: It's George Kirikos.

(Chris): George then Mary.

George Kirikos: Well, I have no problems, you know, with the mutual jurisdiction clause not changing whatsoever that, you know, if IGO's want to use this curative rights mechanism, you know, they have to agree to meet (unintelligible) jurisdiction.

So what I was just proposing was an alternative to it that would attempt to accommodate their concerns in a manner that least affected registrants that

still preserved the rights of registrants to go to national courts because it's kind of an either or situation and so this kind of balances the rights of both.

And I did want to note that it's the national governments who find these treaties and will have the obligations to enforce the rights. It's the governments who, you know, have to block the trademark of their national trademark registrations.

So it kind of makes sense that the obligation if an IGO has a complaint that the national government is the treaty signatory have the, you know, the requirement to, you know, file the complaint on the IGO's behalf if, you know, they feel the complaint is meritorious.

Mary Wong: This is Mary, I'm next in the queue right? I have two comments I guess. One is, this working group could either itself look at what the benefit of presumably I think we would need subject matter expertise on these issues.

Potential alternative mechanisms for achieving the objective that George has outlined, which is if we don't amend the UDRP how do we make it possible or easier for IGO's.

So that may be one thing that we might want to look at as a group or that we might want to look at as a recommendation for our group back to the council that it may be possible and we encourage ICANN to look at these issues et cetera.

So there's maybe a potential avenue for exploration there and I think it's worth discussing if we want to go down that path. So on top of (Paul's) and George's suggestions what other avenues there might be.

The second comment I had was in response to George's comment about the government being the signatories and George that's absolutely right as you know.

I think one thing that did jump to my mind as I looked at your comment was that the government's obligations under 6 Tier are to block third party registrations.

I think there might be an issue there then with then asking them to either to bring these proceedings as to whether or not that might be viewed actually as going further than the national obligations under that treaty, thank you.

(Phil): Yes as we discussed it's clear that, you know, now that George has reminded us of the substance of this it's really all geared toward concerns about the sovereign immunity issue, which we haven't, which is supposed to be discussed later.

So maybe we should kind of move onto that but yet amplifying Mary's point all a government and again we don't - every government has not signed Article 6 Tier or is a member of the World Trade Organization.

But all they've committed to there is basically a very low cost administrative function of simply okay we've gotten the WIPO notice and of course they have the option under the Paris Convention in regard to any particular name or acronym to say we're not going to provide the protection against the registration for that one because they got for some reason they don't like that organization or they don't recognize it.

They have that right under Paris Convention to opt out in regard to particular organizations. But let's say they've opted in, all they've agreed to do is say okay we're putting this on a list and if somebody tries to register a trademark that looks like it we're going to not let them do it in our country, which is a pretty low cost administrative function.

And asking them to bring an affirmative legal or arbitration action on behalf of an IGO based on that I think is probably a bridge too far.

(Chris): So I'm just checking and based on what I'm hearing it feels as if it may make sense to come back to this issue as to whether we're going to amend or create a new UDRP or DRP.

And perhaps what we should do is spend the next 45 minutes with (unintelligible) on the item, which was due to be at 1330 to discuss the list of qualifying IGO's.

The GAC versus the 6 Tier database because would that lead into the discussion on the sovereign immunity issue?

(Phil): Yes (Phil), for myself I think yes I think what we've discovered is the - what we've just been discussing as well as the only reason to consider a new CRP are all geared to the sovereign immunity issue, which we're going to start discussing later today after lunch.

So I think it's best we put all that aside now and get back to this issue of IGO's covered by the Paris Convention versus other IGO's that have met the dot INT requirements or on the block list provided by the GAC and discuss what those distinctions are.

And whether, you know, whether I guess the question is should an IGO that's recognized somehow, you know, by the internal community but isn't covered by the Paris Convention are we going to give them standing or are they just, you know, what do they have.

Is it sufficient to - sufficiently similar to the Paris Convention blocking rights to confer standing or are we going to conclude that it isn't. Are we going to distinguish between them, which would put us at some odds with the GAC, which is trying to put them all on the same - mix them together and say protect them all somehow?

Kathy Kleinman: This is Kathy, so may I ask a question, which is - I'm sorry because I know I missed a few meetings recently but could somebody briefly help me by outlining the two groups, size, scope perhaps of those IGO's protected under 6 Tier and those IGO's protected under the other types of standards that the GAC may be asking for or under dot INT.

Are we looking at million, you know, how do we quantify because this may change our analysis? It will certainly help.

(Phil): I believe that Mary is making physical signs, which indicates that she may be some enlightenment assistance on this issue because I certainly do not have the facts at hand to provide any enlightenment and I don't know if (Peter) does but because I don't recall any extensive - I think we've noted this distinction in past discussions but really haven't gotten into the substance very much.

Kathy Kleinman: I see to recall the IGO is under 6 Tier we were talking about 160 somewhere. I did recall the number 160 came up but that's where I would love to know kind of quantities magnitudes of some of the other categories.

Mary Wong: I don't - this is Mary from staff. I don't know about enlightenment but I will try to assist somewhat. One issue with the 6 Tier database I think as George noted because he was the one who helpfully took some burden off of staff and did the initial research with that.
The 6 Tier doesn't just cover names and acronyms of IGO's as everyone knows. I just want to reiterate this for the record, it covers flags, (unintelligible) bearing et cetera et cetera and emblems, which might also include IGO emblems.

So in a sense it's hard to go into that database and say just how many IGO's because we don't know that it does mean the IGO name and acronym. It may be possible to ask WIPO for that information if they have it.

I recall that maybe about eight to ten years ago they did provide an update to the standing committee or even the general assembly about the number of IGO's. I do not recall if they limited that to IGO's with names and acronyms, so that's point one.

Point two is that when you look at the GAC list I think as George has already noted and as we know it's not the same as those on 6 Tier. There are some IGO's on the GAC list that have utilized 6 Tier protections but not all of them utilize them for names and acronyms some just did it just for acronyms. So that might be a further, you know, detail that we need to look at.

Third point is that as we also noted in previous discussions the GAC list, which is the list that this working group was presented with as a starting point by the GNSO council was created by the GAC based on the dot INT criteria and what I've done is paste it into the notes part of the Adobe Connect the exact language of the dot INT criteria for IANA if that would be helpful.

And obviously even if we've got a list of the number of IGO's that are registered in dot INT that's really now the same as all those who might be eligible to register and have chosen not to, which is in and of itself a fact that was acknowledged by WIPO in its report in WIPO 2 in 2001. So again I don't know how enlightening that is.

(Peter): (Peter) just a clarification question. What you're saying is that those that are registered on the GAC list may not be possible to register on the Article 6 Tier?

They are accepted by GAC but there can be different kind of reasons why they're not officially registered (unintelligible) or am I wrong there?

Mary Wong: I have an opinion - this is Mary from the staff right, I don't think I want to add that. I think if we look at the language in 6 Tier I mean clearly it does apply to international inter-governmental organizations.

So there is a substantial overlap in correspondence with the dot INT criteria but I think we can safely say that maybe it's not exactly the same in the sense that there are IGO's that may qualify under both but that may choose not to register in the dot INT for reasons that are entirely unrelated to trademark type protections. I'm not sure how useful that would be.

(Phil): I have a point of clarification. Who established the criteria for registration dot INT? Is that the United Nations or some other - I mean how set the standard is my question? And maybe we don't know that and have to look into it.

While you're looking at that I think this is important because our consensus so far regarding standing is based upon the Paris Convention. And if we're going to be intellectually consistent if there are IGO's that qualify per dot INT but cannot or have chosen not to get Paris Convention coverage I don't think we can extrapolate and say we - that they have standing.

If we because our standing decision that we reach is based on the rights within the trademark's, the protective rights within the trademark system conferred by the Paris Convention.

I don't think we can just say, and other IGO's get that standing too unless we determine that they, however they decide their - from whatever they derive their IGO status maybe it's another treaty or something among various nations.

Unless it gives them rights within the trademark system I don't or protection within the trademark system I don't see how we can make that leap and say that they're included.

That may make the GAC unhappy because the GAC has lumped them all together but I think we've got to be intellectually consistent here.

(Chris): Kathy.

Kathy Kleinman: This is Kathy, I agree with (Phil) completely. Also I'm looking, I'm in the U.S. trademark database, which is open to anybody, so anybody if you can find it and if you can't ask me for the link.

And so I'm looking at names that fall into the category of what (Phil) was just talking about. And they seems to have very strong protection. So UNESCO is here both as a logo but also as a text mark, which is a text mark for those people who don't live and breathe this stuff is, you know, a series of letters that are registered.

It's the strongest form of a trademark, the broadest form of a trademark. And here UNESCO just, you know, I'm sure it's in other federal databases as well but in the U.S. Trademark Office it's registered in the principle trademark registry, which is our primary trademark database.

And the standard given for it is Article 6 Tier Paris Convention. So UNESCO has taken the affirmative opportunity that (Phil) was talking about to register through - to exercise its rights under Article 6 Tier.

And the U.S. has correspondingly registered it on the principle database, that's very clear protection and that's really something we could hang our hats on and, you know, the world can.

It's something to point to that exists and is very solid. So and on - I was looking at UNICEF is the same way and lots of other of these very famous UN organizations.

(Chris): So I'll to (Val) and (Peter). Could you turn your mike up a bit?

(Val Sherman): Good idea, this is (Val Sherman). I fully agree with what (Phil) and Kathy just said and I also wanted to note that I mean the GAC's listing of registered

names that are temporarily protected right now so the jury is still out on what will happen with those names right?

And I may be wrong but I think that there are ongoing efforts in ICANN. I mean this is kind of I might need somebody more experience with ICANN's dealings to correct me if that's wrong.

But I feel concerned with like you said hanging our hat on this stuff as well. I think that we need something more grounded and something that's been more widely recognized and accepted.

(Peter): Just a question for Kathy, (Peter) here. So what you said was that UNESCO has registered as a national trademark, word mark? Okay so those are examples also for the organization...

Kathy Kleinman: Not as a trademark registration but through the Article 6 Tier - not as a trademark but through the Article 6 Tier Paris Convention. So it's not a trademark that assumes standing it is invoked the protection affirmatively and actively the Article 6 Tier.

And the U.S. has implemented that by putting UNESCO as a mark in the principle trademark registry.

(Peter): ...okay and but at least it's searchable in the U.S. (PTO's) register?

Kathy Kleinman: Yes.

(Peter): Okay.

Kathy Kleinman: Which I didn't realize until I started - (David) and I were kind of talking about some of the big UN organizations so I through it in the database and started seeing how it's showing us where the United States is telling us the protection comes from.

(Peter): Let me just circle back I know Mary has some information on dot INT but I want to just pursue this a touch more. As I understand it and somebody correct me if I'm wrong, the temporary protection granted under that list is a blocking protection in new TLD's is that correct?

I think that's it, which is very different than the question we have, which is access to some type of arbitration process for in IGO's and it's also broader in that that blocking is only for new TLD's and we're considering access potentially to the UDRP, which covers all the legacy TLD's as well so it's broader.

So I just wanted to note for the record that it's - what the temporary protection granted to organizations on that list and that's something that ICANN has agreed to, you know, with GAC request is very different from what we're considering, which is access to some type of dispute resolution process based upon rights within the trademark system conferred by Article 6 Tier.

Mary Wong: Hi Mary again so I'm going to try and keep all my different responses and comments in order. So in no particular order, (Phil) you're right as in how that list has been implemented on a temporary on an interim basis.

And I think this is really important for us to remember because the board has recognized obviously that there is ongoing work in the GNSO. So much of this pending the outcome of that work including the work of our working group.

Secondly, then back to the list that was provided by the GAC in 2013 and as I said just now is the list that we will start to work off of by the GNSO council. And so (Phil) in response to your earlier question where do we get the dot INT criteria that is criteria set by IANA in pursuance of RFC1591 from March 1994 written by (John Pastel).

So the authority there is IANA because they would, you know, authorize to operate the dot INT domain and this is the criteria that from the IANA body.

The other point then I'll also go back to Kathy's and (Peter's) points, the national trademark practices for implementing of 6 Tier do vary and I think we did cover some of this in earlier meetings and including the U.S. practice, which is very similar to the Australian and other common law jurisdictions as the staff research showed.

And that is simply that going back to our standing discussion for an IGO that has indicated its intention to be protected by 6 Tier, that indication has been duly notified by WIPO to national state signatories to Paris as well as the WTO.

No objection has been received by any of those states and clearly in this case no objection was received to for example UNESCO by the U.S. Government. Then the national practice would be however it is that under their national law they do a trademark registration.

And in the United States they place those marks under a special sequencing designation so that it does come up in an examining attorney or an examiner's search. So Kathy I think you've just given us one example of how that looks.

Going back then to the list I think it is incumbent and probably advisable for this group to go back to that question what is it and this is what (Val) was saying that would make sense.

And if for example this group says that the dot INT criteria for various reasons is helpful but it's not certain or predictable and we do need those Article 6 Tier notifications and I think this is a topic that maybe Mason can take up with the GAC through the council or in some other form.

But obviously then if you look at the dot INT criteria it talks about an international inter-governmental organization established by treaties between one or more governments and that's the sort of organization that's also contemplated by 6 Tier.

(Phil): A question Mary, thank you very helpful but I want to drill down a little bit. So what I heard you say is that the criteria that qualifies an organization for eligibility to register domain to dot INT is under dot INT is under a policy established by (John Pastel) pre-ICANN under some ancient RFC.

What exactly does an entity have to demonstrate to be eligible per dot INT registration?

Mary Wong: In the chat.

(Phil): It's in the chat? Okay.

Mary Wong: In the notes column.

(Phil): Okay it must be considered to have - I'm reading this and an independent (unintelligible) and legal personality and governed by legal international law. And who makes that determination IANA?

I mean does someone check once - how do you register dot INT? I mean do you go through a registrar or do you go to someone special? I don't understand that.

It's certainly not one that the registrants are familiar with or they're using. So how is that actually done what are the mechanics? But kind of what I'm getting to is that these criteria however they're reviewed upon a request to register a domain dot INT may have nothing to do with protection within the trademark system, which is what we've based our consensus on, the Paris Convention on.

So I think again if ICANN and the GAC has agreed whether ICANN was correct or incorrect in agreeing to this temporary blocking protection at new TLD's for the list they got from GAC that should not be determinative for our purposes for standing to bring in arbitration acts.

(Chris): Kathy I - yes I see lots of nods of heads around the table. Kathy would you like to comment?

Kathy Kleinman: Just briefly yes, agree completely. The other thing was if I was setting up dot INT criteria I would make it as broad as possible because there's no conflict. You want as many organizations to go into dot INT as possible.

And they still haven't gotten to dot INT because we don't see it every day. We don't use it, we don't see it so you would want that to be as broad as possible. I do agree completely with the way (Phil) scoped it and the agreement.

And also just what you create as registry policy, registration policy is different than trademark policy. And when the world overlaps and conflict, which they don't do in dot INT that's a different scenario.

We're operating in a different world, we're operating in the world of all the TLD's.

(Chris): So it seems as if we have agreement on the issue. Is there a way forward if we are looking at the agenda item, which is I'm trying to determine qualifying IGO's, which is the GAC list versus the Paris Convention.

Mary Wong: While people are thinking, this is Mary from staff, always a speech vacuum. We're looking at some of the WIPO 2 documents because I think going to Kathy's last point that there may be certain issues that have already been

previously identified with the dot INT registration and that goes to (Phil's) point as well.

In terms of action items I would suggest that perhaps we look at whether or not we want to take the temperature of the group. Not necessarily today because we don't have all the working group members with us but maybe take it back to the mailing list and see if this is something that perhaps (Phil) and (Peter) and Mason can go back to the council with to say, kind of like what we did with the INGO's.

When we said, you know, you gave us a charter to look at IGO's and INGO's. We've decided not to look further at INGO's here's why. And whether we want to do the same with this list and maybe that's also a topic to be followed up next time but that may be a potential action item.

(Peter): Just to clarify, (Peter) here. What you mean is just too also make it clear why we want to limit it to IGO's covered just by the Paris Convention, yes. I think that's good if we can get a quick clarification on that and not add to much extra time on the work.

(Phil): Yes and coming back I do think we need to - I'm reading all of that INT criteria that's in the right hand box here. I'm still not clear on the action I think we need and we don't need it right now.
We need to understand the actual mechanics of an international organization. It's established by a treaty, you know, I understand the elements here between, you know, two or more governments and it's got separate legal personality and some kind of status with the UN and all of that.

I still don't understand who they go to. Somebody is reviewing this criteria, I'm not yet clear who I - if it's IANA staff or that and whether they have to go to registrar or just go directly but for me that's all beside the point.

This gives them the right to register a dot INT domain. It does not confer any rights. And it seems to me if an organization qualifies for dot INT but is not either for some reason can't qualify or is chosen not to be protected by the Paris Convention they can get rights to standing for the arbitration procedures by registering a trademark for their name or acronym, that's not a big hurdle.

But if they haven't done that there is nothing I see that gives them - that would confer stand - the criteria to that confer the right to register a dot INT domain. To me I don't see anything that would give them standing to bring an arbitration action if they haven't registered a trademark.

Mary Wong: So following up on (Phil's) comment, this is Mary again. That fact was actually explicitly recognized in the WIPO 2 process in the report. They do recognize for example that the IANA procedure makes no reference to 6 Tier even though it is limited to international inter-governmental organizations, which is also the language used in 6 Tier. So that was known as early as '01 in the WIPO 2 process.

And secondly, that they also note that IGO's who may easily get a dot INT may have chosen not to do so for a variety of reasons. Some may have chosen to register in other gTLD's, there's no limitation.

But there is a limitation in the dot INT space itself that may explain why it's not as fully utilized as it could be and apparently is limited to one registration per organization and that may not work for variants or other issues of abuse.

So the point is that these have all been identified and it may be a reason for the working group to consider inciting why you don't believe that the GAC's criteria would be the appropriate one.

(Chris): Kathy you're seeking clarity.

Kathy Kleinman: So (unintelligible) it looks like you go directly to IANA for registration of a dot INT domain and it echoes, it harkens back the rules of the dot INT harken back as still predictable words.

Two, RFC 1591 March 1994, (John Pastel) so this is pre-ICANN stuff and before any vision of new gTLD's and the massive expansion. These were, you know, designed, created dot INT TLD.

So, you know, we're visiting this new for the first time since the creation of ICANN in a lot of ways. So I think the sensibilities we're bringing and don't forget the massive conflicts that are about to come on the horizon.

Dot INT is a world that exists without conflicts. There is very little overlap among the acronyms of the UN organizations. Once you take these acronyms out except for the famous of all we're going into a world of a lot of conflicts.

You know, every three letter acronym is used a million times out there. So we - I like the narrowest scope that we have and if we have to go explain it to GAC let's go explain it to GAC.

(Phil): And thinking about this a bit more there would never be an abusive registration at dot INT because no bad actor, no intentional cyber-squatter could ever qualify to register a domain there.

So that's another good reason to say this is all very interesting from a historical perspective but really has nothing to do with the standing issue we've been exploring.

(Chris): So in terms of the discussion and for the record and I'm looking around the room is there a conclusion if not a decision to this discussion that you need to go forward whether it's back to the GAC or back into ICANN?

(Val Sherman): (Val Sherman). Well I thought that Mary's idea was to go back to the list and pitch the idea of going back to GAC for clarification as for that.

Mary Wong: Thanks (Val), Mary again. I guess the additional thing I would insert in there is probably to first go back to the GNSO council and I think the next meeting is sometime in March and unfortunately even though our counsel liaison is not here we can certainly brief her.

And it may be well be time for this working group to give an update on today's activities anyway in March.

(Phil): That's Susan correct?

Mary Wong: That's Susan, Susan Kawaguchi and following the counsel discussion and, you know, I think as Mason is looking forward to his next assignment it may well then be appropriate and timely for you to go back to the GAC.

But I think it would be helpful to have counsel sign off on this or at least some counsel discussion.

(Phil): I have a question related to this. How does an IGO - the protections provided to IGO's by the Paris Convention and the list of IGO's that's not a fixed list. It's not - was it fixed at the time of the convention or can new organizations qualify?

And could most IGO's that could qualify for dot INT qualify for Article 6 Tier protection? Because what I'm thinking is that one thing, one message we might go back with after discussing with counsel is to go back and say, hey if they are not covered by - if they're an IGO established by a treaty, you know, dot intelligible but they for some reason are not covered by the Paris Convention for the purposes of our working groups discussion, which is standing to bring an arbitration action.

They either got to take the affirmative step of getting Paris Convention coverage and getting added to the list. We need to understand the mechanics of that or they need to register a trademark in their name and acronyms that they want to protect.

But just because they qualify dot INT doesn't relate in any way the trademark system that's going to meet our criteria, our consensus on standing conferred by Article 6 Tier.

And if it's no big deal to get Paris Convention coverage then it really shouldn't be a problem.

(Chris): Is there any clarity on review Mary in terms of 6 Tier criteria?

Mary Wong: This is Mary again and I'm almost certain that I've come across this somewhere I just can't pull it up right now. So what I'll do is go back and look at the documents and the research that we have done noting that of course the term international inter-governmental organization as used in 6 Tier and as reflected in the IANA requirements for dot INT do refer to race specific organization that has to be established between governments et cetera et cetera.

But I'll try and find a specific instance where that has been documented or explained maybe after lunch.

(Peter): (Peter), just to make sure that I understand this correctly. When we talk about going to counsel to ask for clarification I hope we mean that we make a note first that this is (unintelligible) based on other schedules and the present regulations.

So that we have a specific (unintelligible) working group and then ask more than the general clarification that is this correct, this is how to read it so to speak.

Kathy Kleinman: Well that's what I have a question about. I've never seen this kind of back and forth with the GAC before in the middle of a policy making process. I mean what - this is strange to me what's going, you know, I can understand briefing the counsel, I can understand briefing anybody who wants to know what we're doing.

But asking somebody if it's correct in the middle we've been given a mission and I thought it was our job to figure out the definitions, the scope and to ask questions such as how many organizations are in dot INT, how many organizations qualify for dot INT.

Why, you know, if you want to explain why dot INT qualifications from 1994 would be relevant to existing TLD's that have expanded God knows how many fold.

So, you know, to ask questions to solicit information but to ask if we got it right. I don't know that seems a little weird.

(Chris): (Peter).

(Peter): Yes (Peter) here. I frankly meant that if we come up with our conclusions and more have their comments on it maybe I don't know if it needs to be written as questions or so a question for the comments.

But it's also a good way to actually communicate doing our work directly with GAC to have - to kind of force them to come back with their comments in the different spots of our work not just to read what our final conclusions and then come for the comments.

So yes I agree whatever we can formally call it but to at least inform GAC that this is what we have concluded so far and please come put your comments on that.

(Phil): Adding to that we're certainly not asking for their approval or their permission or anything like that. We take our charge from the resolution with the council resolution.

I created this group, which gave us specific instructions on what we should be looking at and what our goal is. We've already - the GAC communique out of LA, which told us not to look at amending the UDRP URS.

We took note of that and frankly ignored it because we're operating under a charter that told us specifically to look at that and but we are in a period in which we are testing a new method of which Mason is the human embodiment of it to try to better coordinate the ICANN policy making process with the GAC.

And so we're trying to better inform them of what we're doing and of course if they want to comment on that and so far they haven't really comment directly to us.

In fact we got a one sentence answer when we asked for comments before this meeting. They said, we're going to have nothing to say on this subject until after Singapore.

And that in terms of - and that's different that's a different type of comment than what they said in the communique. The communique is a message from the GAC to the board, they have so far given us nothing directly back.

We got something back from that IGO small group that responded directly to this but we're just trying to create a better line of communication between the GNSO council and its policy making work and the GAC.

And so as a matter of courtesy and as a way to show our bonafide commitment to try to make this coordination and communication process

work we're going to advise them when we reach significant decisions points we're going to advise them of what decision we've reached.

And if they want to comment back to us that's fine we're happy to take their comments under advisory but it's not a situation where we're asking them if we got it right or asking permission for anything.

(Chris): (Unintelligible) I mean yes it is different to have this sort of back and forth. It is a new thing to have this sort of back and forth in the middle of a policy process we're working on the basis that back and forth after the policy process has proved to be mostly terrible and we'd like to avoid it.

(Phil): And just to add - go ahead.

(Chris): And this has been a lot of the detailed issues about this yes it's in a trial process and we're sort of feeling our way as we go along but a lot of these issues have been discussed quite extensively by the GNSO GAC consultation group.

So we're hoping we - we're not just sort of charging into it blindly where they've never been quite considered by both GAC and GNSO representatives.

(Phil): And just adding on yes it is new and different but it's trying to avoid the situation we've all seen in the back where GNSO goes through a whole policy making process, comes up with recommendations and then the GAC says, the GAC has had no communications up to then and they say, we disagree completely, you know.

So we're trying to build a working line of communication so that we get some feedback that can help that will minimize or reduce the past pattern of the GAC not weighing in until the very end of a process and then often disagreeing to a large extent with the recommendations of the process.

It may happen but we're making a good faith effort here to communicate and we've been communicating with them and so far we've gotten no communication back except in these very informal discussions with certain members of the GAC but it's not with the GAC as a body.

(Chris): Mary and then Kathy.

Mary Wong: I have a comment but first I want to note that George has also been making some suggestions in the chat with respect to the IGO discussion and we may want to come back to that after we discuss this point.

So just two notes and again it's for the record and for newer members of the GNSO and this working group and I think this is something that has already made implicit or explicit in his remarks.

One is that the IGO's are not the GAC and while we've received a response from the IGO representatives, which is the coalition of IGO's that have been working on this issue that is not the same thing as a communication from the GAC. It certainly doesn't represent GAC advice to ICANN, which has to be based on GAC consensus.

And secondly by the same token, even though we've updated this working group on conversations some of us may have had with individual GAC members this week again that is not a formal GAC position.

So I think this is something that is essential for us to bear in mind and obviously it doesn't make Mason's job any easier but I thought that it would be useful to remind folks of these facts.

Kathy Kleinman: And that's why this very informal procedure is giving me a little bit of heartburn because it's Mason taking it to some individuals in the GAC who may or may not be acting formally on behalf of the majority.

One of the things that's nice about an issues report is you put it out to everybody and it has the whole process not a definition here or a piece there but it's the presentation, the package that the working group has worked so hard on in the PDP to present.

It's got the definitions, it's got the plan, the execution, proposed implementation up to a point and so you see where everybody is going. If you stop each piece along the way it might be taken out of context frankly in some ways or we may be checking with some people but not other people.

This is a new process and so let me just wave flags that there is some concerning pieces of this and kind of what it means to talk to a few people in the GAC short of GAC advice.

And we have a lot of really good questions. I'd love to get some answers from the GAC on some of these. So if we can present both our position in conjunction with perhaps some of the questions that we've been raising as well.

I don't know just as we define this new process what we may be setting up is a GAC veto along the middle and I just want to warn you that that's strange.

(Phil): Just to differentiate, whatever conversations any of us had, informal conversations with certain representatives of different nations who participate in the GAC this week, these particular representatives are particularly interested in this issue is very different than what we sent to the GAC.

We sent the GAC something very similar to what we sent to all the other SO's and AC's. It went to the chairman, it's our presumption that it's the chairman's prerogative and responsibility to distribute it to the members of the GAC and if they want to seek some consensus.

But we're making the effort but that when we have formally communicated, which has happened once as a group. We sent out a letter to all the SO's and AC's and said, this is where we're at we decided INGO's are out, here's where we are on the other stuff.

We invite your comments on a few particular questions plus anything else you want to - and we welcome your feedback and that's what we did. It's very open and transparent. We treated everybody equally, we got responses from some groups.

So it's different than informal conversations in the hallways and it's different from the new experiment that Mason is trying to implement to somehow better integrate the GAC into the policy making process to get their reactions before the very end of it, which has not been very satisfactory for them or for the council.

(Chris): (Peter).

(Peter): And also add and clarify that it's very good that we have some of us have personal relationships with GAC members or IGO members and that we can discuss specific topics and ask questions.

But what we also need to get back is if you have made this formal discussion to go back to us with that information so that we can from an early stage and continuously get a note on what's going on.

And also when we sent out these additional questions it may also get us some further input on for instance what discussions are going on within at least members of GAC, what clarifications do they need and what clarifications do we need to ask for them.

But again also these letters they are more formal but it's still important to have them to send them out to get as much as possible of some kind of

formal feedback or at least to make sure that we can prove that we have asked during the process for specific comments.

And we have also during the process went out to GAC with our report on this is what is going on, this is how we think, this is how we - this attitude on specific issues.

So hopefully we will get some inputs back but at least they can't come back to us when we sent out our final report and say, we haven't heard anything about this, everything is new to us and we don't agree.

And frankly at least from the more informal and continuous work we have got some input and there are members that are active in this. So the work so far has been it's not perfect but better than in other working group examples.

(Chris): Mary.

Mary Wong: Thanks this is Mary again following up on (Peter's) point. And what I'm going to say may be more pertinent for council consideration and I'm looking at (David) because you're on the council and I guess Mason will be at the next meeting since he's not here.

It may be worth considering that as part of the continuous back and forth and engagement that everyone is in agreement that it's not only necessary but helpful to consider whether or not it might be more helpful for Mason and again, you know, I can get a little bit (unintelligible) I keep saying you got to do this, that and the other not that I'm in any position to give any direction.

To do this it's such more informally and the reason I say this is first of all because the GAC is - has to deal with a lot of different issues even within the ICANN space and this is just one of them. In fact this is just one part of the issue of the IGO's more generally.

So therefore secondly, we've already given them a set of questions to Mason and we follow that up by the formal solicitation for input that referenced that set of questions.

As staff I guess I'm just a little concerned that we don't want to be seen as inundating them, you know, every two or three months with formal requests that have deadlines for feedback.

So this may be something to bring up to the council in March when we have that discussion item hopefully on the agenda as to how they believe that managers of the PDP would be the most appropriate way to go about it.

(Phil): I got to say I don't see - this is an issue that GAC cares about, protection of IGO's in the domain name system. And I don't see sending them a two or three page letter once a quarter updating them on our progress and sometimes soliciting some feedback, which is totally voluntary on their part.

They can do what they just did, you know, the week before we came here and have ICANN staff send a one sentence email saying we're going to have nothing to tell you until after Singapore.

But I don't see that as inundating them with excessive information or demands. I think that's pretty minimal and I think if we didn't do something like that at least once a quarter we could be seen as keeping them - I don't want to be seen as keeping them in the dark when they can say, you sprung this final report and recommendations and didn't give us any updates and didn't give us any opportunity for input.

So I don't see what we're doing as inundating. I just wanted to get that on the record.

(Chris): Okay Mason and Kathy and Mary.

Mason Cole: This is Mason, I think you're both right. I mean, you're right (Phil) that once a quarter isn't all that bad. Mary you're right we don't need to be inundating anybody with it.

My suggestion is we actually ask the GAC leadership and just say look we have some questions, we don't want to slam you, you know, what's the best way to followup because we need some more input and can you please give us some guidance and I think they'd appreciate that.

And that would give us a clue about whether or not we're, you know, over stepping with in terms of just too often communication. That's my idea.

Kathy Kleinman: This is Kathy, I like the process that I think (Phil) talked about. If we're going to have a formal communication let's send it to all the SO's and AC's. I think that's a very good way to do it.

It's formal, it's clear and that way if others have issues to weigh in on and that way we won't be viewed advertently or inadvertently of making GAC a party in a way that - let's send it to everybody.

(Phil): That in fact is what we did and if we're going to send it out we're not going to omit the GAC because then it would like we're trying to keep them in the dark.

But we've only sent one communication since we started working and it went to all the SO's and AC's and it was almost identical to all of them. And it gave them an update on where we were and asked two or three questions.

So it was - everyone was treated equally and it wasn't very burdensome for anybody and some groups chose to get back to us and other groups said we had nothing to say or didn't even say that they just didn't get back.

But I don't want to - we've been spending - I don't really want to say we got diverted but we - I think this was a good discussion. We've been talking about our process rather than the issues and we've got a lunch break scheduled right about now.

So maybe if others have - I got one last thing I want to say on this channel subject and then if others have comments on process then maybe it would be good if we break for lunch.

Are we going to take the full hour break? Do people want to take a full hour break or something somewhat shorter and maybe get back to work sooner and wrap up sooner today?

(Chris): Why don't we take 45 minutes?

(Phil): Forty-five okay, so we'll still have a 45 minute break. The last thing I wanted to say is getting back to if we come up with let's say a report which says we believe they already have would be useful, you know, that Article 6 Tier confers standing and nothing needs to be done or a little clarification might be helpful on that but it doesn't cover the other IGO's, which aren't covered by Paris Convention.

Just generally based on my long experience I'm a great believer in what I call creeping incrementalism where if you don't - if we come up with a result that doesn't cover every IGO in the world but provides very useful clarification and standing for a big bunch of them I think that's good progress and we can all be proud of that work.

So I don't think we have to have a mindset that we need a universal solution for every IGO on the planet. I think the group covered by the Paris Convention is a big and significant group and if our work results in useful clarification in establishing standing for useful arbitration process that helps

them protect their rights in their domain system that's a good result and we shouldn't worry about not having universal coverage coming out of our work.

(Chris): Thanks, also we're going to take 45 minutes now. When we come back I'm going to open this for just a couple of minutes and then move on. And in those couple of minutes what I'd like us to do is get to an agreement on the next steps, which it doesn't sound as if it will be very difficult based on the discussion that we've just had.

(Phil): Yes just, and just before break I think when we come back we want to - I think we've kind of discussed the IGO, the Paris Convention versus other IGO issues as far as we can today.

Kind of take notes on what additional information we need when we come back to it and then start the sovereign immunity discussion and get as far as we can on that today and that will be a good day's work.

(Chris): Great so be back in 45.

END