

**Transcription ICANN Singapore  
IGO-INGO Access to Curative Rights Protection Mechanisms Working Group  
Friday 13 February 2015  
Part 3**

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

(Chris): Thanks everybody. We're back from 45 minutes of lunch or late night coffee or whatever it is. I thought the just before we go any further it may be helpful to summarize what we've agreed in terms of action steps from this morning.

And I think (Peter)'s going to do that and we're going then to move on to the discussion on sovereign immunity issue. (Peter).

(Peter): Thanks, (Peter) here. Well initially for the first part of the morning we'll go back to the draft what we call the draft UDRP text and based on the comments we have got today make some amendments and send out to the full list of the working group so far.

And the second is to send out the new questions to GAC and others informing all our conclusion that we show strictly identification of ideas to Article 6 and not to the GAC list and ask for comments to that correct?

Yes.

(Chris): Great. Thank you and brief and succinct summary of this morning, thank you.

Any before I move on has anybody get any comments on that or anything to add to that, a summary of this morning?

Woman: George had his hand up.

(Chris): George had his hand up. George?

George Kirikos: Yes George Kirikos speaking. One thing I did want to note though about limiting things to the Article 6 (Ter) list is that from a domain registrant's point of view it's actually very good to limit it to the database because it's something where a registrant can actually be notified that there's some kind of mark in existence because it does exist in some kind of database that they can look up.

Whereas if we start expanding it to, you know, treaties between Uganda and Zimbabwe or all these other countries the registrant might have no idea that those marks or trademark like rights exist. So there is that advantage to limiting things to the Article 6 (Ter) database.

(Peter): Thanks, (Peter). I fully agree and it's good to see if we can use those comments in a proper way in our official notes as well. Thanks.

(Phil): And (Phil) here. I think that was a good point but one further thought. If there's no clear way to know that someone - that some IGO is out there it would certainly make it more difficult to - for that IGO's complainant to sustain their burden of showing bad faith registration if you really - there's no standard way to identify the IGO.

But and a good point. And I think we pretty much we're drifting toward a conclusion that the Paris convention will suffice in some way for standing but these other IGOs unless we discover some clear link to the trademark system probably not unless they gone unregistered trademarks in their names.

Should we tee up a sovereign immunity discussion then?

(Chris): Sure if you would (Phil) I think that would be helpful.

(Phil): Yes. Let me just, you know, okay let me - the way I'm thinking of that which is useful for me and hopefully for other people, I just think this is - we're dealing with a situation where I think sovereign immunity will seldom in the real world ever be an issue.

We do - we are dealing with a situation where IGOs that have registered domains in TLDs other than .int where I guess they go straight to IANA I think we're presuming unless we find out otherwise are doing so in the way every other registrant does.

They're going through some registrar to become a customer. They have to agree to the customer agreement which includes the right which informs them of the UDRP and then part of the UDRP is the right of appeal.

I think George made a useful point this morning that UDRP was created, you know, as an alternative to the standard litigation system one in which it was at the option of the complainant if they wanted to go that way and where the registrant for whatever reason could opt out and either stop the UDRP by filing a lawsuit or could appeal through the national court so their national court. So there's an important registrant right consideration.

And we also learned through some earlier work that at least if an IGO believes that a nation which is supposed to be implementing Article 6 (Ter) or protection for them has failed somehow and has allowed a trademark to be registered that wasn't supposed to be that's - then at least we found that US telegram that which said your option is to file LanaMax lawsuit in the courts of the United States.

That's affirmative act would take. It's not a government coming after them or a third-party dragging them into a court. It's their decision.

I think in many cases they would go administrative and try to get the PTO or the other national and other nations, other trademark authorities to extinguish the trademark registration.

There's usually an administrative process. But we're only to me, sovereign immunity only arises hypothetically where an IGO brings a complaint, let's say they bring a complaint in the current UDRP and they prevail.

And we know that in most UDRPs what 2/3 or so there's no response from the registrant at a 50-50 win loss rate where there is a response.

But let's say they brought a case and it's a clear-cut case of infringement. They've won the Web site, had a name that was their name or acronym or very confusingly similar whatever standard we decide on.

I mean what are the odds of the - it only arises where the registrant would appear under the current system to a national court where the IGO would be compelled if they want to defend their original win to respond to that court action.

And I think it still - so I think in the real world I know there's a principle at stake for the IGOs and this is not governments controlling them or taxing them or anything like that.

But while there is a principle at stake and we have to give, you know, due consideration to that as well as to registrant rights in reality I think the number of times that would occur is going to be very small.

So I just I think we have to take it seriously but we also have to think about the fact that it's in the vast majority of actions where an IGO yellow brings an

arbitration action to where they believe that infringement or some type of trespass on their rights has occurred in violation of their six tier protection it's going to be the rare case indeed when - where sovereign immunity becomes an issue.

So I don't think that's determined whether we can just dismiss it but I think it's a factor we have to consider. And I will stop talking at this point and let others start chiming in.

But I - one - I think parsing it I think we've got to think about the - what is the difference between governments trying to tax or control IGOs which isn't at stake here between an IGO of its own volition going to a national trademark authority, going to a national court to correct what it believes is a mistake and failure to provide adequate six tier protection.

And the third case would be where the registrant goes to the national court to either stop or appeal, stop a UDRP or appeal the decision in one which would be a very rare case if it's clear infringement going on.

Val Sherman: This is Val Sherman for the record. Just wanted to might there be scenarios where it's actually the IGO that's wishing to appeal the UDRP finding like if there is a finding of reverse domain hijacking and they actually need to escalate? I guess that was more of a question.

(Phil): Theoretically yes sure. Theoretically absolutely but I would presume most IGO - let's presume that they're only going to file an arbitration action where someone has registered a domain which the name of the domain is identical or very similar in a confusing way to their name or acronym and the content at the Web site is basically mimicking them. Maybe it's a charity scam or some other kind of scam going on.

So I don't see them going after unless there's something bad happening in the Web site what are the odds that why would they want to acquire it?

Usually, you know, reverse domain name hijacking is where somebody either doesn't want to pay the price, the market price for a domain or for some or they register the trademark way after the domain was registered and they're doing for some they want to acquire and they're not entitled to get it. And that's what arises.

I don't - why would IGOs even want to bring that kind of - so theoretically it's possible but again but I think that we're talking about a very rare case.

Mary Wong: This is Mary from staff. And to just let folks know that what we have up in the Adobe room is the IGO small group response to this question which this group started discussing at our last meeting.

Much of it probably repeats either GAC advice or, you know, responses that we've had before. They do say in the top part of the bottom page that you see there that - and this seems to be in response to a view that they've heard that IGOs regularly waive their immunity that their assertion here is that that exception has to be taken at the highest levels of their organization meaning the director general for example.

And I raise this point first to draw people's attention to the fact that we have had at least an initial response so we may want to go back to them as well as to the GAC after today.

But also to note that one of the issues seemed to be not so much the regularity or lack thereof or the chances of them going to court or don't appeal reverse domain hijacking but the blanket submission, what George is calling the mutual jurisdiction clause that in order to even have something done under the UDRP you have to agree.

And that may or may not be something that this group finds helpful but it seems to me that that's the objection that you have to submit regardless of whether you are taking action, whether there's an appeal or anything like that.

In other words it's different from a case where they have the discretion to decide whether to oppose or to file a claim, et cetera, for what it's worth.

(Phil): (Phil) here. And I'm not trying to monopolize this but let me jump in here.

What's process language, because I don't find it? I think is both informative but not entirely convincing what they sent us.

I want to go to the second paragraph here, the one at the bottom of the page. We're looking at the sentence starts when an attempt is made to summon an IGO before a national court that would be the case where a registrant appeals to a national court as is their appeal right under a UDRP. That seems to be their concern.

You know, and again as opposed to then they say - but then they say the enforcement or misuse of IGO identifiers is the responsibility of the state signator of the Paris convention and/or YW - World Trade Organization trips.

As we found out at least in the United States -- we still don't know about other countries -- the US position is well if you think we have an adequately enforced your trademark rights under Paris convention your remedy is to file a LanaMax suit.

So at least one sovereign state has said, you know, you want protection, file a lawsuit in our courts. And they're really their position seems a little inconsistent to me.

They're relying on government to protect them in national trademarks. There's no Internet. There's an international treaty but there's no international trademark system.

It's implemented by different nations in somewhat different ways. So it's kind of like we want all of the protections provided by the nation but we don't - which is through their governments but we don't want to be subject to that. You know, we want the benefits without the obligations.

And then in the paragraph above what did I want to say here? They say all right sentence, a couple of sentences subjecting IGOs to the laws of the given sovereign state parenthetical for example by appearing before a national court closed parenthetical would effectively require other sovereign states that are members of the IGO to seek some sovereignty to the state in which the national court sits.

So they're saying it's not just an offense to us. It's an offense to all the nations that created us, if one - if the court of one is determining our rights somewhere.

But if we find that other nations have the same position that the US - if they failed to properly implement the Paris convention protections that the recourse is to their particular national court then it - then maybe the governments have at least passively acknowledged that that's the way it works.

And of course the governments let's try a reverse experiment. We know that individual nations are not obligated to implement the Paris convention protection for any particular IGO. They have an opt out rate for each and everyone. Is that - have the other - and they've all agreed to that.

So if there's some IGO, you know, XYZ IGO and a particular nation says hey XYZ IGO for whatever reason we're not going to protect in that trademark



system have the other nations that have created XYZ have they lost any sovereignty or has their sovereignty been diminished by that?

So I don't have the answer here but I'm not convinced by this argument see if they want to have their cake and eat it too.

They want protection from government run trademark systems and maybe even - and maybe even the option to go in the court if that's the way the nation says. But they don't want to be brought into the same court by another party.

(Chris): George Kirikos?

George Kirikos: George Kirikos speaking. Yes I agree with (Phil) it's not a very convincing statement talking about having rights without any responsibilities to be held accountable.

One point I wanted to make, two points I wanted to make. First in the top paragraph in the Adobe it mentioned IGOs are not required to defend their rights in national courts. And I think that's an important distinction.

This isn't about defending their rights. This is about them enforcing their rights.

So there's on the one hand they can use the immunity argument as a shield but it's an entirely different matter for them to be using it as a sword where they're trying to enforce their rights against some other third-party, their alleged rights.

And then to go to the second point I wanted to make was that the enforcement of misuse of IGO identifiers is the responsibilities of the states signatory.

And this is a point I made maybe not half an hour ago or an hour ago when we were talking about the four different policy options that we have that that would be consistent with the idea of having the state be the proxy complainant.

If it's the IGO's argument that the states are the ones who are supposed to enforce the treaty then it's entirely the state's obligation to file the UDRP and defend it in national courts if it was appealed to a national court by the respondent in the UDRP.

(Peter): So (Peter) here. Is our conclusion so far that we need to reach out to them and get some further...

George Kirikos: No.

(Peter): ...specifications maybe with some examples from us on other cases where they may be forced to use national legislation in how this is compared to well, domain disputes, just a suggestion.

Mary Wong: This is Mary from staff. I think a couple of things. One is that as still noted the Paris convention itself does allow for a state that would otherwise be obligated to implement 6 (Ter) protections to register an objection.

It doesn't state the grounds. And at this moment we don't have the information as to how many have done that and for what reason. I'm not aware if they're even obliged to even publicly state their reason.

So just wanted to follow-up on that that you cannot implement, if you want to not implement as a nation state you have to register your objection and that's provided for.

The other thing is in respect of national implementations and (Phil) as you noted for the United States we have that document from something like ten years ago two things.

One is that I think there was some follow-up with the US GAC rep who I think was going to get back to us with any updates or clarifications on that. So maybe that's a worthwhile thing to pursue with individual GAC reps. We could send a request to a few for example.

Having said that I think even though staff hasn't done the research it would be probably in my personal view very difficult to find without that kind of engagement any sort of policies or rules in individual states as to how they deal with these things.

We can find rules at trademark practices, trademark offices practices to what they do when they get the notification.

But the limited research we have we don't have any information as to any advice that they may give to IGOs as to what to do except for things like the State Department document.

So it may be worthwhile going back either to the GAC or to the IGOs or to both with some sort of specific follow-up.

And in talking to the IGOs who - well the one IGO who was here the representative from (WICO) I - that indicated that that might be something forthcoming from this group...

(Phil): Yes.

Mary Wong: ...because it does seem to staff that. While this is initially helpful it probably doesn't get specific or detailed enough to assist us much further in our analysis. I'd like to add one more point. Can I keep - go on?

Man: Sure.

Mary Wong: And maybe not right this minute but if we do have time this afternoon it might be worthwhile for the working group to recall the NGCPs initial proposal to the GAC from a year ago now almost regarding some suggestions for dealing with the - this particular issue.

And it does go into a little bit of things like the URS. But I didn't want to - I didn't want us to forget that there was a proposal which seems to have been in discussion but hasn't been officially responded to.

It's the March 2014 proposal that was sent to - that was sent to the GAC in March by the NGCP just before ICANN 49. And that was also sent to the GNSO Council at the same time.

(Phil): And what did that propose...

Mary Wong: I can pull that up if you give me...

(Phil): Okay.

Mary Wong: ...a minute if you think...

((Crosstalk))

(Phil): I'll give you a minute.

Mary Wong: ...it is helpful.

(Phil): While you're doing that just to get some thoughts out here I think we need to ask the IGOs at least that small group that responded they just explained to us when some nation is messed up and you believe they've allowed a

trademark registration that they failed to protect you, they have an objective so they've accepted their responsibility. You've notified WIPO, they've accepted their responsibility to protect you, they've allowed the registration of a trademark that you believe violates your Paris convention rights how do you deal with it?

And then let's say they come back and say oh well we've been to the trademark office and asked them to extinguish the mark.

Then am trying to think is that, you know, nation's passed trademark laws. And there is a way to protect your rights, administrative rights and what in the US is, the executive patent trademark office is part of the Commerce Department. It's part of the Executive Branch.

Is there a significant difference between going to the executive branch of a government for purposes of protecting their sovereign immunity is it going to the executive branch with administrative remedy sufficiently different from going to a judicial branch for relief in the courts and making themselves subject to court decisions?

I'm not sure there's a significant enough difference that it really - I think once you ask a government to protect you or firmly ask them whether it's the executive branch or the judicial branch you, you know, you've conceded a little bit of your sovereign immunity to get protection.

So again I'm trying to understand how this all gets implemented in the real world. And I think we have to find out. And maybe it's just, you know, Mason and others just reaching out to individual GAC members saying hey, you know, do you ever require IGOs to file litigation in your courts to protect themselves if they think you haven't done so?

Because to me if we find out a significant number of major nations have the same position the US has in that 2002 telegram, you know, hey you're not happy file a LanaMax suit that would really undermine their argument.

If the nations that have signed the Paris convention it's a significant number and so, you know, substantial nations have that position. We don't know the answer yet but I think we need to find this out.

Mary Wong: (Unintelligible).

(Chris): George?

George please go.

George Kirikos: Oh sorry, I was muted, George Kirikos speaking. Just to continue with the analysis that (Phil) was raising to pose the applicant for a trademark that happen to be identical to that of an Article 6 (Ter) mark had the mark rejected by the trademark registration authorities the USPTO in the case of the United States or SIPO in the case of Canada.

Presumably the applicant could go to the courts of their national jurisdiction and file suit against the trademark board in the courts or through the appeal mechanism in registration authority.

And so while the IGO isn't sued directly they'd kind of be an intervener with an interest.

And so putting a kind of a domain perspective it would mean that the decision-maker, in this case the WIPO panel or the NAF panel, the UDRP panel would be the party that would be susceptible to the lawsuit if we kind of used that approach although that's probably something that would be - put the UDRP panelists and WIPO and (MAF) on kind of red alert to oppose that.

But that would be possible, one possible approach that those complainants instead of being against the IGO would be against the panelists and the UDRP providers for making an incorrect decision.

(Phil): Mary this document you just put on the screen have we ever seen this document before? I don't...

((Crosstalk))

(Phil): ...recall seeing this.

Mary Wong: Yes the working group hasn't discussed this document because we haven't approached the sovereign immunity issues we're doing now.

It was sent to the council by the NGPC last year in March so...

(Phil): Okay so council saw it?

Mary Wong: Yes.

(Phil): (David) do you have any recollection of council reaction to this document?

I've got to say I find this document, you know, privileged and confidential. It's not that confidential because at least council (unintelligible).

But I find it some parts of it disturbing. Now modifying part one trademark clearinghouse modification that was decided to be an implementation of rights protections in new TLDs.

So it's not policy and what's proposed is not particularly bothersome letting them submit up to two acronyms for free for registration in the clearinghouse, you know.

And that's subject to a contract between ICANN and the - and Deloitte who they chose to - then - but then it gets more disturbing.

Then ICANN will modify aspects of the URS to enable IGOs. When they say ICANN who are they talking about? Are they talking about ICANN the community through a policy process or they talking about the NGPC on its own doing this which is just a board subcommittee? So it will be ICANN.

Well how can they commit ICANN to do something before the community has discussed it in a forum like this?

Mary Wong: (Unintelligible).

(Phil): Okay. I'm just raising questions here. But there they say they're going to, you know, in cases involving this for URS IGO names and acronyms requiring consent to national jurisdiction will not apply. And the outcome of such case will not be appealable.

I mean this involves registering rights that, you know, and I think if people are shelling out, you know, \$50 or \$100 or more for a domain and a new TLD on an annual basis which is a lot of the pricing they want to make sure they have - that they don't have diminished rights when an IGO brings it.

Then arbitration mechanism, the NGPC has just accepted their argument that we're first beginning to debate that they can't consent to the jurisdiction of a national court and that ICANN in consultation with IGOs will develop rules and procedure of an arbitration process to resolve claims, doesn't how it'll be different.

Then we go down - okay well that's the three. That's the UDRP. Again there's no consideration this document of registrant rights.



And the UDRP changing that, changing rules and procedures at UDRP or some new arbitration well that's kind of what we're engaged in.

But that's a big deal. That's not again I'm not sure how they could commit to this, put it on the table for IGOs that's something they could promise in any way or commit to getting done?

Mary Wong: Me?

Man: (Unintelligible).

Mary Wong: Yes Mary. And I'm just trying to pull up some of the documentation...

(Phil): Okay.

Mary Wong: ...that followed for this so I'll come back with more specifics.

However I did want to note that this particular proposal does cover more than what our working group is...

(Phil): Right.

Mary Wong: ...chartered to do. And I know (Phil) you find and I will imagine most members will find those parts that concern our work actually the troubling parts.

(Phil): Yes.

Mary Wong: But I wanted to note that because it does take place in the broader context of the broader ongoing discussion as we know from - that stemmed from the prior PDP Working Group.

So just to add to what I think (David)'s recollection is that this has been the subject of council discussion for the past year including in London in June

when there was discussion about the GNSO possibly modifying some of its original recommendations.

So this letter was part of that consideration and subsequent discussions with the NGPC between NGPC and the council does have this in mind including the NGPC letters to the council following in the council responses to the NGPC.

So these are the ones I'm trying to pull up so I can give you more...

(Phil): Okay.

Mary Wong: ...specific dates. But the point is that this was something that the council has acknowledged as part of its discussions and the NGPC subsequently did acknowledge the work of our group because we called that his proposal was sent before this group was constituted.

And so the subsequent correspondence that shows the NGPC and the board's acknowledgment that this is work that would be undertaken by our group if that's helpful (Phil)?

(Phil): Okay I guess here's what bothers me and we're getting a little bit but this is related to our consideration. You read the first bullet under 4, impact of future GNSO PDP on the URS modifications and arbitration mechanism.

It says that the terms of discerning modifications to the URS and creation of an arbitration mechanism for the benefit of IGOs will remain in place unless the board adopts further improvements to the URS and UDRP pursuant to any policy development process.

By implication that contemplates these types of very major changes being done without a policy development process.

And of course what we're involved with is a policy. Is this a PDP...

Mary Wong: Yes.

(Phil): ...this working group?

Mary Wong: Yes.

(Phil): That's what I thought. Yes. I want to make sure of that. So it just concerns me that the NGPC would kind of hold out to the IGOs that they could do this without the full kind of process we're going through that considers all the legalities and all the rights of the different parties affected.

Because I don't see any consideration in this document about its promising a lot to the IGOs at the expense, potential - and eroding appeals rights to registrants in that process.

So okay, I'm just reacting to the document I've never seen before.

Mary Wong: Right, right. And I just want to get some dates.

Man: Yes.

Mary Wong: (Unintelligible) is something and (unintelligible) is going to be really short.

So just again for folks who haven't been following this saga this proposal was in June which - I'm sorry in March of 2014 it was part of the dialogue that was initiated after the GNSOs - after the GNSO's adoption of the original PDP recommendations which was November 2013.

So we had the GNSO's recommendations adopted wholesale by the council in 2013 some of which as we know were inconsistent with GAC advice.

This March proposal was part of the board February 2014 resolution to try to achieve some sort of resolution but the reconciliation.

The GNSO council then in June initiated a PDP and chartered this group. And I'll come back with more. (Peter) go ahead.

(Phil): Okay. One more thought on that and then I'll defer to (Peter).

We know that the UDRP is a consensus policy whereas the URS and trademark clearinghouse are implementation of the rights, general rights protection policy. At least that's was the view the community came to.

But still the URS is baked into the applicant guidebook. So any change in the US would require an amendment to the applicant guidebook wouldn't it?

Mary Wong: (Unintelligible)?

Man: No. I mean no, I don't have an answer to that.

Mary Wong: No.

(Phil): Oh.

Mary Wong: So Mary again, sorry, don't have an answer. But that is one of the issues that was called out in the issue report that preceded the formation of this working group and is referenced in the charter of this working group as one of the things that we should look at.

We haven't done so yet and you remember the work plan that (Steve) and I prepared because unless and until we look into amending the URS or something it's really maybe not something that would be useful for our group to consider at this time so not a full answer but again something that was fed into our chartering in June.

(Phil): Okay. But I do note if you want to see what the elements are of the URS you go to the - you go to that module of the Applicant Guidebook. That's where it's found. It's an implementation of the general rights protection policy for new TLDs. The language is in the Applicant Guidebook.

And I thought any modification of that or the trademark clearinghouse was going to proceed after the delivery of this staff report that's now deferred till October 30 of this year on the efficacy of the existing matter.

So all of this is very - I just don't know how the NGPC could hold all this kind of promise out to IGOs and kind of ignore the fact that changing the URS requires amendment of the Applicant Guidebook and that changing the UDRP requires a PDP.

Mary Wong: That's what - and that's what we were chartered to look at whether the URS should also be a consensus policy.

(Peter): No problem. (Peter) here, just a couple of comments and further questions in fact.

But I think it's interesting to see is that it's specifically noted about URS modifications on the general more General Point 3 arbitration mechanism UDRPs mentioned but as in very general terms that there is a problem we have to solve, no specifications.

But I think it's interesting when it comes to the URS. For one thing is that it says that the URS rules require in consent to national jurisdiction will not apply and the outcomes of such cases will not be available to any court or national jurisdiction.

That in fact actually comes to both the domain holder and the complainant so I mean, it's from both parties.

So it doesn't solve where IGOs will take a case that they that disappoint which kind of jurisdiction or what kind of court are we talking about there.

And also it's noted that specifically for the URS the last point the IGOs will not be required to pay for the use of the URS.

We heard that before claim that it's - the system is so expensive, et cetera. And although it may not be one of our main issues but we had it on a question and we got some comments on it. But again I can't see any comments on that in a point three dealing general with the arbitration mechanism.

(Phil): And I have - looking further at this document and the portion you just referenced where it says IGOs will not be required to pay for use of the URS, the filing fee modest is at 500 but it begs the question okay who is going to pay?

There is the two providers, the National Arbitration Forum and the Asia Domain Name Center for Dispute Resolution. They have to pay their examiners to decide these cases.

Is ICANN going to pay it? Who's going to pay it? I don't, you know, I know there's an MOU. I have - I looked at it once quite a while ago between ICANN and the two providers. At least there's an MOU. There's no contract with UDRP providers.

Does that MO you allow ICANN to compel URS providers to provide free arbitration to certain parties? I don't know.

And then I want to note another thing down here Glossary Number 5. This relates to the big discussion we had all morning where we decided that the

list that ICANN got from the GAC that the IGO's covered by the Paris convention.

We have a general consensus they have standing to use the arbitration procedures. We have a general consensus that the other ones unless they've registered trademarks don't have standing because there's nothing sufficiently related to trademark protection.

And yet the glossary says eligible IGOs and IGO whose name appears on the list attaches annex to that March 22, 2013 letter from Heather Dryden to Steve Crocker, while that's the mixed up list where some are Paris convention, some aren't.

So that also is totally inconsistent with the reasoning of this group so far and the conclusions we've reached to date.

So none of this has been implemented. It's out there and I don't know what they're going to do with it and I don't know if they're thinking about ever trying to impose parts of it that, you know, are congruent with the work we've been charged with doing by the council.

But I do find aspects of this disturbing. It just looks like the NGPC said, "Hey we're going to give you hey IGOs we're going to give you stuff to make you happy without considering the rights of the registrants and without considering all the very complex and subtle legal issues that and process issues that this working group have been grappling with for months."

(Chris): And without understanding the topic.

Mary Wong: Okay so this is Mary again with hopefully further clarification.

I really do think it's very important to note that this proposal was before this group was chartered and that the council did take note of this because

subsequent to this and subsequent to our chartering there was further discussions between the council and members of the NGPC.

There was acknowledgment from the NGPC that - and I can't remember exactly which letter it was in but there express acknowledgment from the NGPC that the GNSO has now chartered a working group to look at some of these issues.

And so what staff would suggest here is not to really focus on this. We're putting this up here as an FYI because there is explicit acknowledgment first by the NGPC in the late summer last year and now by the GAC in its latest info communiqué that we are working on this and whereas a year or so ago the landscape was very, very different.

(Phil): I have a request though to staff and then we'll let George speak. Mary can you - not now but, you know, once we're all back from Singapore next week or so before we get back on the sovereign immune topic can you send us all this document with the brief history of the process by which it was sent to the IGOs and considered by the council?

And also find out what is its status now? Is it still on the table? Is there still a possibility that this or significant parts of it could be implemented?

And in particular is there any chance that any parts of it will be implemented that implicate the work that we're engaged in?

Mary Wong: (Unintelligible).

(Phil): Okay. Let's let George go.

Mary Wong: (Unintelligible).



(Chris): Well Mary perhaps you could respond to that before George given I think that's a very pertinent question.

Mary Wong: Thank you (Phil) and (Chris). In working with the staff that's support the board and there in relation with the GAC the policy staff understanding is that where the NGPC and therefore the board are concerned that these are issues that our working group is working on.

And their focus right now therefore is on the other outstanding recommendations and that they're not focused on this particular issue because they recognize this is an ongoing PDP.

(Phil): And just so I understand what that means the other outstanding recommendations are the temporary blocking mechanisms that were put in place for all of the IGOs on that March 2013 list?

Is that correct?

Mary Wong: More specifically it would be what the permanent protection is and it would look like including Trademark Clearinghouse notices and the like.

Man: George, could you go. Thanks. And (Phil), could you turn your mic off?

George Kirikos: George. George Kirikos speaking. In the chat room on the Adobe I posted some links to a couple of Canadian court decisions regarding an IGO called the Northwest Atlantic Fisheries Organization. They actually own nafo.int and - (or an) IGO.

One of the decisions is from the Supreme Court Canada and it talks about the limits of their immunities. The immunity that the IGOs are talking about is just not absolute as they claim. It's limited and part of the language.

As I quoted in the room that it's not absolute immunity from legal process in this case Canadian courts. Rather it's the title to immunity to the extent and only to the extent that can show that immunity in a particular case is required for the performance of its function. And the Supreme Court - that was (a maze) first appeals court case.

And then in the Supreme Court Canada decision, which was higher up in the chain of cases the same broad case for NAFO to perform its functions however does not require immunity from a separation indemnity claim.

Separation indemnity does not interfere with NAFO's functions. Indeed NAFO recognizes that, you know, the separation indemnity for - to A under its staff rules and concedes that the NAFO immunity ordered it not a (unintelligible) (a maze) claim.

So I think, you know, one of the questions we have to think about is, you know, is a domain name ownership something that's a core aspect of the operation of the IGO. I would say no. And so that should be a consideration involved.

And (although) just to talk about the draft of (unintelligible) draft, which lists (some) IGOs that's obviously unacceptable because it doesn't weight the costs and the benefits that ICANN and its constituent bodies should be (unintelligible), you know, benefits to one party and it's disproportionate to all other parties.

Man: Can I just take a check here? Given that you haven't - maybe haven't seen the document that Mary has just put up and this will take broad discussion, what would it be helpful to achieve in the next hour on this issue? Anybody.

(Phil): So I'd like to hear from some of the other members of the working group. I mean we had...

Woman: (Unintelligible).

(Phil): ...yes, and we'll get - let George weigh in in a second. But we've kind of had a preliminary discussion of sovereign immunity and some of the information we need to really get a better handle on the question.

We've been shown a document that most of us have never seen before about something that NGPC put on the table last year to IGOs. But that hasn't been implemented and seems to be on hold at least for now while we're doing our work.

But what else can we - what else should we be talking about focusing on for however much longer we want to continue? I mean we're scheduled till 5:00. Doesn't mean we have to meet till 5:00. But we're all here in the room and, you know, there may be other useful things we can do at least for the next hour, hour and a half that we want to use the time while we're here.

But what - so I'm kind of asking the group, you know, what do you think we can get done or should be talking about on sovereign immunity?

Man: Thanks (Phil). George, do you have a comment?

George Kirikos: George Kirikos speaking. One approach would be to, you know, consider what all the different alternative solutions might be like I had listed four earlier. The second option I listed was actually basically the NGPC document that we saw, which was basically to cave into IGO's demands and give them everything they want and make national court appeals impossible.

I can go through what the other four were but - sorry, what the other three options were but perhaps other participants in the chat room have ideas as to what possible solutions exist. Or we can go at a more basic level and say, you know, are IGO immunities absolute. I'd say no.

But, you know, perhaps people have a different perspective on that kind of question because if that's a threshold question, you know, are the claims that the IGO's making correct, then if we conclude no, you know, it's not a, you know, a functional necessity that immunizes it from all sorts of lawsuits, then their kind of argument is moot and we can just reject it on that basis.

Man: Thanks George. Any other contributions at this point to - I think the question was just on the table, which is what - would it be helpful for us to discuss further in relation to the sovereign immunity issue and if it feels that if people need to take a step back and consider before engaging on this issue again and what - would it be helpful to use the time to discuss? Any takers?

Mary Wong: Not so much a specific suggestion although I suppose in the course of talking we'll come up with one. But just to go back to the earlier points on the - basically that the chronology, if you like, of the NGPC's proposal. And I had mentioned that there was some back and forth between the Council and the NGPC subsequent to that proposal including letters that were exchanged.

I just wanted to point out that in June the Council did inform NGPC that there was going to be a working group that is going to do a PDP. And in response Cherine Chalaby, the Chair of the New gTLD Program Committee, sent a letter back acknowledging this and saying that the NGPC won't take any action with respect to the GAC advice on curative rights protection brought to the conclusion about PDP.

So I thought it'd be helpful to note that that was actually specifically acknowledged by the NGPC.

Man: Thanks Mary.

Val Sherman: This is Val Sherman for the record. I just have a question. So maybe I - maybe you already answered it. Just I just didn't quite catch it. But this wasn't shared with the GAC, this proposal?

Mary Wong: It was.

Val Sherman: It was shared with the GAC. Okay. What I thought.

Mary Wong: And just to - for the clarity and I apologize for not stating some of the obvious. Because the IGOs are - well they're observers to the GAC. And so a lot of the formal communications would actually go through the GAC.

In our case obviously in our PDP we had formal request to the GAC and also specific set of questions to the IGOs. That's why we got responses directly from the IGOs in this case.

(Phil): Seems to - besides the specific questions I suggested a while ago that needed to be raised with the IGOs regarding how do they correct mistakes they believe have been made in national implementation of this Article (6 tier) rights and questions to GAC nations about do you ever require IGOs to access our court, you know, the court system when they believe there's been an omission in protecting their rights.

I think we need - I'm no expert on what sovereign immunity means. You know, for a nation it means, you know, where, you know, sometimes you can't sue the government, sometimes you can if they give consent. Sometimes you can on certain matters. That's a matter of national law in each nation.

But I don't have any sense for what - we're talking about sovereign immunity and I don't know what sovereign immunity really - what is the - I don't know what the generally accepted scope of sovereign immunity for international intergovernmental organizations is. I don't know if someone's going to (treat) us on this, if that's a good law review article or something.

But I think we're talking about something and we don't really understand what it is. And I don't see how we can give adequate consideration to legitimate claims for sovereign immunity if we don't understand the scope of that sovereign immunity.

George has suggested that it's not absolute. That he cited a case which apparently an international organization, an IGO established a deal with fishing in the North Atlantic I assume between the U.S., Canada and European nations was found not to have sovereign immunity in terms of Canadian appointment law for one of their employees in Canada because it was outside their primary scope and purpose, which was, you know, rules for fishing ground in the North Atlantic.

So that's interesting but that's just anecdotal. We need some better understanding of what the proper scope of sovereign - I'm repeating myself. We don't really understand what we're - I think we should protect it. We may have to balance it against registrant rights but we can't really understand what protection it deserves until we understand what the generally accepted scope is for it.

Mary Wong: Mary from staff. In follow up - and that may be something that this group can spend some time thinking about. First of all, the questions that we might want to go back to either the GAC or the IGOs (or those with) on this issue.

And secondly, maybe request - and we can go back to our colleagues that we have some kind of subject matter expert briefing on this point. Because the GNSO's rules on PDPs and working groups do envisage that should a working group require that kind of subject matter expertise that it can and probably should be done. So we can do that.

And in that regard, I just wanted to note obviously that there have been a lot of general discussions and this is not specific to the work of our group but

about the role of the GAC and the role of the GNSO. And obviously the GAC would like public policy advice.

So from the staff perspective it seems to us that it's a pretty good idea for us to rather than speculate have some form of - and I'm not saying that we're - that we're doing what the GAC tells us to do or that we're doing less than we should but that simply because this would be a helpful thing for us to understand in doing our work.

(Phil): I'm going to - I'm all for, you know, as I stated earlier (as discussed) I'm all for communicating with the GAC and trying to improve the relation within GNSO.

But I don't think we can take GAC advice on a very esoteric legal issue. Because we know that the GAC often is lobbied by various priorities and passes along the message they hear that most - I doubt there's few if any members of the GAC with any expertise in international law generally much less than the laws of IGOs.

And I think we need to look and it may just be doing some - I don't have access but, you know, if ICANN - if staff has access to LexisNexis. I got to think that the international law section of the American Bar Association or somebody - some professor who teaches international law at some esteemed law school in the U.S. or Europe or somewhere that there's got to be some good law review articles out there on what does sovereign immunity mean for international intergovernmental organizations.

We can find those and read them. Those of us particularly with legal training can understand what it is we're dealing with. I don't think we can just take the IGO claims because their claim seems to be it's unlimited and we could never be brought into court on anything, which we're finding examples where they have been brought into court.

We're finding examples where nations have told them if you want to protect your rights you have to - in our nation you have to go to court. So we can't take their word. I don't think we can take the GAC's word who are not experts. You know, they're usually second level ministers in some government department and this is not their full time job in being on the GAC.

I think we need to look toward legal scholars in this area to get an objective read on what sovereign immunity means.

Man: Thanks (Phil). And (Cathy) and then Mary again.

(Cathy): (Phil) - first apologies for coming in late. Vehement agreement with (Phil) that we search for some kind of neutral authority. And rather than just law review articles, let's ask some of those professors. And I would pick one from Europe as you said and one from the U.S. and maybe one from Asia.

Yes. Let's find the scholars. I'm sure they would be willing to give us some of their time. And let's have some of these questions and pose - there are definitely some experts on this around the world. And let's find them. It would be good.

This is how we (unintelligible) some other things is go to some neutral authorities like some of the world trademark experts, you know, people who are experts on the balance of trademarks and their use and kind of bring them in - people outside the ICANN arena and help size - you know, everybody's got good intents here but outside the political pressures of this particular arena. And, you know, people whose job it is to comment on this neutrally. Thanks.

Man: Thanks (Cathy). Mary then (Peter).

Mary Wong: And obviously at staff we can certainly work on contacting experts and (Cathy) I think you're right. They probably would be willing to give us some of



their time. And so we can start with a briefing asking questions and do follow ups.

And maybe I wasn't super clear before. But I think the idea is so that we have this knowledge within this working group, the GNSO and that can only help for the interactions with the GAC in terms of engaging with them on this issue without either organization getting too out of their league or space. And George has his hand up.

Man: (Peter), you want to go? And then George.

(Peter): I just want to make a quick administrative summary so far. As I understand our discussion here is this is not a topic that we will add to the (unintelligible) have doubts to GAC and other groups, which I think also it's better just the questions or the more summary of our conclusions so far that we talked about before lunch. They're more clear.

These - this is more of a - more complicated questions. So if we put on the third conclusion of today, it's that we rather try to get us informed from other external groups free of charge.

Woman: I don't know about that.

Man: George. Thanks.

George Kirikos: George Kirikos speaking. I pointed a few more links to cases in the Adobe chat room. So hopefully they'll be added to the Wiki and help our research on the topic.

I just want to perhaps suggest another kind of though experiment. We're taking as a given that the UDRP and the URS exists. And if we go back in time there was a world in which the UDRP and the URS didn't exist.

And the whole purpose of those curative rights mechanisms was to, you know, create streamline procedures as alternatives to the courts for, you know, clear-cut cases of abuses. It wasn't meant to solve every problem in the world or every possible dispute. Just a subset of the - of all problems that would, you know, lend themselves to efficiencies.

But we can consider an experiment where we just simply decide that, you know, the UDRP and the URS are going to be abolished. And so there's no more UDRP, no more URS. What would happen? What would IGOs do? Does anybody have an answer? That's really what their rights are under the existing world.

Let's say, you know, they're saying that they can't use the UDRP, can't use the URS. What would they do? Like would they file a lawsuit, would they tell the government to file a lawsuit on their behalf? What would they do? What's the answer to that question?

And so, you know, pretend that this world doesn't have a UDRP or URS. Why would we create, you know, some special exception to all the rules for this class of problems that doesn't lend itself to that kind of streamline mechanism?

You know, we would probably make the conscious choice that no, this isn't a problem that, you know, is fit for the UDRP or URS. You know, go solve it under the existing law. So if there is existing laws they can take advantage of that they're claiming, you know, they don't want to use it or they claim that they're immune from it or whatever, you know, that's one kind of - just an experiment that we may want to - may want to explore.

Man: That would be a short discussion. That would bring this discussion to a short end. Thanks George. (Phil).

(Phil): Well, in don't now but I think, you know, if there was no UDRP or URS, if they had a problem with the domain registration they thought was infringing their rights within the trademark system, they'd have to, as I said, go to the particular - a particular government and try to get administrative relief in the trademark deal or judicially.

I did want to - George posted a link to - and I'm learning all kinds of new things about law that I never knew existed as part of this working group. Very interesting and, you know, U.S. law is not determined although ICANN is a U.S. based organization. And we're not going to get into that discussion, which is not even at issue in the IANA transition and the end of U.S. - the U.S. government role on the IANA functions.

But he posted a link to a 2010 news article and things. But again, this is the kind of thing we need to be in that would probably be covered on law review articles and discussions with academics or expert on international law.

But turns out there were two U.S. laws relevant to the subject. And one is a 1945 law. And this is the link to the earthrights.org link that George posted a few minutes ago.

Nineteen forty-five law that basically gave international organizations the same sovereign immunity as foreign governments, which is interesting; it took a law of the U.S. to give immunity - sovereign immunity to IGOs. So it was in the U.S.

But then there was - and that was to reassure the United Nations that, you know, if the diplomats come to the U.S. when it was formed wouldn't be subject to U.S. law, that they'd have immunity.

But then in 1976 the U.S. Congress rather than getting away from court-by-court decisions on the scope of immunity, which implies that immunity even under that '45 law was not absolute, passed a law the Foreign Sovereign

Immunities Act, which ended the court-by-court jurisdiction and decision making and said this a scope of sovereign immunity for governments in the U.S. and that's the limit.

So, which is interesting. The sovereign immunity enjoyed by a nation or an IGO in a particular nation is determined by the legislation passed by that particular nation.

So I know we're getting the feeling that there is some (unintelligible) sovereign immunity. It's important that we respect it. It's only going to arise when there's an appeal (by the) registrants in a UDRP or URS decision under their existing rights.

But we need to understand what the real scope of it is and whether it even is relevant to arbitration disputes involving domain names. Because if an agency, you know, they'll have the right to get the wrong domain names and (dot enter) anywhere else.

But if this is - if the laws say the immunity ends when it's not related to your central mission, there'd be very few cases where domain name arbitration is an essential function of an IGO. I think we need to objectively evaluate the claims to immunity by understanding the generally accepted scope of immunity for IGOs.

Man: Thanks. (Cathy). Could you kill your mic (Thomas)?

(Thomas): Oh, sorry.

(Cathy): Agree completely although hopefully we don't have to become experts in the subject or we'll be here for a long time. I just - it just occurred to me and (Mason) can probably verify this.

When you sign up for a domain name through a registrar, don't you waive jurisdiction to where the registrar is located for lawsuits? You can be reached where you're located and where the registrar is located. Doesn't every domain name registrant regardless of who they are including IGOs, don't they sign that as part of the registration agreement?

(The answer's yes), except maybe some special ones but certainly all the legacy gTLDs. You know, .com, .org, .net. You waive jurisdiction. So we should check and see how the IGOs feel about existing obligations under the registration agreement.

Man: So given the discussion that we've had in the last 45 minutes or thereabouts, (I thinking of) the co-Chairs. Do you feel that we've gone far enough and that the next steps are we need to understand this better and we need to get some scholarship on it and therefore, there isn't a lot of point to continue this discussion? Or are you happy to (roll on it) or continue it?

Man: Well, (unintelligible), from my point of view I think we - what we have done so far is to identify what we need to reach out and get further information (on this about). So...

(Phil): I disagree. I think we've - and we may want to discuss - there may be some other questions we want to raise or issues, you know, we want to parse before any of this. But I think we're finding that we can't make this us.

We have to know what IGOs do to protect themselves when they believe their rights have been violated in a particular national jurisdiction. We need to find out how nations besides the U.S., what they've told IGOs about protecting their Paris convention rights when they think they've been violated within that nation's trademark system.

And we really need to know what sovereign immunity means for IGOs. We can't respect it if we don't know what it really means. And so I think we're -

there's only so much more we can do today until we get some of this information and some of these answers.

We just can't - we can't speculate as to what it is or should be. We have to go by how it's actually implemented and viewed in the world of international law.

Man: So you're summarizing three action points, right, from this discussion. One is talk to the IGOs. Second is - would be (unintelligible) nation. And third would be to get you scholarship and on the sovereign immunity is. Mary.

Mary Wong: I'm not trying to prolong this meeting. This is Mary from ICANN staff. It's been a long week for everybody. But would it be - I think it would be helpful whether we're talking about international law experts or further input from the IGOs if we could get specific about either the questions that we want answered or the nature of the information that we want.

So I don't know if it would be worth it to go into that discussion today or have staff come back with some suggestions in the next few weeks as a next step. And then we did have some other things about next steps that I can hold off on until we determine how you - how else you want to go about this.

Man: So the question out there from Mary, do we need to get more specific about the questions, which would fall under the different action steps that (Phil) outlined earlier or do we do that offline?

Man: But add just - I did make that - I cannot in this specific second come up with our specified questions. But well, I think if we're given a couple more minutes, it would be good if we, as I say whilst we're here to at least put up some basic draft questions and that you can then work better on to make it more conclusive.

(Phil): Yes. I think what we need to understand is two things. One, you know, I mean there's no one answer because different nations interpret this

differently. You know, you probably get one answer in the U and a somewhat different answer in the U.S. and Canada and a different answer in China and Russia. There's no one definitive answer.

But we need - I think that the main question is what is the generally recognized scope of sovereign immunity for international intergovernmental organizations. We suspect it's not absolute, that there are exceptions. We need to understand what the prevailing view is around the world.

I think the other question is no matter and what treaty or agreement created a particular IGO and there may be other treaties like the Paris convention that give them certain protections among a large group of nations.

When an IGO is given - granted protection by some type of treaty like the Paris convention and when they believe that their protections have not been adequately observed in a particular nation, what are they generally required to do to get that redressed? Does that make sense?

And there have to be - you know, there's got to be. We're not experts in this field. But I'm sure there's some consensus views on this and some good legal scholarship on it.

Man: George, you would like to join the discussion?

George Kirikos: Yes. I was just going to say that even if you granted the IGOs the idea that they had this absolute immunity, one of the prerequisites from our working group's perspective should be why you come to us in the first place; i.e., they'd have to demonstrate that there actually is a cybersquatting problem.

Like they haven't really documented the extent of cybersquatting of IGO names in the first place. Back when the UDRP was created, there was a lot of cybersquatting on famous trademarks. And so it was kind of a response to a documented problem. And courts (were over expensive) and thought was

that it would, you know, reduce cybersquatting if there was a procedure in place as a first venue I guess for an action.

The IGOs that have come to us or has come to the GAC in terms of pressuring them haven't really documented if there was a problem to begin with. So that's, you know, something we should add to the list of what we're asking them because that's, you know, an additional threshold question before, you know, we go into thinking of other solutions and what the ramifications of what those solutions are. So this goes back to the cost versus benefits case.

(Phil): And what - two thoughts on that. (Phil) here for the record. One is that I suspect, you know, there's the NPOC now within ICANN. I suspect there's a lot more cybersquatting against charitable organizations than against IGOs because the reason people cybersquat charitable organizations or create disaster related, you know, Web sites is to get contributions to scam people and get money.

Nobody, you know, IGOs don't go out and ask for contributions from the general public. They get funded by governments and the UN. And that - what was the other point I wanted to make? Somebody else speak because I just lost my second thought.

Man: (Cathy).

(Cathy): And going back to the contractual issue I raised and I'm not a contractual expert. I'd like to know what IGOs do when they sign up for Microsoft software or when they register a domain name or when they sign any of the millions of software and other contracts of adhesion that require you to waive jurisdiction to wherever the software provider is or wherever the registrar is or wherever the other groups that you're working with are.



It's in every single contract - every single non-negotiated contract everyone signs for services online. What does that mean when you're an IGO and you're claiming your immunity? How do you not sign these things?

(Phil): I remember the second point I wanted to make, which is besides being concerned about a proper balance between IGO rights and registrant rights and the domain name arbitration system, we also got to be thinking about free speech.

Not every IGO is a beloved organization. Some of them are heavily criticized. And we don't want to give them access to an arbitration system where someone has used their name in a criticism site and they're trying to extinguish it because they don't want to be criticized and the organization has been - that criticized them has been deprived of the proper appeal rights.

So that - I think that's another - we haven't really talked about the free speech aspect. But I think that's something we need to be sensitive to because there may well be - once we ask them who's infringed, you know, I don't know if they're going to cite us but there may be certain Web sites which say, you know, which are very critical of a particular Internet IGO, which they'd like to extinguish through an arbitration procedure. But I don't think we'd necessarily want to be party to helping them achieve that goal. Val.

Val Sherman: Val for the record. Sherman. Val Sherman. So I just wanted to ask whether - I mean their right to appeal would also be in line as well, right. Or would that - or is that something that we're not really considering? It's not just the registrants appeal. It's their own right to appeal. So there's no escalation within the (IP).

I wonder if we should ask whether they envision their own right to appeal should they want to escalate to, you know, which - where would that go? Do they understand that their right is lost - would be lost too? Or do - does it matter to us right now?

This is what I meant by my odd point about we're domain name (like) checking, which wasn't very clear.

Man: Mary.

Mary Wong: This is Mary. And again, I need to go back to all the letters - proposal documents GAC communiques. There was - there has been I should say and maybe (Mason) recalls better than I do. At least in - I think it was a couple of communiques I want to emphasize the (I think and put) some of the letters about the question of an appeal mechanism.

And this was also something that was highlighted in previous (efforts). It's not clear how that feeds into your specific question whether it makes a difference if we're talking about the UDRP versus the URS. It's not clear whether or not they mean an entirely separate process.

I do need to go back and look at some of the specifics. But the point I guess for now is that at least in concept this notion of an appeal mechanism for IGOs has been (slated) explicitly. But it was in the community and certainly within the GNSO and at the NGPC level. I don't believe it has been extensively discussed yet in the modern context.

Man: Hello. Yes. It's like what we discussed previously about the privilege and confidential draft proposed for dealing with IGO acronyms. My (partner)'s questions on point too there with (unintelligible) URS modifications. Just to say that the URS rules requiring consent to national jurisdiction would not apply and outcome for such cases would not be appealable to any court of national jurisdictions.

And of course the parties must be to be declared that it's both for the compliance and as well as for the domain holder. So whatever you choose

there, it's sort of - it's (unintelligible). Whatever you claim there takes - it will be related to both parties.

Man: Mary's just putting the document back up. George.

George Kirikos: George Kirikos speaking. I did want to add an additional point, which was I supposed you go to work for, you know, the United Nations or an IGO and you have an employment discrimination situation or some kind of dispute with that IGO and they claim immunity.

From the perspective of the employee, he knew going in that there was this immunity issue to begin with, that - and you, you know, you chose to go to work for that IGO. And so there was this sense of there's consent and, you know, you knew things going in.

In the case of, you know, a domain name registration, well, let's go back a second. There was kind of a contract between the employee and the employer. In the case of a domain name registration though the contracts are really between the domain registrant and a registrar and through them to ICANN - not even to ICANN. ICANN isn't a party to the contact. They kind of impose it.

But the contract is between the registrar and the registrant and to some extent the registry because the registry imposes the terms on the, sorry, registrar, which then imposes upon the registrant.

So the IGO it's kind of never in the picture. It's kind of like, you know, this additional third party that is getting all these rights and the registrant was never kind of thinking about them in the first place. So some extent, you know, it shows how far removed the thing is in terms of consent.

And so I just wanted to kind of point that out. It's not something where a logical registrant would have, you know, voluntarily removed their, you know,

right to appeal to a national court because, you know, they would have never even heard about this IGO. They have no contractual relationship with - they never, you know, knew about them, never wanted to form any contract or have any relation with them whatsoever.

And so they wouldn't, you know, voluntarily, you know, circumscribe their rights or limit their rights to this unknown party. So for us to kind of, you know, impose, you know, a limitation on the registrant's rights, you know, really, you know, it's almost a definition of a contract of adhesion where, you know, you know, you know, you know, just sign this contract or you don't.

You know, you know it's nothing that a registrant would logically negotiate, which is far different from the case where, you know, an employee volunteers to go work for an IGO where they knew everything going in. There's not much in direct relationship between the IGO and the employee.

So, this, you know, these multiple levels of indirection kind of should be a - probably (now) it should be weighed in when considering, you know, whether to impose these obligations on a registrant.

Man: Thank you George. I'm looking around at (unintelligible). Do we need to take a quick break and think this through a little bit before we come back in again?

(Phil): Yes. That's a good - why don't we take a ten-minute break for bathroom, coffee, whatever. Come back and I think we're probably close to the end of the road for this session. We've done an excellent job identifying questions we need to asked and answered and information we need to get to really do a credible job in addressing the sovereign immunity issue.

But maybe during the break people will think of one or two more points they want to raise and then we can just have a general - I think the last thing we should do is to okay, when shall we meet again and what should the tentative agenda be for the next meeting.

And there's some leftover issues from this morning that we might want to come back to in the next meeting before - till we have the information we need to proceed in an intelligent way on sovereign immunity. But let's come - let's take a ten-minute break till 3:00. Come back at 3:00. And maybe a 15, 20 minute discussion of next steps for this working group and then we can end the day somewhat earlier than we expected.

And the people who are trying to stay awake in the other part of the world can finally go to bed.

Man: Great. So (we're done).

END