

Terri Agnew:Dear all, welcome to the IGO-INGO Curative Rights Protection PDP WG Meeting on the Thursday, 05 May 2016

Petter Rindforth:Hi Terri, had som problem to connect to Adobe. Worked after my 3rd login.

Petter Rindforth:May be my new security system ;-)

Terri Agnew:@Petter, I will send you an email to check your plug in's they may need updated

Petter Rindforth:Thanks!

Terri Agnew:I sent you a private AC chat

George Kirikos:Hi everyone.

Osvaldo Novoa:Hello all

Paul Tattersfield:Hello everyone

Philip Corwin:Terri, send me that email as well -- Adobe Chat is working for me on IE but not on Chrome

Terri Agnew:@Philip will do

Philip Corwin:Thx

George Kirikos:Sorry, I got disconnected by the phone.

George Kirikos:I'm calling back in.

Terri Agnew:George is back on audio

George Kirikos:I'm back on the phone.

Jay Chapman:Agree with sending out, Phil, and with a timely response request as Petter suggests

Rudi Vansnick:+1

Paul Tattersfield:Agree it is a great memo. @ Phil -The degree of immunity seems very fluid and it seems to vary not only by IGO and jurisdiction but also by time (presidential wish/decreed etc.)

Terri Agnew>Welcome Paul Keating

paul keating:sorry all for being late.

Mary Wong:@George, I believe it was made clear to Prof Swaine that we are asking about jurisdictional immunity of an IGO.

paul keating:@George, Immunity means taht your complaint is dismissed as a matter of course without examination of your claim.

Terri Agnew>Welcome Lori Schulman

George Kirikos:Perhaps written comments by next week? (Friday May 13th?)

paul keating:Petter, can we agree on a process for submitting comments? otherwise we end up with numerous emails, each of which are organized in a different method.

paul keating:Petter we also need to have a call to review the comments so we can direct Prof. Swaine as to any relevant matter.

George Kirikos:Right, Paul, it's a defense to an action.

Lori:Sorry I am late. I can be on for about 30 minutes before I have to leave.

George Kirikos:But, what is immunity actual protecting?

Lori:I liked the suggestions.

Terri Agnew>Welcome David Maher

Mary Wong:Immunity from suit in a particular jurisdiction, in this case, right?

George Kirikos:Page 2: "The merits of such an action will depend on the law of the jurisdiction concerned." This is a VERY IMPORTANT statement. Assigning that role to some 3rd party arbitration, instead of the relevant national court is very, very dangerous. It usurps the power of those national courts to adjudicate the case, and set forth what the relevant law is, whether the case is meritorious.

paul keating:@Phil - As to the gerater weight - absolutely not. That is one of teh main issues of the UDRP today. Swain's comments are essentially that the immunity issue depends upon teh application of teh law in tehjurisdiction in whihc any post-UDRP action is filed.

paul keating:I tend to agree. The issue is to direct further questions to Swain for clarification and NOT to ask him to edit to our liking.

Philip Corwin:Agreed -- if we push beyond clarification for changes in language it would undermine its status as the views of an INDEPENDENT expert

paul keating:@Phil, I agree completely

Lori:+1

paul keating:@Phil, clarifications should be separately stated in a supplemental document.

George Kirikos:Perhaps comments by May 16th? (two weekends from today)

George Kirikos:(that's a Monday)

Mary Wong:We are aiming for 19 May, two weeks from now - to give him time to consider responses. But that will depend on us getting him our questions within the next few days or week maximum.

Mary Wong:@George, that works too

George Kirikos:We should have more time to make our own comments.....maybe schedule another call for 3 weeks?

paul keating:Perhaps questions and "comments" should be different? Questions for clarifications are ok in 1 Week and a call to identify and solidify the questions to be asked (they all cost money no?) and then a deadline from Swain for any supplemental.

paul keating:comments are then a part of the final report

paul keating:questions are what he needs to respond to to clarify. Comments are just editorial

Terri Agnew:Kathy Kleiman has joined audio

paul keating:Phil, do we have a target for issuing a report?

paul keating:?

Philip Corwin:@Paul--as soon as we can responsibly do so -- and I would hope that is between Helsinki and the final 2016 ICANN meeting

paul keating:Can we solidify then that what is requested in 1 week are QUESTIONS to Swain regarding his memo? e.g. things in need of clarification. Opinions, etc should follow later as per Petter's comment.

paul keating:@Mary, I have a real issue with this memo being released to others outside of this WG absent our report.

Mary Wong:@Paul, we were asked for it

Paul Tattersfield:the report has "Privileged and Confidential DRAFT v.3" on the top of it

paul keating:Mary, please clarify that any information exchanged within any WG is thus public?

Mary Wong:@Paul, as long as it is part of a WG call that is recorded or on a mailing list discussion, yes, it is public.

Mary Wong:This is why Prof Swaine supplied us with a synopsis for ICANN55; he was not comfortable with his work at that stage being published.

paul keating:ok gthanks

Lori:@ Paul, to Mary's point, I don't think that the report is confidential.

Lori:the privilege asserted is from the attorney to the client but once released to the team, I believe that the privilege is waived

paul keating:Phil, I think a letter from you both as co-chairs is appropriate. I should also request their input for the purposes of our report as a WG.

George Kirikos:If the IGOs are going to be given more time to make comments, shouldn't we give ourselves the same time? (i.e. otherwise we'll be going back to the Professor multiple times)

Lori:The privileged is waived by ICANN because of the nature of ICANN's work

paul keating:@Phil, To echo Petter, this memo is only one (1) item that forms the basis for our report. It is not THE basis for the report.

Philip Corwin:I think it can be the basis of an excellent discussion in Helsinki

paul keating:so I would be careful how I described it to the public prior to the next meeting.

Philip Corwin:Correct Paul. It is only to provide an expert legal opinion relating to the immunity issue

George Kirikos:So, what are the deadlines for the first set of clarifications??

Lori:Agree with Phil. This will form a good basis for discussion but is not dispositive

Lori:My Adobe status icons don't appear to be working.

Lori:Can we ask the professor for a high level executive summary for laymen

paul keating:Perhaps we could:

Lori:Can you hear me?

George Kirikos:Yes, Lori.

George Kirikos:Very softly, though.

Lori:My mic is not working

George Kirikos:One can dial in by phone.

Philip Corwin:We hear you, but faintly.

Terri Agnew:@Lori, let me know if a dial out is needed. We can hear you but very faint

paul keating:I am opposed to any layman summary. The summary will only lead to confusion arising out of potential inconsistencies between his actual memo and his layman summary. Sorry, not to be a lawyer but.....

Petter Rindforth:we hear you

Terri Agnew:@Lori, yes we can hear you

paul keating:yes

George Kirikos:Yes, we can hear you.

George Kirikos:We lost you.

Paul Tattersfield:@Paul +1

Terri Agnew:@Lori, we lost you, please let me know if a dial out is needed

Philip Corwin:Now we don't hear you

George Kirikos:Best to use the telephone.

Lori:please dial out +202=704-0408

paul keating:I think the analysis in less legaleze is the job of the WG

George Kirikos:1-866-692-5726

Lori:I am in Switzerland

Philip Corwin:Lori, give Terri your number and she'll call you

George Kirikos:Switzerland = 0800-120-032

Lori:+1-202-704-0408

George Kirikos:Or, 41-44-580-6398

George Kirikos:Executive Summary = "It Depends" :-)

Terri Agnew:@Lori, the op will dial out in a moment

paul keating:Perhaps we could (1) prepare a list of materials to consider in the context of the report, and (2) assign people to provide the initial draft, and (3) schedule a review session.

Philip Corwin:No, George -- "It's complicated" ;-)

George Kirikos:-)

paul keating:Petter +1

Terri Agnew:Lori is on audio

paul keating:Lori, Good points. However, that is really our task in our report. The opinion is just like relying on a legal opinion in a case by a court.

George Kirikos:The exec summary might be the middle paragraph of page 3 starting with "The overall answer, then, is contingent."

David Maher (PIR):@paul +1

George Kirikos:Sorry, what was that date again? May 13th for comments?

Steve Chan:16 May  
George Kirikos:Ok, May 16th would be good, to give time to go through it thoroughly.  
George Kirikos:(I've read it twice already)  
paul keating:Mary, I suggest questions due by 12th. Summarize and WG call by 17th and move forward from there.  
paul keating:FASTER PLEASE  
paul keating:I agree with your timing.  
Mary Wong:OK, got it  
paul keating:Lets push and the worst case is he is not available.  
Mary Wong:We will seek confirmation of Prof Swaine's availability for the 19th  
Mary Wong:We will also send a note to the mailing list with all these dates  
George Kirikos:Determine his availability first, because otherwise we're rushing to put together our notes, when we otherwise wouldn't.  
paul keating:questions by 11th. call on 12th. call asap with Swain.  
George Kirikos:Plus, the IGOs/GAC don't seem to be in a rush. They should get the same deadlines we do.  
Steve Chan:@George, I've sent a note to him already for the purpose  
paul keating:but lets not delay our end  
George Kirikos:BTW, are we now permanently going to meet on Thursdays, to not conflict with the RPM WG ?  
Rudi Vansnick:need to go, another call coming soon  
paul keating:deadline for questions? set call next  
Philip Corwin:yes, thursday calls  
Jay Chapman:Mary, looking ahead - what is the presently scheduled day & time for our WG's meeting in Helsinki?  
paul keating:I have to leave but thank you for everyone's input. Great call.  
Paul Tattersfield:UTC+2?  
Mary Wong:Yes, 27 June (Monday) at 1330 Helsinki time  
George Kirikos:So, probably something like 4 am Eastern time.  
Jay Chapman:Thanks  
George Kirikos:Or, maybe 6 am.  
George Kirikos:Bye folks.  
Paul Tattersfield:bye all thanks