

Adobe Connect chat transcript for Thursday, 08 September 2016

Yesim Nazlar:Welcome to the IGO-INGO Curative Rights Protection PDP WG Meeting held on Thursday, 08 September 2016 at 17:00 UTC

Yesim Nazlar:Agenda: <https://community.icann.org/x/UxmsAw>

George Kirikos:Hi folks!

Paul Tattersfield:Hi

George Kirikos:Hey Paul.

Paul Tattersfield:How's things in Canada?

George Kirikos:Great here, thanks. How are you today?

Paul Tattersfield:Great thanks, were having an Indian Summer so it's a good time of year

Philip Corwin:Hello all

Mary Wong:First things first, welcome back Steve Chan from medical leave!

George Kirikos:Nice to hear things went well, Steve.

Steve Chan:Thanks Phil, Mary, everyone!

Mason Cole:Good to have you back, Steve!

George Kirikos:Sounds good, Phil.

George Kirikos:#1 shouldn't be controversial.

Jay Chapman:#1 good

George Kirikos:We're just focusing on the BOLD language, for now.

Jay Chapman:i do have questions about the final paragraph of the content for rec #1, but sounds like we're discussing this later

Mary Wong:Yes, that's right, Phil

George Kirikos:Is there an email with the staff concerns that was sent to the mailing list??

Mary Wong:@George, we have only discussed this with the co-chairs for now, as a follow up to last week's WG call

George Kirikos:Thanks, Mary.

Mary Wong:But if the co-chairs wish, we can forward that to the WG of course.

Jay Chapman:that would help, Mary

George Kirikos:+1 Phil. I think the UDRP panelists would give standing.

George Kirikos:One additional argument would be that it would fall under 3(xiii)

George Kirikos:<https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>

George Kirikos:"re warranted under these Rules and under applicable law," i.e. the words "and under applicable law" would trigger standing.

Yesim Nazlar:Lori Schulman has joined on the phone bridge only

Lori Schulman:I am now online. Thank you

Yesim Nazlar:Lori Schulman is now on AC as well

Paul Tattersfield:Hi Lori

Lori Schulman:Hi Paul

Yesim Nazlar:Gary S. Campbell joined

George Kirikos:1.7 of the WIPO overviews also show how "unregistered" rights can be demonstrated. <http://www.wipo.int/amc/en/domains/search/overview2.0/#17>

Gary S Campbell:Hi Guys

Lori Schulman:Thank you. I heard the end of your opinion. I will listen to the recording.

George Kirikos>Welcome, Gary.

Paul Tattersfield:+1 George the registration of rights is only a marker in time

George Kirikos:Thanks Phil.

George Kirikos:Page 5 of 11.

George Kirikos:(very bottom of page 5)

Lori Schulman:I am missing page 5

Lori Schulman:can't seem to scroll to it

George Kirikos:Here's the text of Article

6ter: http://www.wipo.int/article6ter/en/legal_texts/article_6ter.html

Lori Schulman:Using the copy Mary sent last night

George Kirikos:I assume we want to capture the language "is not of such a nature as to suggest to the public that a connection exists between the organization concerned" ??

Lori Schulman:That was my typing sorry.

George Kirikos:and also "such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization."

George Kirikos: Changing that would mean creating new law, which we shouldn't contemplate.

George Kirikos: Where it says "agent or licensee", perhaps make it "agent, assignee, or licensee"? (i.e. add "assignee" as a potential route)

George Kirikos: I would be in favour of Option #1, because it most closely reflects the "status quo" if we did a thought experiment of "what would happen if the UDRP never existed". i.e. IGO would waive immunity to bring a court dispute, if the UDRP doesn't exist. If Option 2 exists, then it would support gaming by complainants.

Lori Schulman: George, what do you mean by gaming?

George Kirikos: I'll try to get in queue.

Lori Schulman: ok

Jay Chapman: exactly George

George Kirikos: * 6 to unmute

Mary Wong: FWIW Lori's concern is one shared by staff as well.

Jay Chapman: the issue here is not immunity, it is the likelihood that a registrant's domain name can be taken away from them

Jay Chapman: without due process

Jay Chapman: due process = via a court of mutual jurisdiction

Mary Wong: Our reasons include the fact that a successful plea of immunity is not the same substantive ground as vitiating a panel decision.

George Kirikos: New hand.

George Kirikos: We posted evidence of cases where courts overturned arbitrators.

Mary Wong: @George, yes, but after consideration of the actual case facts, not simply based on an IGO successfully pleading immunity, surely?

George Kirikos: IF arbitrators can't be trusted to give the correct decision, then removing the court option makes those arbitrators unaccountable.

Lori Schulman: The system is not predictable. You cannot have a 100% predictable system.

George Kirikos: Courts are far more protective of due process than arbitration.

Lori Schulman: Judges make incorrect decisions too. We throw ourselves at the mercy of any system.

Lori Schulman: throw

George Kirikos: Yes, but courts have multiple levels of appeals, etc.

Lori Schulman: George I get that but IGO's are not typical rightsholders

Lori Schulman: that's the whole point

George Kirikos: I disagree, Lori. IGOs still have to go to the courts if I start selling UNESCO biscuits, etc.

George Kirikos: My devil's argument would be "get rid of the UDRP completely", Option #3.

Lori Schulman: George, totally unacceptable to trademark owners and you know that.

George Kirikos: What would IGOs (and TM holders) have as choices under Option #3??

George Kirikos: The "bargain" in the creation of the UDRP was that it wouldn't override the courts.

Lori Schulman: The point of the UDRP was to make the system efficient and reasonably reliable for all concerned.

George Kirikos: The national courts still existed, for either side to use, if the decision was incorrect.

Mary Wong: @George, it's likely that Option 3 is outside the scope of this WG.

George Kirikos: I disagree, Lori. Vehemently.

Lori Schulman: Yes, but the UDRP is geared toward private parties.

Lori Schulman: private parties

Lori Schulman: we don't have private parties here

Lori Schulman: we have a governmental org

Lori Schulman: How is that treated in Canada?

George Kirikos: If you want a "more efficient" system, you could go the "URS" 1 page form, for the UDRP. That would be very efficient.

George Kirikos: Wouldn't get due process, though.

Lori Schulman: URS does not impose permanent remedies

Lori Schulman: names get recirculated not redelegated

Lori Schulman: or transferred

Mary Wong: And my hand is up too

Lori Schulman: George, I am talking about problems related to IGO's

Jay Chapman:Where an IGO licenses its rights to a third party for UDRP assertion, an option 1 or 2 would never arise, because immunity is not at issue

George Kirikos:+1 Jay. We gave them the mechanism. They would only choose to avoid the licensing, etc., if they think they can game the outcome.

George Kirikos:Sound was breaking up there.

George Kirikos:I wasn't seriously proposing Option #3, but I am saying that Option #1 is more consistent with a hypothetical Option #3.

George Kirikos:Should we jump to #5 first?

Lori Schulman:i will defer my time to Mary

Mary Wong:Right, George, understood - so just noting for the record, nothing more.

George Kirikos:(bottom of page 10)

George Kirikos:Oops, looks like we have Rec #6 too.

Lori Schulman:I am not talking about parallel systems

Lori Schulman:I am talking about arbitration as a reasonable road to address the concerns of an important minority of rights holders = IGO's

Mary Wong:@Petter, this could be one of the open questions for which the WG seeks public input.

George Kirikos:Reasonable for one side, but not both, Lori.

George Kirikos:Mandatory arbitration has too many issues.

Lori Schulman:George, we can find decisions that run favorable to registrants and investors

Lori Schulman:As does court action for IGO's --too many serious, complicated issues

Lori Schulman:UNESCO can take make roads to deal with its biscuits but lets stick to domain centered issues

Lori Schulman:many

George Kirikos:I disagreee, Lori. The law should be the same for biscuits as it is for domain names.

Lori Schulman:demands, negotiation, mediation, arbitration. Court should never be a first resort

George Kirikos:We shouldn't be creating new laws, here, just reflecting existing laws.

Lori Schulman:We are.

Lori Schulman:I believe re IGO immunity.

George Kirikos:IGO waives that immunity, when it is the complainant.

George Kirikos:It is 100% shielded, if it doesn't want to file any complaint.

Lori Schulman:the standards of proof for actions in trademark vs domain cases aer not the same

George Kirikos:Let's suppose an IGO hacks my domain name registrar, and steals my domain name.

Lori Schulman:I am not a litigator so I can't go into deep details but I know that each cause of action has different legal hurdles

George Kirikos:I would be unable to sue them to recover my domain -- they have immunity there, because they are the defendant.

Lori Schulman:trademark claims v domain claims

George Kirikos:However, in the opposite situation, as complainant, they have to waiver their immunity, to take property through the legal system from someone else.

Lori Schulman:then there is a forum for your recourse

Lori Schulman:that's how it works in U.S. a special court for the types of claims you describe so why not special forum

Lori Schulman:for IGO issue

George Kirikos:Which "IGO special court" exists for biscuit disputes?

Lori Schulman:in US it court of claims

Lori Schulman:don't know outside of us

Lori Schulman:it is a court but with special rules for USG entities

Lori Schulman:I don't know about IGO's

Lori Schulman:Wish more were here to defend

Lori Schulman:that may say something too

Lori Schulman:can't sue for TM and Copyright claims in US

Lori Schulman:it's an issue, I won't deny that but agencies are generally careful but no always

George Kirikos:Are we back to 12 noon next week? Or sticking to 1 pm (Eastern time)?

Mary Wong:Yes, I think so, Phil

Mary Wong:Not at the moment

Mary Wong:Will do, Phil

Lori Schulman:This was lively. Thanks everyone.

Jay Chapman:appreciate the discussion

George Kirikos:Bye folks.

Mary Wong:Thank you all!

Jay Chapman:Bye everyone - thanks

Yesim Nazlar:Next Call is set to 15 September at 16:00 UTC

Lori Schulman:thank you phil

Paul Tattersfield:thanks bye all

Yesim Nazlar:Thank you all!