

Petter Rindforth: Hi George, welcome!

George Kirikos: Hi folks.

George Kirikos: Hi Petter.

Michelle DeSmyter: Hi there George and Petter!

George Kirikos: Hi Michelle.

Petter Rindforth: Hi! Calling in from another conference today, so I hope that you will not hear to much external noice.

Paul Tattersfield: Hi everyone

George Kirikos: Welcome Paul.

George Kirikos: I can hear you, Petter.

Philip Corwin: Good day all

George Kirikos: Hi Phil.

Mary Wong: Document is unsync'ed for all to scroll.

George Kirikos: (we're at the bottom of page 6, top of page 7)

George Kirikos: There was a very good piece in the NY Times about the dangers of arbitration, see:

[http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html?\\_r=0](http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html?_r=0)

Jay Chapman: for clarification - what color are the changes attributable to staff?

George Kirikos: More and more federal agencies in the US are also moving against arbitration, see:

[http://www.nytimes.com/2016/09/29/business/dealbook/arbitration-nursing-homes-elder-abuse-harassment-claims.html?\\_r=0](http://www.nytimes.com/2016/09/29/business/dealbook/arbitration-nursing-homes-elder-abuse-harassment-claims.html?_r=0)

Mary Wong: Hi Jay, on screen tje staff changes display in orange in this section

Jay Chapman: got it. thanks, Mary

George Kirikos: A third piece worth reading,

<http://www.nytimes.com/2015/11/02/business/dealbook/in-arbitration-a-privatization-of-the-justice-system.html>

Mary Wong: No worries - it's starting to look quite colorful, we know. You can also see more clearly in the Word document who made what changes, and in what color.

Jay Chapman: 10-4

Mary Wong: @Petter, yes, that was the intent of adding "published" - to make clear it's a publicly available document, not just something sent to the GAC.

Philip Corwin: @George--those US cases involve instances in which consumers have been required to waive their access to court, including the bringing of class actions, and to only use arbitration for complaints. very different than UDRP/URS, which are options in addition to court adjudication

George Kirikos: Is this document accurate on the different degrees of "consensus" in a PDP? <https://www.icann.org/en/system/files/files/consensus-levels-proposal-16sep14-en.pdf> (might be outdated)

Paul Tattersfield: George's audio isn't very clear here

George Kirikos: Sorry, Paul. Are we at "consensus", if there are just one or two people against Option 1?

George Kirikos: i.e. "full consensus" vs. "rough consensus" vs. "consensus" vs. ....

Paul Tattersfield: thanks George

George Kirikos: +1 Jay

Mary Wong: We can say consensus (without the word rough), and ask for specific objections from the list?

Mary Wong: Consensus in the WG Guidelines = where most agree, and only a small minority disagree.

George Kirikos: I don't see it as intolerable situation for the IGO --- if the UDRP didn't exist, they would have had to waive immunity. Sending it back to arbitration (with all its weaknesses) is less fair, given they routinely get it wrong.

Mary Wong: @Phil, note that the UNCITRAL Rules don't limit the venue/arbitrator/entity to any particular provider.

Mary Wong: (that's why we wanted to highlight the distinction between specifying the arbitration entity and the applicable rules for an arbitration)

Paul Tattersfield: Human rights came up in the RMP WG, could be relevant here as with a biased arbitration a right to be fairly heard would be have been denied

George Kirikos: Footnote 2 of the document I linked to said explicitly: " It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term "Consensus" as this may have legal implications."

George Kirikos: (sorry for the formatting)

George Kirikos: Vitiating the UDRP/URS decision, though, preserves the "status quo" (i.e. as if the UDRP didn't happen), in the event that the court somehow finds that the waiver was insufficient to overturn the immunity.

Paul Tattersfield: An aside: The new font in this chat window is not as clear as the previous chatroom

Mary Wong: @Paul T, we just increased the font size - does that help?

Paul Tattersfield: yes seems clearer not any larger which is good

Paul Tattersfield: thanks :)

George Kirikos: Some additional articles on forced arbitration:  
<http://www.afj.org/our-work/issues/eliminating-forced-arbitration>

George Kirikos: And additional reading:  
[http://www.citizen.org/congress/article\\_redirect.cfm?ID=7332](http://www.citizen.org/congress/article_redirect.cfm?ID=7332)

Mary Wong: @Petter, yes, we will likely reword this para on consensus.

George Kirikos: Not "full consensus", but we have reached "consensus".

George Kirikos: (since that's the PDP guidelines)

Philip Corwin: Question for staff: Under WG procedures, what level of consensus is required to adopt a recommendation in the FINAL report? Thanks

Jay Chapman: a second bite at the apple, yes Mary

Mary Wong: Thanks, Jay, for clarifying - we just wanted to be sure the WG is aware of and has considered this.

Jay Chapman: Thanks, Mary

George Kirikos: It's forum shopping.....the IGO isn't restricted from filing a complaint in court (rather than use the UDRP). But, strategically, they would choose the venue where the odds are skewed in their favour (UDRP, arbitration, etc.).

George Kirikos: The ability to have recourse to the national courts isn't just a check on the IGO or the domain name registrant --- it's a check on the entire system of arbitration or UDRP (i.e. on the providers). Otherwise, there can be a permanent deviation from the laws of the various nations.

Jay Chapman: Very helpful - thanks, Mary

Mary Wong: You're (all) most welcome!

Paul Tattersfield: George +1 'a permanent deviation' or worse over time an increasing deviation

George Kirikos: +1 Phil

Jay Chapman: agree Phil

George Kirikos: At least a week for a thorough review.

Paul Tattersfield: agree Phil 2 weeks would be better

George Kirikos: (Paul Keating did a first pass, but I know I haven't done as much as I wanted, given it was always changing)

George Kirikos: (as did Petter)

Philip Corwin: Section 6 is clearly most important, and if we are unable to issue complete draft report pre-Hyderabad we should probably put out Section 6 draft to focus discussion in Hyderabad. On that, do we know yet when this WG will meet there?

George Kirikos: Bye folks.

Mary Wong: Agree, Phil - we will check on the actual WG meeting time and day.

Philip Corwin: That helps Mary, and is along the lines of what I just proposed.

Mary Wong: We've submitted a request so we should be on the official schedule for sure.

Jay Chapman: Thanks, everyone. Progress continues!

Paul Tattersfield: thanks all bye

Philip Corwin: I will chair next week

Philip Corwin: Bye all