

**ICANN
Transcription
IGO-INGO Curative Rights Protection PDP WG Meeting
Thursday, 27 April 2017 at 16:00 UTC.**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-igo-ingo-crp-access-27apr17-en.mp3>

AC Recording: <https://participate.icann.org/p3kbgsm5d25/>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Attendees:

David Maher – RySG
George Kirikos – Individual
Jay Chapman – Individual
Paul Tattersfield – Individual
Petter Rindforth – IPC (co-chair)
Osvaldo Novoa - ISPCP
Phil Corwin – BC (co-chair)
Mason Cole – RySG
Paul Keating - NCUC

Apologies: none

ICANN staff:

Mary Wong
Steve Chan
Dennis Chang
Berry Cobb
Terri Agnew
Julie Bisland

Coordinator: Excuse me, recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the IGO INGO Access to Curative Rights Protection Mechanism Working Group call on 27 April 2017.

On the call today we have George Kirikos, Petter Rindforth, David Maher, Phil Corwin, Paul Keating, Paul Tattersfield and Osvaldo Novoa. Joining us a little later in the call will be Mason Cole. We have no listed apologies for today's meeting. From staff we have Steve Chan, Mary Wong, Julie Bisland and myself, Terri Agnew. I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phone and microphones on me and when I was speaking to avoid any background noise.

With this alternate back over to our cochair, Phil Corwin, please begin.

Phil Corwin: Okay, thank you very much, Terri. We've done the roll call. Anyone have any updates to their statement of interest? Okay, and starting off I want to thank Petter for chairing last week's call, I was not able to participate last week due to a personal matter that I had to deal with, but I'm happy to be back with the working group. I fear that we made quite good progress last week in reviewing the additional comments, and we will get back to that in a minute.

Before Item 2 on our agenda, which is a new item just added I believe since the agenda was circulated yesterday, we want to advise the working group earlier this week Petter and I are on the email list for the informal discussion group on IGO - a variety of IGO issues, that was the group that have been facilitated discussions at the Copenhagen meeting.

And a few days ago Bruce Tonkin, who has now left the Board but is running that group at the Board's request, proposed the idea of possibly engaging a new legal expert to look at a different question than the one that Professor Swaine looked at. Professor Swaine looked of course at the recognized scope of IGO immunity, and how that might apply to domain name disputes.

Bruce thought it might be useful to engage another expert to see if there is any other legal basis outside of trademark law pertaining to protection of IGO names and acronyms. And then the way that I thought affects us is that he proposed that if that was undertaken that it should inform our work.

And as we are moving quite rapidly toward completing a draft final report and had expected to - was aiming to hopefully deliver that report just before the Johannesburg ICANN meeting, taking such a new, you know, legal input into consideration would necessarily delay our report by an unknown amount of time, as right now it's just an idea; they haven't really refined proposal much less determined what kind of experts they would require or how long the inquiry might take.

Let me bring you up to speed, this is developing rapidly. And overnight, at least overnight for me, (John Pasero), of OECD, reply to Bruce and basically in his response through a lot of cold water on the suggestion saying that additional legal research should not be undertaken for a variety of reasons. And I weighed in on the discussion saying that we would wait to see if other IGOs felt the same.

And George, I see your hand up, let me finish this whole description and see if Petter has anything to add, and then we will hear from you. But this may be an idea that arises and disappears within the course of this week. If IGOs don't support the suggestion it's not likely it will be undertaken.

I'm skeptical about the idea for a number of reasons. One, finding it hard to believe that in the two plus course of this working group's efforts as well as the two-year period of the IGO GAC IGO small-group discussion it seems somewhat incredulous to me that if there were other independent legal bases for protecting IGO names and acronyms that we wouldn't have heard about it by now.

Also in regard to possible additional bases, such as consumer protection law or unfair competition law, those are much more varied and spotty and sporadic and different in approach than trademark law is, and consumer protection law doesn't provide independent rights of action so it's hard to see how that could be the basis for a separate CRP since the UDRP and URS are there as alternatives to establish judicial rights of action not as something new and created out of whole cloth.

And the final thing to bring the working group up to speed is that this morning Petter and I were on a previously scheduled call with the chair and vice chairs of the GNSO Council they are doing this with a number of working groups just so they, as Council leadership, can be fully up to speed on where various working groups are at in their work.

But we did discuss this issue and the tentative conclusion we came to would be - it was that are working group should continue driving forward at the pace we have now to complete a draft final report based on comments we received during the formal comment period and to wait to see if this idea that Bruce Tonkin uploaded in the discussion group gets any traction, and if it's going to go forward to actually seeking out and engaging the services of a separate legal expert, and if that happens we will - the cochairs would further consult with Council leadership down the road deciding on the best path forward.

The bottom line, we wouldn't in any way at this point slow down or defer any of our work, we will keep moving forward to complete a draft final report. So I'm going to stop there. And George, even though your hand was up first, given that Petter is the cochair and was part of this discussion this morning I'm going to ask - call on him to chime in with any additional thoughts. Then we can hear from you, George, and then I see Mary's hand up, so we will get input from everyone who wants to speak on this.

But again emphasizing that right now nothing is going to change for our working group, we are going to keep moving forward with all deliberate speed to develop a draft final report. So Petter, go ahead.

Petter Rindforth: Thanks. Petter here. And as you said, I think it's important to point to all of you that we will continue with the excellent working speed we have so far so that we can come to some pretty soon with some kind of initial conclusion based on all the comments we have got.

And well, I don't like the situation where someone coming up with a suggestion of new investigations, new experts that we have to wait for prolonging the time extra. We have already gone through the issue from all the possible views and we have already spent a lot of time on this topic.

But on the other hand, also as I understand from the Council, if this is the final topic that people outside of the working group think that we should have considered before we come out with our recommendations and conclusions, and if we don't do this that will mean that we - we will be question that we haven't done all the work and listened to everybody.

So if that's the case, well, let's do it. But, as said, I prefer that we proceed as we have done so far come up with our - some kind of - not the final recommendation but final conclusion from our point of view, from our side based on all the official comments we have got. And then we'll see if this idea is still there, and if this is also something that in that case will be supported by both the Council and GAC and the Board, then well, okay, we have to realize that we cannot finish the work for another extra months. But just the idea that kind of topic. So thanks.

Phil Corwin: Yes, and, Petter, just to add to that before George speaks, we're not talking about delaying our work, we're talking about completing our work and then we'll see again this idea may have gone up the flag pole and be pulled back down before the week is over. We are dealing - this discussion group on IGO

issues is completely ad hoc group, it has no formal status within ICANN or under the bylaws; and has no formal place in the PDP process. But we are dealing frankly with an internal ICANN political situation where the Board has - is looking to Bruce Tonkin, who has just left the Board to run this effort.

And we're also I should mention that when Bruce floated this idea the other day the ICANN CEO chimed in that he thought that might be a good idea. So the leadership of Council is worried that if this actually gains traction and goes forward that we wouldn't want to be in a situation where Council approves our final report and then the Board rejected or asks us to come back and reconsider things because of this other development.

But again, it may go nowhere. And I don't think it'll come up with anything of substance but let's see what happens. So order of speakers, George and then Mary and then Mason and Paul Keating. So go ahead, George.

George Kirikos: Sorry, I was muted. George Kirikos for the transcript. Yes, first I think we should note that we actually discussed this topic so that, you know, this topic of whether we should hire another external counsel should do if our final report. And for one of the reasons that Phil gave earlier regarding that we are here to, you know, that any procedure that we develop is to supplement the law and not create new law.

So these local laws that they want to study already exist and so if they study them they're not going to change. So the IGOs would still have the ability to use those procedures regardless of whether the UDRP or the URS even exist. So for that reason it shouldn't affect our report.

But the main reason I would be against hiring another legal expert to study the standing question is that we are already concluding in our report that IGOs do have standing using the Article 6ter basis, and so under the UDRP and the URS there are three prongs that the complainant has to meet to pass

the three-part test. So we are basically giving them the standing, you know, the first part of the test with a very low barrier.

It's always been a fairly low barrier, and we are just, you know, basically giving them that prong as long as, you know, as long as the Article 6ter registration or even their common law rights can be established showing that there is similarity between the domain name and the term in their name or acronym or Article 6ter mark or whatever. So we are basically already giving them standing, so I don't see how any review by an extralegal expert can actually improve the situation from what we've already decided. We are relying essentially on the fact but there are two other prongs to the test, you know, the person has good use of the domain name or legitimate use of the domain name or that they didn't register it in bad faith or use the domain name in bad faith to save themselves in the UDRP or the URS.

So I'm comfortable not going forward with any, you know, external legal counsel that would delay the process, you know, another year because I'm pretty sure we've dotted all our Is and crossed all our Ts already so this seems like some delaying tactic to achieve some other goal perhaps, you know, adopting what they want, you know, as a separate procedure. And I don't think that we would recommend that regardless of what the external analysis showed. Thank you.

Phil Corwin: Yes, thank you, George. And I just want to clarify that if this new legal inquiry is undertaken it would not be undertaken by this working group, it would be undertaken by this ad hoc discussion group on IGO issues, and we would be notified that that effort has been undertaken and possibly asked to delay delivery of our final report until that legal expert report is delivered.

Again, I don't - I'm incredulous that any new legal basis for IGO name and acronym protection could be found. I'm also personally concerned, you know, UDRP and URS are the exception. It's the only area where ICANN has provided an alternative procedure for an established legal right of action. And

if ICANN were to start creating an alternative based on unfair competition laws or consumer protection laws or what else, does that set a precedent where ICANN starts creating alternative means pursuing all kinds of legal claims as they relate to the DNS in particular.

I'll stop there and call on Mary and then we'll get back to the working group members. Go ahead, Mary.

Mary Wong: Thanks, Phil. And Mary from staff here. I just wanted to pick up on some of the points that you made in your introduction when you were explaining the proposal. And I wanted to first start by noting that four working group members who haven't had a chance to listen to the recording or read the transcript of the Copenhagen discussion that it may be very helpful to do so because a lot of this was a fleshed out in that discussion and explained.

And based on that I want to clarify that this is a proposal that Bruce is making to the ICANN organization; it is not something that he came up with between Copenhagen and yesterday or the day before. It was an idea that was raised during the Copenhagen discussions. And there was recognition that that there may be some other bases of law that we didn't really know what it was.

So from where we sit in the ICANN staff side, we see it as Bruce picking up the suggestion and, you know, going back to the list with it to see if that is an idea that people support.

Secondly, I don't read it and I don't think Bruce or anyone intends or reads it as a delaying tactic. And Phil, I think you noted that as well. It certainly would, if undertaken, affect the timeline of our PDP but the suggestion was not raised or made or pursued with any intention of actually causing such a delayed.

So then the last thing that I'll say for now is that there is a consciousness, and Phil and Petter, I think the Council leadership made it quite clear this morning

on the call too bad because this is an ongoing PDP, that kind of opinion would be input into the PDP. So it's not as if there is a parallel track of work that this discussion group would go off and do and then expect the GNSO or this PDP working group to take it as a directive.

And so I think at this moment, it's more of a proposal for consultation and input. And as Phil said, we can see how far that may go. But there is an awareness that this is an ongoing PDP and it may be a useful input. Thanks, Phil.

Phil Corwin: Yes, and thanks, Mary, for pointing out that if they decide to go forward and engage a legal expert and look in, you know, to this question of other independent legal protections for IGO names and acronyms, if the report, whatever this result of that report, the would be treated as just one more comment by this working group.

And I want to make clear, the only thing we discussed, and that might be delayed is the official filing of our final report if this goes forward. It's not going to delay our work. We are going to keep pushing forward on the same basis we've been pushing forward. And if we haven't - I think we should still aim for completing a draft final report before Johannesburg.

And regardless of whether we formally file it, which would, you know, set the clock ticking for GNSO Council consideration, if we don't do that, the onus will not be on us for any resulting delay. And that final report will not be a secret. Everything we do is completely transparent. The text of that final draft report will be out there in public. So it can be discussed in Johannesburg whether or not it has been formally filed for Council consideration.

So I'll stop there and Mason is next.

Mason Cole: Thanks, Phil. Mason Cole. I just wondered if it might be useful if we invited Bruce or well specifically Bruce onto the next working group call just to get his

point of view and maybe some more insight on what's happening with the Board, and management level.

Phil Corwin: Yes, that might be useful, Mason. The cochairs can take that under advisement. Again, given the somewhat surprising comment of the OECD legal counsel overnight, saying that that organization didn't want such an inquiry started, and I had a further exchange with the group, and (Jonathan Pasero) said he would contact his other colleagues in the IGO world and see if they shared that view.

So we may be discussing something that by the end of the week has come and gone. We have to wait and see what happens. But we felt the working group should be fully informed of this development so they didn't hear it from somewhere else and be surprised and think we were hiding anything from them.

Paul Keating.

Paul Keating: Hi, Phil. This is Paul Keating for the record. Thank you. I wanted to, so first I disagree with one of the statements. If you look at the plethora of laws out there that you're going to find about consumer protection and fraud and everything else, you are going to find a basis of some - find a basis for them to make some sort of claim, okay?

But in reality that's not the issue. The issue is do they have the ability to make that claim in the context of the UDRP? Okay, under a curative rate mechanism. That's really the issue. Number 1, I think that - I see this as a delaying tactic and nothing short of it because to do a survey of every single possible law that would give them some sort of claim against some domain registrant is a project that would take decades, okay? And it would be a moving target and all of those laws constantly change particularly those laws in effect in common law jurisdictions. So I think that it is a no-brainer.

Now how do we deal with this? I would very much support us actually dealing with this issue inside of our current report. We deal with the fact that the issue was raised, it's a matter of the public comment period. And we address it for the reasons I laid out, that it's well beyond the scope, it's not included within the traditional concepts of curative right as a basis for standing for raising such a claim, and that's incorporating those rights within a curative process would be well beyond the policy that supports the underlying UDRP and URS process.

So I think we shouldn't hide it. We should deal with it in our report. And as George suggested, we come out affirmatively and state that we've granted them standing so that this would not, you know, our not dealing with this is not harming them in any fashion. And then we deal with it straightforward as a separate set of paragraphs within the context of our report.

And then nobody can complain about the fact that we ignored something, we are not shoving it under the carpet. And more importantly we are shooting this idea in the head and putting it to sleep so it doesn't delay our work for years to come. Thank you.

Phil Corwin: Yes thank you, Paul. And I can tell you that - my only question about your statement would be, and let me finish and then I will let you respond, is what would we respond to? Right now, you know, we had a full comment period, which we extended for 30 days at the request of the GAC.

And we have not - we did not hear in that comment period or through the entire course of this working group's efforts for more than two years leading up to the comment, any assertion by any IGO or anybody else that they had any other basis for protecting their names and acronyms other than either trademark law, which we know about, and which is the existing basis for the ICANN existing CRPs, or what I kind of referred to as the penumbra of rights that IGOs have asserted they have based on their special status as

organizations with a public purpose established by nation states through treaties.

But that's about as far as they've gone in asserting some separate bases that would justify a separate type of CRP separate and apart from the UDRP and URS. So I'm not quite sure what we'd respond to because no one has asserted any other statutory basis for protection of their names and acronyms, it's either been trademarked or the general special status they hold as IGOs.

That I don't know if you have any response to that, and then we can hear from Petter.

Pau Keating: Yes I do. This is Pau Keating for the record again. And I'm glad you raised the issue because I guess number one, if we look to our original marching orders, and the concerns that IGOs were expressing in the first place, it was not about whether or not they had rights, it was about how do they carve out a separate process so that they didn't have to give up their chairs sovereign immunity issues. So this was never a question about rights. So it doesn't surprise me that someone didn't come up with this during the comment period or earlier.

But nevertheless, I don't think it very difficult to add in a reference paragraph that says, you know, during the course and scope of ICANN meetings or whatever, you know, issues were raised as to whether or not IGOs had additional rights above and beyond trademarks. And we just deal with it, that while they may or they may not, but it doesn't really make a hill of beans worth of difference because they have rights, we feel here, and that brings up the issue of immunity, which we've dealt with here.

And even if we were to recognize or investigate other rights that they may have, they still have the immunity issue to deal with so what do they get? In other words, we show it for what it is, which is in my opinion, just a rat hole

that someone is coming up with it at the last minute because of an uncontrolled set of conversations in a public forum, and, you know, a resistance from what I hear from your description, resistance from the executive level to actually say no to these people. Okay?

And I I've said enough, but I don't think we should go down this path. I think that we affirmatively should deal with it in fact in a report in order to cut it off. Thank you.

Phil Corwin: Okay, and thanks, Paul. And again we are not proposing to go down this path and right now we don't even know if they are going to go down the path of retaining a new expert. Petter, go ahead.

((Crosstalk))

Petter Rindforth: Petter here, just quick comments on this topic, I also followed the chat here. And well, we have already spent 30 minutes discussing this topic and I think for the best of all of us we, as Phil pointed out, we need to keep in mind that specific topic so far for us to deal with. It came up and it may be something to further discussed in Johannesburg. But I definitely recommend that we are going back to our work with going through the comments we have received and proceed as we planned to do before this idea came out.

And as said, it may even be so that this is just an idea that will not be alive when we arrived in Johannesburg. But now we all have knowledge about this, and we are prepared if the topic comes up for real. But let's proceed with going through the comments we have and make our own conclusions. Thanks.

Phil Corwin: Yes, thanks Petter. I'd agree with that. Mary, did you have further comments, and also I see Mason's and Paul's hands up. I don't know if those are old hands? If they are I'd ask them to put them down. But if you have a further comment, Mary, please go ahead.

Mary Wong: I do, Phil. And it really is just to clarify a couple of things. One is that with regard to the scope of our charter, in the original issue report it does clarify that IGOs may have challenges for two reasons. And one was related to rights in the sense that if they do not have trademarks, as not all of them do then they wouldn't be able to use the UDRP. I'm not making an argument that that's a good case or not, I'm simply saying that the issue of rights was noted at the outset of our PDP as was the issue of immunity.

And I just wanted to reiterate too bad however this discussion does, when, Phil you and Petter report back on the discussion of this working group on this idea to the Council leadership and to the discussion list, that clearly, you know, we would not as a working group stopped our work until that discussion is done.

And I wanted to emphasize that it really would be, if it goes ahead, input to our group. And on top of that it's not been discussed because it's not even clear whether it would be something that's a supportable proposal, it's not been discussed, you know, who the expert would be, how that person or persons would be picked and what is the exact question to be asked. So those things are so down the road if at all. Thanks, Phil.

Phil Corwin: Yes, and thanks for pointing that out Mary, that of course is one of the concerns figuring out what kind of expert and finding the expert and having the expert do whatever is required to take, based on our experience with Professor Swaine in both selecting him and the is doing his research and then as working with him to refine his final memo, we know it is a long undertaking to make that kind of inquiry, even if they come up with nothing it's going to take quite a while to find nothing if they're going to do a comprehensive survey of statutes around the world.

But again, you know, we spent more than 30 minutes discussing this potential development which again, may dissipate and sink below the waves before

the week is over. If it continues I think we will take very seriously the idea of inviting Bruce to join our next call or the call after to discuss this with him.

I can tell you from the call with the Council leadership this morning that any delay in the formal filing of our final report would not be viewed happily by others in the GNSO world, particularly the contracted parties who very much want this issue to be completed. But let's just see what happens. And with that I suggest we put this distraction aside and turned back and get going on Item 3 which is the review of the public comment review tool to determine which of many comments still warrant further review and additional working group discussion about whether and how we should modify our initial report before filing a final report.

It's my understanding that the group last week completed its review of all substantive comments that contained any new facts or any arguments. So let me start there. Does anyone believe that we are not finished, that any of the filed comments need further discussion before we get to the next stage of actually deciding, looking at the new material and debating which if any of them justify modifications of the initial report? So anyone think that we still have work to do in reviewing comments before moving onto the next stage?

And I don't hear anyone or see any hands so I take that to mean that everyone feels that we pretty much completed that initial review on last week's call. And with that, we've got a new document up on the screen here. I note that it's 56 pages long, which is quite a lengthy document. Since staff prepared this document, I wonder if staff could briefly take us through it and explain just how it's formatted and how it identifies those comments which are new in substance or argument and which merit therefore further consideration by this working group? So if staff could take us through it briefly and explain it to us and then we can start plunging into it.

Steve Chan: Hi, Phil. Thanks. This is Steve Chan.

((Crosstalk))

Mary Wong: Phil, this is Mary, and - yes, I'm going to ask Steve to take over here because he was on the call with Petter last week and is more familiar with this document than I. So Steve, please go ahead.

Phil Corwin: Yes, go ahead Steve.

Steve Chan: Sorry, I had to - my phone just died. This is Steve Chan from staff. And I was actually just about to put a list of the entities from which we received comments that we reviewed last week. I'll get to that in a second. But just to explain what this document is that we're looking at.

It is - as I think Mary has mentioned a few times, it's a summary document an organizational document of the comments received. It's not intended to replace the full comments of course, but it's to help the working group look at the comments in an organized way. So the way that this particular document is organized is that it - maybe I can sync the document to help us all look at the same thing.

Phil Corwin: Okay, Steve, let me ask you, and I don't know what just happened, I just lost scroll control of the document.

Steve Chan: Sorry, that was me, I synced - I can unsync it.

Phil Corwin: Yes, can we restore that please? Thanks. So I see there's a color - okay, so there's a color key. So for concerns, divergence, agreement and new idea, I'm going to briefly scan through the document to see where those - okay. The first - that only crops up in a few places. Are those the only places where - what I'm trying to ask is does this document clearly identify, now as we went through each comment, we kind of said oh we've heard that one before, it's not new. Or oh, you know, we don't think that - that's a new argument but we don't think it has any credence and we're not going to deal with it further.

And then in other cases, we said oh that's a new fact, we weren't aware of and need to take into consideration or that's a new argument we haven't seen before and should consider it. So does this document really - does it differentiate between the things that we've seen and heard before or didn't believe even if new, required any further consideration versus the things that we agreed on that initial review said, hey, we need to come back and consider that further.

Steve Chan: Thanks, Phil, for the question. This is Steve Chan again from staff. And to answer your question directly, it does not do what you just said, it does not marry the - this document, which is a summary of the - an organization of the comments received with what we - the working group has determined are possible new arguments or new information to be considered. So I can tell you right now that we have another document that's ready to be loaded if we want to discuss that.

What that document contains is the collection of what staff has been able to determine are new information or new facts that the working group might consider. So that's a separate document at this point. It has not been married with this document. And actually just to touch on what you mentioned earlier about the color coding, we have not yet taken that in account that is more of a working group function to determine the impact of the comments.

What we have done to help make this more of a - I guess the review of the comments that are in this document a little more efficient for the readers is to try to provide at the top of each of these comments a very brief summary of what the comments pertains to. I think a next step could be for this document to try to fill in that color coding based on the discussions that have taken place to date. Hope that helps. Thanks.

Phil Corwin: Okay, Petter, I had seen your hand up and then it's down now. Did you have anything to say on this?

Petter Rindforth: Petter here. No it was more or less the same and I just wanted to also to clarify that the code keys were - as I understood it, and obviously correctly, something for us to note when we go through these documents.

I just wanted to - before I unfortunately I have to leave the meeting for today, but I also - I think it's on Page 2 it's a good short summarize and then perhaps the other documents that was mentioned is better to go through to have more of a summarized yes or no on our specific topics. So thanks and thanks for today.

Phil Corwin: Okay, thank you, Petter and thank you for being on this call. I know you have to leave momentarily and we'll keep you up to date on what happens during the remaining half of today's call.

My view is that - I want to amend my prior statement, besides trying to identify new facts and new arguments, we also broke out on Question 4 we asked for specific opinions on Option 1 or 2, and most of the commenters did not provide us with that but we did have a few and I know we noted those. So I'd like to ask staff, you know, looking at this 56 page document, for example, I know it leads on Page 4 with the WIPO comments and I recall quite clearly that when we reviewed them we discussed them and said they didn't merit any additional consideration that we - that we didn't see anything from WIPO that we hadn't previously considered.

So rather than - I think it'd be more efficient if we could put the other document that actually is based on the facts and arguments and comments on Question 4 that we identified on our initial review because that's where we really want to put our effort now in giving each of those additional consideration and discussing whether they merit modifications of the initial report.

Mary, I see your hand up.

Mary Wong: Phil, and so just to close off that part, and this was - while Steve was uploading this new document, may we suggest that we send a note to the full mailing list after this call reminding folks to, if they haven't, take a look through that 56 page document because we do want to be sure that everyone's had a chance to look at the comments and so if there's something that we may have missed as a group or that staff may have not identified or picked up in the notes that you now see, that that is highlighted as, you know, maybe one of the new facts or arguments that we might want to consider.

Phil Corwin: Okay, yes, I think that's a worthwhile suggestion. I don't believe we've seen that document before so I think it's worth mailing out to everybody so they have a copy and can peruse it at their leisure and get back to us if they think anything is missing or misstated in that document. I'm fine with that.

So now we have the other document up, and this document I'm happy to note is not 56 pages long, it's one page long. And I'm surprised it's that short, but - and I apologize for the background noise, apparently there's a fire in my neighborhood, got my windows open with the spring breezes. Let me hold for one second while they pass. A lot of fire trucks. Okay, they're receding in the distance now.

Okay, so why don't we - yes, Steve, I see your hand up.

Steve Chan: Thanks, Phil. This is Steve again for the record. I just want to make a quick comment to put this document into context. The source of this document is the - so I'll say it differently, the information in this document has already been shared in the email via the agenda. It's largely a change from what was shared in the agenda from the - from last week's meeting. There was one additional thing added, it's 4C here regarding the Go Daddy's arbitration requirement.

But other than that it's largely unchanged from last week, and again, it was shared in the agenda so...

Phil Corwin: Okay, was this document discussed last week or just made available?

Steve Chan: The information was shared in the agenda, it was not discussed. There was not adequate time to cover this material.

Phil Corwin: Okay. And, Steve, let me ask, does this document fully reflect all the items we identified as new facts, new arguments or specific responses on Question 4? I was kind of envisioning a document that on specific topics set forth, you know, the additional facts or arguments and identified the party that had provided them. So how comprehensive is this?

Steve Chan: I think I might turn that one over to Mary actually.

Phil Corwin: Okay. Go ahead, Mary.

Mary Wong: Hi, Phil, everyone, this is Mary. So to answer your specific question, it's not comprehensive, clearly. You know, looking at it and considering that we've been doing this for several weeks, I think it might - maybe be more helpful if we did fill it out a little more, but having already that public comment review tool that was a fairly long document as you saw, and having had the working group work through individual comments, we haven't take upon ourselves to make another table or longer document.

So in short, what this document is, is the staff's attempt to bullet point list, if you like, in summary form, the various points that were noted over the last three weeks or so about possible new facts or arguments or perspectives and sources of additional information that we might want to look at.

So it may be helpful if folks take a look at this and if really there's, you know, not much recollection about where those comments came from or we're not

able to explain that, we can certainly as staff go back and fill that in. And to the extent that you see some, you know, new information that may be highlighted, and I'm thinking here for example of the OECD's point about the New York Convention, we can pull out those documents as well for review between now and next week and for discussion next week if you like.

So would it help, Phil, to just take a quick look at this document...

((Crosstalk))

Phil Corwin: Well, I think today's discussion we've got 40 minutes left, we should tee off this document. I'll leave it to staff as how do I want to approach it. I'd be happy, you know, one way to deal with this would be to go back to the 56-page document, refer to the notes that I know staff took during our review of the comments over the comments over the past few weeks where we specifically identified facts or arguments that we regarded as new and meriting further consideration and just, you know, using that color coding to identify them in the long document and that would be - that might be the easiest way.

But I'll leave it to staff to how they want to do it, but eventually I'd like to, on a particular topic, assemble all the comments and identify the party bringing the facts or making the arguments to our attention. But again, so in that document in the long document on the WIPO comment there wouldn't be anything to color in because we decided in our initial review that there was nothing new there.

On the OECD, there were some new things that we agreed to come back to and discuss further. So that might be the easier way. But I'm going to leave it to staff, but that would identify with a little more detail the arguments made by the - and the party making the argument and then we could - if we ever need to, could look back at the original text of the comment and in many cases it won't be required.

So why doesn't staff consider what would be the most efficient pay to provide the working group with that additional detail and meanwhile I think we can start discussing some of these - some of what we have on this single page document and get into it. And I'll lead off on Question 1, which was we had a number of comments saying that Article 6ter was unsuitable to be a separate basis for standing to bring a curative rights action.

There was concern about that. There was concern about whether it should be an independent basis. There was concern that Article 6ter notification might be over inclusive, and permit some gaps which were not authentic, quote unquote, to get special treatment aside from trademark rights.

And there was also concern from the IPC about any guidance that might accompany that approach although I did note when we were discussing that that this working group had full authority to provide guidance since we have authority to actually recommend formal changes in the UDRP or URS, we certainly have authority to provide guidance to experts providing the decision making function for those CRPs.

So let me say my thinking on this, and I open it up for group discussion, is that we might - based on the comments we've gotten, which I take quite seriously, we might want to pare back our recommendation and rather than having an IGOs notification to WIPO asserting their Article 6ter protections, have it being an independent basis for standing, that we might want to dial that back and say that such notification could be presented as evidence of common law trademark rights if there are no formal trademark rights that would fit squarely within the existing UDRP and the WIPO guidance to examiners, which recognizes common law trademark rights as a sufficient basis for filing an action.

It would - so it'd bring it more squarely within trademark rights rather than being an alternative right and would also reduce and perhaps entirely

eliminate any guidance so that we still might want to provide some guidance to WIPO experts in regard to the authenticate-ness issue that they might also wish to look at the GAC list and maybe further question an IGO without trademark rights formal registered trademark rights in relying on Article 6ter about whether a bona fide IGO.

So let me stop there and open up this very important subject for group discussion. Yes, George, go ahead.

George Kirikos: George Kirikos for the transcript. I could go along with that watering down of our proposal. I always felt that, you know, the Article 6ter was a supplement - a way of treating to the panelists that there is a common law trademark. Our report says, you know, rather than being evidence that, you know, it's actually proof. So watering it down from proof to just mere evidence would be a step backwards in terms of IGO protections. So I could live with that but I don't see why IGOs would mind if we, you know, said, you know, check the box that it is proof that, you know, it's more than just evidence.

So I could live with watering down but, you know, I think what we've done is actually a fair, you know, a good thing for the IGOs. And I don't know who's actually complaining because it seems like the governments wanted us to do something to expand protections for IGOs and we've done so and they're now mad that we did too much.

But if that's what, you know, the rest of the group thinks I could go along with it. The reason why I will supported our initial recommendation was to say that it is proof not just evidence, is that there we have the two prongs of the UDRP and the URS, which do protect the registrant, the first prong is not enough to win. And so it seems that the governments and the IGOs - or at least the governments who are concerned about this issue haven't realized that it's not enough to actually win the UDRP with that first prong, that the other two prongs exist that are, you know, in 90% of the cases determinative. Thank you.

Phil Corwin: Yes, thanks for that, George. Just responding, I think there was some concern from IGOs, but more than that, the US government definitely raised concerns about Article 6ter in and of itself providing a basis for standing. The IPC was very concerned about having any basis for bringing a UDRP or URS other than one based squarely in trademark law. So I think if we dial it back a little bit to just not being an independent basis but strong evidence of common law trademark rights, we effectively deal with those criticisms while still effectively providing in almost all situations, IGOs with an alternative basis for bringing a curative rights action other than a trademark registration.

So it's not a huge difference, but I think it's one that deals with effectively with a lot of the criticism received in the original comment period.

Are there other comments on this? Mary, go ahead.

Mary Wong: Thanks, Phil. So in the absence of hands from working group members, from the staff side, two things. One is, and you've already noted this, Phil, that the comment here about Article 6ter not being appropriate for standing, there was a very strong comment from the US government and the IPC among others also submitted a strong comment. So it wasn't the IGOs.

Our understanding is that from the IGOs and the GAC, if you look at the more recent discussions and the communiqué, one factor that was important to them why there needed to be protections for the IGOs and their acronyms was the public policy concerns that they highlighted.

So that's not necessarily a legal basis for standing, that doesn't give substantive legal rights, but that as certainly a strong factor. And it wasn't so much that the IGOs were, you know, objecting to 6ter, in fact they were the ones who brought up 6ter in the first place, and now we're also looking at public policy concerns. But the objections to 6ter I believe the strongest comments came from the United States government and the IPC.

Then the second point that, if you allow staff to make, is that we've been thinking a little bit about this issue with 6ter, and the substantive legal rights that would be needed for standing based on how dispute resolution mechanisms like the UDRP and the URS have evolved. So as George says, the first prong is standing and for standing we're talking about substantive trademark rights.

Aside from what we talked about earlier in the call, I think our question to the working group is what would be the need to introduce 6ter if you are looking at a recommendation where an IGO would have to show legal rights of some sort? And those sorts could be common law trademark rights, they could be some other form of unregistered rights. So in some senses, it's not a trademark but it is a substantive legal right.

So what we're struggling with on the staff side is what would having 6ter as an additional element here, add because 6ter doesn't establish any kind of right at all whether common law or otherwise.

Phil Corwin: Yes, Mary, just in response, we understand that 6ter doesn't provide any affirmative rights, but I think a final report noting at a minimum that an IGOs use of the 6ter notification process notifying WIPO of their assertion of rights regarding their name, acronym or both, should generally be viewed as strong evidence of common law trademark rights would be useful. I hate to say the word "guidance" since we know the IPC is opposed to any kind of guidance, but I think it would clear up any confusion on whether an IGO can proceed to file an action based solely on a claim of common law trademark rights evidenced by assertion of its 6ter rights.

Paul Keating, please go ahead.

Paul Keating: I'm in agreement for listing it as merely a factor of evidence. And Mary just a comment, other rights are not equivalent to trademark rights, are not

acceptable under the UDRP. One must establish the trademark. And the trademark can be established by common law - using common law factors or registration. But there are no other rights that are recognized under the UDRP or URS.

So I'm in agreement that it is evidence of a trademark right, and let the panelists deal with it as they wish.

Phil Corwin: Yes, yes, that's the view I've come around to, Paul. Let me - I notice George made a suggestion and I was thinking the same thing myself. This won't be a final determination but if we could just take an informal straw poll right now and before you do anything if you tend to favor dialing back the use of 6ter to merely - I don't want to say merely but to be - to constitute evidence of common law trademark rights, put up a green checkmark. If you believe we should stick to our original proposal of having it be an independent basis for standing to bring a UDRP or URS, put a red check - a red X there. So let's take a quick survey of the working group to see where people are at.

Okay, okay so I see all green checks except for one red X. David Maher, you're the red X, did you want to say anything in defense of that position before we proceed further?

David Maher: No, I don't really have anything to say about it.

Phil Corwin: Okay, okay you just like - think we should stick to the original proposal. So it seems like we have a fairly good consensus among the working group members on this call that dialing back the weight of what 6ter means in the CRP context could be advisable. Please clear your marks and I think for right now I'll call on you in a second, Mary, we probably gone as far as we can go on Item Number 1 pending preparation either, you know, additional details and the long review document or further elaboration on this document, we can return to this question when we have that.

Mary, go ahead.

Mary Wong: Thanks, Phil. And so to follow up on Paul's point, yes, I wasn't meaning to say that the UDRP includes all these other rights. I think from the staff side it just seems to us, and we want to clarify this, that in essence, what the group that's on this call for the most part appear to be saying is that for an IGO you either have a trademark, if it is not registered it should be the equivalent more or less of a registered trademark in the sense that it's a common law trademark or an unregistered mark in a similar sense.

So in that way it's really not different from the current UDRP. And that's why we were struggling with, you know, the 6ter bit because while it may make it easier, we're not sure that it really adds that much because 6ter really doesn't show that an IGO has a common trademark in its acronyms. So just those two points, Phil, for clarification.

Phil Corwin: Okay, well, you know, I appreciate that, Mary. I'm inclined to let the WIPO - the UDRP panelists and this might be something that WIPO can address in their guidance to panelists, I know they're preparing version 3.0 of that, but, you know, they'll certainly take an interest in this, they're very interested in IGO issues. I know it's not fully determinative of a common law trademark right, but the fact that it was exercised would bear some weight I think in backing a claim to common law trademarks in an IGO's name or acronym. So it has some weight without being fully determinative and pointing that out in our report clarifying that issue could be helpful.

Okay, Item 2, and again this is just an initial review of these, we're going to come back to all these issues when we have a more fully developed review tool that identifies the new facts and arguments under the parties filing the comment. But Recommendation Number 4, can staff refresh my memory on what - I know Recommendation 4 was the one where we asked about Option 1 and Option 2 what happens when an IGO successfully asserts its immunity in a subsequent judicial de novo review of the initial CRP decision.

Was that the recommendation that we should leave it to the courts to determine the immunity claim? If you could just refresh my memory on that?

Mary Wong: Hi, Phil, this is Mary from staff again. And sorry for the delay. We were actually just trying to pull up the public comment review tool because that is the recommendation that goes into the various options. And I believe it has to do with immunity. The problem with immunity and how to deal with it short of changing the mutual jurisdiction clause, does that help?

Phil Corwin: Yes, that helps somewhat and that reinforces my view that that's the issue that Recommendation 4 was directed toward. Here we have three reasons provided by OECD, we might have to go back to the other document to look at those specific reasons, I don't recall them offhand. The World Bank question the feasibility of the assignee option that was use of an assignee agent or licensee to file the action to provide some insulation to the IGO so that they couldn't be charged with having fully waived their immunity.

And on whether we ignored or misinterpreted the Swaine opinion, I do remember that a number of IGOs quoted from the Swaine memo a sentence, which I don't have the exact language in front of me, where he said, well perhaps in a majority of cases they'd be successful in asserting their immunity. My own personal response to that was that, one, the fact that they might prevail in a majority of cases, which was just his opinion, it can't be proven or disproven, also allows that they would fail in some cases.

And goes back to our original conclusion that ICANN - it was not suitable for ICANN to be predetermining the outcome of those arguments in different national courts as to how they might come out because we're aware from the Swaine memo that different courts have different approaches on the immunity question and how they'd apply national law and the prevailing analytical method to a domain name dispute.

Also those comments failed all of them neglected to point out that Professor Swaine elsewhere in his memo said that it wouldn't be unreasonable since the curative rights processes were providing a faster and substantially less expensive method for the determination of these disputes outside the context of judicial forms where the mere filing of an action would constitute waiving immunity by an IGO, that it would not be unreasonable to ask the IGOs to waive their immunity as a precondition of using a CRP.

We're not asking - and we have never gone that far, we're not asking IGOs to waive their immunity to bring an action, we're just saying that in the rare instance where the registrant loses and has legal rights to bring a de novo quote, appeal, unquote, that it should be up to the court to determine the validity of the immunity claims, that ICANN shouldn't be determining it in advance.

And to further focus the discussion and perhaps confuse it, I wanted to raise the issue of something that's been percolating in my own mind. I know there is the clause in the UDRP that the complainant will, you know, submits to the possibility of a follow up court action if either it or the other party wants to question the result of the UDRP. But since immunity is a defense, we haven't really considered, I don't believe, whether agreeing to that portion of the UDRP constitutes a waiver of all possible defenses.

I guess the question I'm asking is by under the current UDRP, if an IGO brings a UDRP, are they waiving their immunity defense or are they merely agreeing to the procedural reality of that they might be a subsequent court action but in that court action would they still have the availability of asserting the immunity defense having not waived that defense by agreeing to the UDRP?

So I'm going to open this up to discussion now. I guess anyone who wants to react to any of the criticism we've seen for not giving IGOs advance immunity and saying that they may be subject to court review and the rare instance of

an appeal or request for de novo review of the UDRP or URS decision, and also the workability of the criticism of the recommendation that IGOs could file via third party to further insulate themselves against claims that they've waived their immunity in advance.

So anybody wants to speak to any of that, those are pretty meaty topics. Yes, George.

George Kirikos: George Kirikos for the transcript. Yes, I think our report actually handled all these arguments, there wasn't really anything too new in their arguments. There actually - I was very puzzled by the fact that the question - the feasibility of the assignee option, when we actually know that it worked and we provided examples of, they didn't read all the footnotes or didn't follow our mailing list, so we know that the assignee works if they want to avoid the immunity question entirely.

And if they don't want to avoid the immunity issue and actually file on their own behalf, then they do have to waive their rights, you know, in the event that it goes to a law suit and that's a very low probability because, you know, the number of law suits relative to the number of UDRPs, is, you know, probably on the order, you know, less than 3%, I don't know the exact numbers but it's obviously very small. And so that, you know, in real life if the UDRP and URS didn't exist, they would necessarily have to waive their rights.

So, you know, we're saying, you know, nothing changes, you know, the UDRP - the presence of the UDRP doesn't suddenly create a new immunity for them, it just maintains what would have happened - maintains everybody's legal rights had it not existed in the first place. Thank you.

Phil Corwin: Okay, thank you, George. Do we have further comments on this? This is the big issue, immunity, because it's the one that's been the whole basis for the

IGO's repeated requests for an entirely separate process in which the domain registrant would not have potential access to court review. Yes, Mary.

Mary Wong: Hi, Phil. Staff was just wondering if it would be helpful to pull up the OECD comment because of all the commenters, I think they did try to provide reasons why Recommendation 4 would not work. And the further comment we have here is that this point as you and Petter will recall, was touched on in the Sunday evening discussions in Copenhagen, but I think due to time pressures, it wasn't as fully discussed as the standing issue. So it may be worth our group spending a little time discussing this.

Phil Corwin: Okay, yes, I think that might be helpful. While you're preparing that I'm going to call on Paul Keating. Just before that, I'd also - I'm still seeking input on this - on the view of working group members of whether when an IGO files a UDRP under the current language of the policy are they - they are clearly acquiescing to the possibility of either party and they'd be unlikely to do so if they want - because they'd have to waive immunity to do so - but of the registrant files a subsequent court action have they - they clearly consented to being in that court room and having to respond to that action.

But have they waived their defense or their ability to assert immunity? And I think to be consistent with the whole approach that this working group has taken which has been that the courts should decide the immunity question to state somewhere in our final report that we believe that should be the case that an IGO should not be viewed as having waived its immunity defense but that what we wanted to do was preserve their ability to assert and have an independent determination by a national court in that rare situation.

So anything on that, and let's hear from Paul Keating on the overall immunity question and then we'll look at the OCED comment because that was a very substantive one that we thought deserved further consideration before preparing our final report. Go ahead, Paul.

Paul Keating: Thank you. Paul Keating for the record. I think we got it absolutely correct in the way we wrote it. The - and to answer your subsequent follow on question, Phil, by agreeing to a mutual jurisdiction, I don't - I think that the issue of whether or not the IGO has affirmatively waived its immunity claim is something for the judicial authority to agree about, to decide. But more importantly what it does serve to do is it does implement - it acts to implement automatically the 10-day waiting rule, okay?

So in other words, if I lose it - if I'm the respondent and I lose the UDRP, I have - I can go to any court I want to challenge that decision, but if I do not go to a court - let me reverse that - if I go to the court in the mutual jurisdiction then all I have to do I send out a copy of the complaint and there's an automatic injunction barring the completion of the order, in other words, the domain doesn't go anywhere until that action is terminated in the mutual jurisdiction.

So that's the primary function as a lawyer, the way I see it, that that's the function of that consent to the mutual jurisdiction. I've agreed that if you go to this place and you - you file a court proceeding, there's an automatic injunction and until that court proceeding is terminated. Now whether or not by doing that I have also waived my defense of sovereign immunity, in other words, to get this matter dismissed, that remains an issue for the judicial authority to determine, not for us. Okay? Thank you.

Phil Corwin: Yes, thanks Paul. And I think that was useful input. And again, of course we can't - neither ICANN much less this working group can bind any court down the road to take any particular path in response to an IGO's immunity claim. But I think I firmly believe personally that our final report should state this working group's belief that by filing a UDRP an IGO has not surrendered its right to assert an immunity defense in a subsequent court action, so at least when that comes up and they're explaining to the judge what this UDRP thing is, that preceded the filing before the court, that they can point to such

language and hopefully use it to at least preserve their ability to assert that defense.

We now have the OECD document comment in front of us, so let's - this is five pages long and we've got 10 minutes left. Let's - so I don't think we're going to get to another issue besides immunity on this call today. Let's give it a quick review again and see where there's something we need to seriously consider.

So Recommendation 1, they had no position. Recommendation 2, they agree that standing to file a complaint under the UDRP and URS should be based on international law rather than trademark law. I guess there they were agreeing with Article 6ter assertion, be an independent basis for standing, which we're now considering dialing back. And I'll just keep going here and anybody chime in if you - and, Paul, I see your hand still up, I think that's an old hand if could drop it unless it's a new comment you want to make.

Okay, so Recommendation 3, that was recommendation guidance to panelists to look at the Article 6ter standards when that was used as a basis for standing. They thought that unduly interfered with panelist decision making and proposed an interpretation of Article 6ter which would not enjoy consensus.

And so I guess in that regard they're similar to the IPC that they didn't want this working group providing extensive guidance to panelists, and if we do go forward with dialing back 6ter to merely being evidence of - where common law trademark rights are asserted, that would eliminate all of that because it would simply be brought under a trademark right and panelists would not have to look at Article 6ter in determining whether the complainant had prevailed on the UDRP - the things that have to be proven to prevail in a case.

Okay, Recommendation 4, they state that our conclusion that no change be made to the mutual jurisdiction clause of the UDRP and URS - they think it's not supported by the findings of the PDP for three main reasons. First, they think we incorrectly restated the immunity test proposed by our own legal expert, Professor Swaine, that we misapplied the incorrect test by applying - that's a lot of - we misapplied the incorrect test by applying an inappropriate legal standard, so they think we went wrong in three separate ways on this.

And third, the working group's proposed remedy entails a complicated legal work around which can undermine both an IGO's immunities and its ability to defend its rights in its own name. And then they go on to elaborate each of those points. And second, they think we were relying on a threshold of legal certainty which will be satisfied only if it can be determined that all courts will necessarily find an infringing registration.

Third, that we - where we stated that no change was necessary on the mutual jurisdiction clause, they think that's a tenuous determination on use of an assignee, licensee or agent. That even if it was found to be legally effective, a claim for which there's little jurisprudential support, that might be because it's a very new area of IGOs proceeding in that manner, that such assignments could be regarded.

I notice that that statement from Professor Swaine is "could" not "would" it wasn't conclusive, it was just suggestive. So let me go see what else they have here. Okay, all right, you can all read - you can all scroll through and read the substance here. So now I'm going to invite - and then they go in - well further reviewing this they - they refer to the New York Convention. I think we might want to return to the New York Convention in our consideration of the responses we've received on Options 1 and 2 where we invited comment on Question 4 because it would relate to an arbitration mechanism being available if there's a successful assertion of sovereign immunity.

But we've got four minutes left, we have time for brief comments on the very meaty substance of the OECD filing. And then I think we'll take on or two comments and discuss the agenda for the next meeting and the timing of the next meeting. George, go ahead.

George Kirikos: Yes, George Kirikos for the transcript. The OECD comment seems to want us to assume that the IGO will automatically win on immunity based on, you know, Professor Swaine's comment on functional immunity. And I think that's wrong because, you know, as I pointed out in the chat room, it might not even be a real IGO, like the US government made a lot of noise about, you know, some IGOs that are claiming to be IGOs aren't real IGOs. Which I think means pragmatically that in some nations they may not be recognized as IGOs whereas in other nations they would.

And so, you know, we have to leave it up to the courts in order to ensure that, you know, that the ones that are recognized, you know, can raise the immunity argument; the ones that aren't recognized, you know, are deprived of that argument because, you know, they don't have that immunity at all in that nation. And so it really is up to the court.

And depends on, you know, the drafting documents, you know, the treaty that created the IGO. So it's very fact-specific and, you know, it's for the courts to be interpreting those facts and interpreting those laws and not us as, you know, as a working group to be, you know, prejudging the outcome. So I think we got it right. I'll give up my time to somebody else now. Thank you.

Phil Corwin: Okay. Thanks, George. And seeing no other hands up, I think we're going to bring this discussion to a close for this week. And we're going to meet again next week, I believe, same day and same time, is that correct, staff?

Mary Wong: Phil, this is Mary. As Terri has just put in the chat, it is the same day, Thursday, same time, 1600 UTC, same duration, 90 minutes. And George has also asked whether the following week is going to be a meeting or should

we skip it because of the GDD Summit? I think that's something that you folks might want to discuss.

In the meantime, Phil, Steve and I have been, you know, sort of going back and forth and thinking about it. We wonder if it would be helpful to discussions of these various topics and we've only focused on one or two today. If we took that summary document, that one page document, you just saw and basically created cross references there to who made that suggestion, what the comment was and to the specific page in the public comment review tool where you can find the text as well as a link to the comment whether that would be helpful.

Phil Corwin: Right.

Mary Wong: So it would expand on that one page document and give you more context and references.

Phil Corwin: Yes, and Mary, is that one page document, is that the complete list of all the new facts and arguments we received? You know, I know it's not very detailed right now, but is that the sum total?

Mary Wong: That is the - that is the staff's analysis of what the total was because even though there were a few comments that said, you know, somewhat different things, they were addressing a very similar point. And so we've tried to capture that in basically I think it's six topic headings and a few sub-headings. But we really would welcome if anyone feels that we've missed out something that please let us know as you go through the public comment review tool one more time.

Phil Corwin: Okay, yes, and I think cochairs will continue discussing this with staff, but, you know, whether you want to expand this document or just look at this document and at your notes on our prior discussions, as we went through the comments and - I think we're talking about 12-15 new facts, new arguments

total and just kind of color code those on the detailed document where - which is arranged by recommendations where we could go through and see where - which group made which new argument or brought new facts to light on a particular recommendation.

Either way that would facilitate that kind of recommendation - recommendation by recommendation, review of new input where we can take all the new remarks into - under advisement and come to a conclusion as to whether we need to modify the initial report and response to them. So we can - either way we need something a little bit different than what we have right now to have a more fruitful discussion next week.

Let me ask last thing, who on the call today, if you could just put a green checkmark, anyone going to be at the GDD Summit and therefore unable to participate in this call if we hold it the week after next? And I'm not seeing any checkmarks, so, you know, if none of the regular participants on these calls are going to be at the GDD Summit, so we may not have to put off a call that week, we can just continue moving forward with our work if there's no substantial number of members of the working group going to be in Spain for that. So looks like we may be able to have that call unless we hear back further from members.

So with that, if no one has any final comments at two minutes past our projected closing point I'm going to bring this call to a close and thank everybody for your continued work and attention, and I'm still optimistic that we can produce a draft final report pre-Johannesburg and in regard to that separate possibility of a new legal inquiry, that will not delay our work in reaching that final draft report and producing it, it will merely possibly affect its official filing. But we'll deal with that situation as it develops. So thank you all very much and enjoy the rest of your day. Good bye.

Terri Agnew: Thank you. Once again, the meeting has been adjourned. (Jay), the operator, if you could please stop all recordings. To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END