

Terri Agnew:Welcome to the IGO-INGO Access to Curative Rights Protection Mechanisms Working Group call on Thursday, 13 July 2017 at 16:00 UTC for 90 minutes .

Terri Agnew:agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_R2XwAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=C3GLdQ_WhgDxVyka2Qbiyf5XVNBswyFz5bjnvzVHf1A&s=gkE_X4CfLHxQIH3fbJkXYVVugKIMjRHY0mUh-7ApjzM&e=

George Kirikos:Hi folks.

Paul Tattersfield:Hi George, Everyone

George Kirikos:Hey Paul.

Paul Tattersfield:This looks very cool is it near you George?

Paul Tattersfield:<https://pbs.twimg.com/media/DDHaEsVXUAALFkS.jpg>:large

George Kirikos:No, I'm in Toronto. That appears to be somewhere in Western Canada? (perhaps the Rocky Mountains?)

Paul Tattersfield:Ah a long way lol - Banff

George Kirikos:I found a very interesting article about the UN and Immunity, in relation to fraud, which had a very interesting quote. See: https://urldefense.proofpoint.com/v2/url?u=http-3A_www.foxnews.com_world_2016_07_12_fraud-2Dwhat-2Dfraud-2Dwatchdogs-2Dfind-2Dun-2Din-2Dstate-2Dnear-2Ddenial-2Dabout-2Dinternal-2Dcorruption.html&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=C3GLdQ_WhgDxVyka2Qbiyf5XVNBswyFz5bjnvzVHf1A&s=DdTKmZH2sH5GA0nfsoE8bxLliM_SWjf0_U8OAnkLV7E&e=

George Kirikos:"And follow-up often just ends: the U.N. bureaucracy is reluctant to prosecute fraudsters even when discovered. The reason: it may involve lifting "the immunity of witnesses and related United Nations documents, and may exposure the United Nations organizations to counter-claims."

George Kirikos:So, the question is: If countries don't change their fraud laws, to allow these actual fraudsters to be prosecuted, why should ICANN be changing its rules? What's different about domain names?

George Kirikos:This provides even further support for Option #1.

Jay Chapman:don't have scroll ability yet

Mary Wong:@Jay, you should do. Maybe reboot AC?

Terri Agnew:@Jay, try logging in with a differnt browser

George Kirikos:Links to everything at: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000781.html>

Jay Chapman:thanks

George Kirikos:It wasn't the only basis -- just evidence of TM (not proof).

George Kirikos:WIPO is trying hard to eliminate court action. Unacceptable.

George Kirikos:+1 Petter. Non-commercial entities can hold TMs. Indeed, ICANN holds TMs.

Paul Tattersfield:Ckass 35 for chariable fund raising

Mary Wong:I think the comment was directed not toward the entity holding a TM, but the use to which a TM must be put (i.e. use in commerce)

Paul Tattersfield:Class 36! bad typo

George Kirikos:I think more broadly, a trademark right comes from being an indicator of source for wares/services.

George Kirikos:So, to the extent that an IGO is a source of any services, then it would broadly qualify.

George Kirikos: Sometimes, "services" might be as broad as "advocacy" or "communications to the public", etc.

George Kirikos: It's such a low burden.

Petter Rindforth: Agree, "commercial" is an old way to describe trademarks

George Kirikos: IGOs can always use law enforcement/courts in cases of emergencies.

George Kirikos: If "crime" is so obvious, why is the "first step" going to ICANN, rather than going to the police?

Mary Wong: On the question of creating a new form of URS - note that our Charter has a two-step instruction: first consider if the existing mechanisms adequately address the needs of IGOs and INGOs, and, secondly, if not, whether a new, narrowly tailored DRP should be developed.

Paul Tattersfield: The quickest way is to ask the registrars for scam sites most are very helpful and very timely

Mary Wong: In relation therefore to the question of whether it is within scope to develop a new rapid takedown procedure - presumably, if the WG agrees that this is not necessary it is because the WG believes that existing mechanisms (i.e. the URS in this case) does indeed adequately address IGO needs?

George Kirikos: And hosting companies, or payment processors, etc.

Paul Tattersfield: exactly George

Paul Tattersfield: Is there a situation where a state or an IGO can invoke immunity for a counter claim or an appeal on a matter initially determined by a court?

George Kirikos: But, the UDRP decision should NOT be respected --- de novo means "start from a fresh slate". That's why Option 1 is the option that makes most sense, since the IGO would have failed in its undertakings made, the price paid for utilizing the UDRP.

George Kirikos: I disagree. "Secret advice" can't form the basis/foundation for our work.

Petter Rindforth: Having served 16 years as panelist, I agree with Phil's conclusion

George Kirikos: As I noted, there could be counter-measures to that (e.g. in rem, sue the registrar/registry etc)

Mary Wong: @Paul T, I'm far from an expert but it would seem logical that, once an IGO has submitted to a court's jurisdiction, it cannot piecemeal invoke immunity for a specific part of that suit (e.g. a counterclaim).

Paul Tattersfield: agree Mary, however they are only waiving jurisdictional immunity not immunity from execution

George Kirikos: @Mary: unless, as Option 3 advocated by Paul Keating, there was only a *limited* waiver in the UDRP, instead of a general waiver of immunity.

Mary Wong: On the vitiation question (Option 1), staff had also raised the question of whether vitiation is legally correct.

George Kirikos: (i.e. the limited waiver would be with respect to just the domain name itself, and nothing else)

Paul Tattersfield: I think it worth noting Phil The kind of miscreants and harm that Brian was citing wouldn't even file a UDRP response never start a court action

Paul Tattersfield: never mind

George Kirikos: @Mary: vitiating has to do with how the Registrars (who are ordered to follow the UDRP) handle the UDRP outcome.

George Kirikos: It's not in the courts at all.

George Kirikos: i.e. Option #1 says "registrars will disregard the outcome of the UDRP" That is what vitiation achieves.

Mary Wong: @George, when we speak of "vitiating" a panel decision, that can have substantive consequences legally. If it is just about how registrars handle the decision, then we may wish to consider using another word instead of "vitate" (which has a specific legal meaning).

George Kirikos:If it achieves the same effect, the wording can change, Mary.

Mary Wong:Thanks, George - let's figure it out when we come to the text of the draft Final Report.

George Kirikos:<http://www.foxnews.com/world/2016/07/12/fraud-what-fraud-watchdogs-find-un-in-state-near-denial-about-internal-corruption.html>

George Kirikos:Here was the quote again: And follow-up often just ends: the U.N. bureaucracy is reluctant to prosecute fraudsters even when discovered. The reason: it may involve lifting "the immunity of witnesses and related United Nations documents, and may expose the United Nations organizations to counter-claims."

George Kirikos:What's so special about domain names, when national govts don't create special procedures to allow IGOs to file cases in the event of fraud?

George Kirikos:Due process is *so* important to national authorities that they allow that fraud to continue.

George Kirikos:(new hand up, just to add a couple more points re: the specifics of the proposal)

Petter Rindforth:Mary: A perfect summary of what I tried to say ;-)

Paul Tattersfield:@Mary not all IGOs have immunity – eg EuroControl

Paul Tattersfield:Isn't it an ADR?

George Kirikos:<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-June/000769.html>

George Kirikos:<http://www.dreyfus.fr/en/marques/france-a-domain-name-transferred-by-udrp-decision-was-finally-returned-to-its-initial-owner/>

George Kirikos:An "ADR" is any alternative to courts. :-)

George Kirikos:A mediation is also an ADR.

George Kirikos:Yes, but those rare cases are going to involve the MOST VALUABLE DOMAIN NAMES.

George Kirikos:And, if it's such a "rare case", why is ICANN getting involved --- why not say "it's such a rare case, we'll just let the courts handle it". UDRP wasn't designed for 100% of all potential disputes.

Jay Chapman:I agree Phil -very rare. In fact, it will only happen where the domain registrant believes its conduct and domain name are worthy of the utmost protection and defense - that defense should not be limited by us or ICANN

George Kirikos:+1 Jay

George Kirikos:Forum shopping ---- changing who handles the dispute, i.e. an arbitration panel, vs. a court.

Berry Cobb:@Paul - can you provide a source that states EuroControl does not have immunity? I'm curious as it is listed on the list provided by the GAC.

Jay Chapman:Phil, couldn't a domain registrant appeal to a higher court even if the lower court determined that the IGO's immunity to be valid?

Paul Tattersfield:The IGOs are not seeking immunity to defend their own assets, they are seeking immunity from a counter claim when they have initiated the original action.

George Kirikos:(my hand is new)

Mary Wong:@Jay, the success of such an appeal will need to be based on the fact that the initial judge got the law on immunity wrong. Then everything goes back down to the initial court again.

Jay Chapman:I understand, Mary - it would be a narrow appeal solely related to the immunity issue

Jay Chapman:but an appeal, nonetheless

Paul Tattersfield:@Berry yes it is on their list :) - I was looking at quite a few IGOs and their articles I was planning to send something to the list but have been taken away by non ICANN matters - If you have an email address I can send you details before I put them on the list

Berry Cobb:@Paul - thanks much. I can just wait until you send to the list.

Mary Wong:@Jay, thanks - and this also seems to be what Petter is saying; there is nothing to stop either party from going to court (including appealing from a lower court decision)

Jay Chapman:Excellent point on licensee/agent/appointee, George

George Kirikos:They wouldn't have to raise that point since they're already in court.

George Kirikos:i.e. the contract of adhesion is meaningless, unless you get to BINDING arbitration.

George Kirikos:New Hand if others have nothing more.

Jay Chapman:have there been any substantive points to consider that argue against the licensee/agent solution?

George Kirikos:Not really, Jay.

Petter Rindforth:Mary's hand is also up

George Kirikos:I had a new hand.

George Kirikos:Still 10 minutes left.

Paul Tattersfield:Would it be better for any such new (improved) arbitration procedure to be for all UDRP disputes not just IGOs?

George Kirikos:<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-June/000769.html>

Paul Tattersfield:I think they would only be waiving jurisdictional immunity in most jurisdictions

George Kirikos:This only goes to the WAIVER aspect.

George Kirikos:Personal views, but let's see what others think.

Paul Tattersfield:how can you enforce damages if they haven't waived immunity from execution?

George Kirikos:Have it on the agenda, so others can input, not just us.

George Kirikos:Open court principle , too, for the Option 2.

George Kirikos:Multiple possible levels of appeals.

George Kirikos:(which some in the chat room seem to support)

George Kirikos:Outside our scope to look at arbitration for everyone (that'd be the RPM PDP).

George Kirikos:But, I'd be opposed to binding arbitration. I prefer the less rigged system of the courts.

George Kirikos:Some IGOs might be only valid in certain countries.

George Kirikos:e.g. an IGO in Egypt/Syria might not have immunity in Canada.

George Kirikos:(or the USA)

Paul Tattersfield:IGOs can only assert immunity in Memberr's jurisdictions

George Kirikos:@Paul: and the nature of that immunity will differ, as we know, i.e. functional immunity vs. absolute, etc.

George Kirikos:GAC advice was hilarious.

George Kirikos:Looks like it was written by WIPO.

Jay Chapman:I appreciate the discussion - thanks to everyone

Terri Agnew:The next IGO-INGO Access to Curative Rights Protection Mechanisms Working Group call will take place on Thursday, 20 July 2017 at 16:00 UTC for 90 minutes

Jay Chapman:appreciate :)

George Kirikos:Bye everyone. Have a great week. Game of Thrones Sunday, woohoo! :-)

Paul Tattersfield:Great discussion thanks Phil , Everyone bye all