

Terri Agnew:Welcome to the IGO-INGO Access to Curative Rights Protection Mechanisms Working Group call on Thursday, 20 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_ZXrwAw&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=gLT8tC_FT16L-fjjNvWzwY0Ub0vh-6deJwKcz2fS7T4&s=i96hne7_g0VDZyWcYaVlhQzed29RC5P4WSx9KVn-ndk&e=

George Kirikos:Hi folks.

George Kirikos:How much for a quorum?

Terri Agnew:this groups has 18 members

Paul Tattersfield:Hi George & Petter

Terri Agnew:**28 members

Steve Chan:@George, there are no prescribed numbers for deciding whether or not to conduct a WG call. It's up to the discretion of the WG leadership

Philip Corwin:Waiting on audio operator

George Kirikos:We're up to 5 now, so that's looking better (was just 2 earlier).

Petter Rindforth:waiting...

Terri Agnew:alerting op

Osvaldo Novoa:Hello all!

George Kirikos:Welcome Osvaldo.

Philip Corwin:Wait now up to 4 minutes!

Petter Rindforth:still waiting.... :-(

George Kirikos:If we changed the call to start at 11:55 am (Eastern), one would zip through the operators. :-)

George Kirikos:[skips their 'peak' at the top of the hour]

Jay Chapman:waiting on phone operator to pick up

Jay Chapman:thanks, sorry not meaning to pile on :)

Philip Corwin:Finally on audio, waiting one minute for Petter

Terri Agnew:of course if any dial outs are needed, please let me know

Nat Cohen:Yes, I'm on audio. Hello everyone.

Poncelet Ileleji:Hello all

George Kirikos:Without wasting too much time on this, whatever's in the UDRP doesn't preclude any other kinds of litigation to resolve the ownership of the UDRP. See:

<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000800.html>

George Kirikos:Just because ICANN delineates one procedure doesn't mean it's the only option for a registrant.

George Kirikos:*resolve the ownership of the domain, rather

George Kirikos:It's not "another arbitration" since UDRP is not an arbitration.

Terri Agnew:Welcome Paul Keating

Paul keating:hi. i am text only right now. will try to dial in

George Kirikos:It didn't make sense.

Mary Wong:We can try to rephrase or, if directed, delete this sentence.

Mary Wong:Based on Phil's comment, maybe rephrasing is better.

Mary Wong:@Phil, yes, that was the intention, hence these went under a Preliminary Notes intro.

George Kirikos:Whether it's an IGO or not is obviously decided by the court itself (i.e. that's how they were able to assert immunity successfully).

George Kirikos:i.e you only get to Option 2 if it's an IGO recognized by that court AND had immunity.

Paul keating:@phil. who would add igos to the GAC list?

Paul Tattersfield:The GAC list could be problematic as not all IGO's on it have the right to imunity

George Kirikos:It might be an IGO in Africa, but not be recognized as such in Canada (not a member of that specific treaty), for example.

Mary Wong:@Paul, as the list was prepared by the GAC, staff has assumed that the GAC will update. When it sent the list over, the GAC specified that they may update it either every 3 years or when the next gTLD round is launched.

Paul Keating:@phil, what is the relevant jurisdiction and how determined? registration agreement? location of registrant? complaint?

George Kirikos:This document didn't capture all the past comments, in any event (perhaps can repeat them in writing on the list).

Mary Wong:This is also the list that the current implementation of the adopted IGO-INGO recommendations is using, so there is a consistency consideration as well.

Mary Wong:@George, the new preliminary notes only tried to capture substantive comments that may need amendment to the UDRP to be effective, not all the comments that were made while the topic was being discussed.

George Kirikos:Some jurisdictions/nations don't have arbitrations, by the way. (something I read when researching IGOs)

Paul Keating:so it would be the jurisdiction in which the action had been pending?

George Kirikos:The jurisdiction where the court ruled in favour of the IGO on immunity, presumably.

George Kirikos:Anyhow, Option 3.

George Kirikos:It's not really an either/or for Option 3 --- it can be done in parallel to #1, #2 or #3, even.

George Kirikos:Not just a monetary award --- also a counterclaim, based on other causes of action.

George Kirikos:(e.g. employment law, etc.)

George Kirikos:IGO, not NGO.

Paul Tattersfield:Are the IGO's concerns about damages real? Wouldn't the mutual jurisdiction clause just be a waiver of jurisdictional immunity rather than immunity from execution which would normally require a separate explicit waiver in most jurisdictions?

George Kirikos:"quasi in rem"

Mary Wong:@Paul T, I believe you are right that they have mostly been concerned with jurisdictional immunity. To my knowledge we've not heard any concerns that enforcing a panel decision by transfer (for instance) would raise immunity issues for IGOs.

George Kirikos:Right, it's the IGO making an express, but limited, waiver --- specifying that it's just a dispute over the domain that is to be decided by the relevant national court.

George Kirikos:(asserts it is an IGO, or is determined by a court to be an IGO) :-)

George Kirikos:To avoid the fake IGOs.

George Kirikos:Damages, but also other causes of action unrelated to the domain (e.g. employment lawsuit, etc.).

George Kirikos:https://www.law.cornell.edu/wex/quasi_in_rem "When hearing quasi in rem actions, a court may only affect a named defendant's interest in a specific named piece of property."

George Kirikos:That's I think what we're trying to achieve.

George Kirikos:+1 Paul K.

Mary Wong:There is also a separate (different) legal issue of immunity when it comes to UN employees.

George Kirikos:Some registrars don't like being added to such a lawsuit, though. :-)

George Kirikos:Right, the in rem action is exactly the kind of thing I was talking about, to counter Petter's example.

George Kirikos:But, you don't have to rely on the ACPA, to assert in rem. You can assert "in rem" or "quasi in rem" under non-statutory, common law principles.

Mary Wong:Thanks, Paul - that's helpful to know (about the ACPA process).

Mary Wong:@Paul, that's where I'm coming from; the sense that not many other jurisdictions will entertain these actions either in the same way or at all.

Mary Wong:@Phil, I believe several countries were considering an ACPA-type statute but, as Paul says, we're not aware of any that actually did so.

Poncelet Ileleji:Much appreciated @Paul

George Kirikos:.uk DRP, yes.

Mary Wong:Paul K has just said, very clearly, what staff was trying to distinguish as well - the difference between a court action ending (or being dismissed) for lack of jurisdiction and when the court dismisses an action based on examination of substantive merits (which can only proceed if there is not a jurisdictional problem).

Philip Corwin:BTW, Paul, I like the fact that your proposal only requires an amendment to the UDRP Rules, not the underlying Policy

Philip Corwin:Policy changes will be much more difficult to advance beyond this WG

George Kirikos:Contract of adhesion --- courts will ignore that kind of overbroad language. :-)

George Kirikos:Compulsion --- harder to disobey a court's order, when they're a party.

George Kirikos:(easier to ignore an ex parte order)

George Kirikos:Or challenge that ex parte order.

George Kirikos:Right, but "in rem" involves only the property. e.g. XYZ vs a Boat Located on Lake Ontario.

George Kirikos:4k only specifies a court of "competent jurisdiction" --- doesn't have to be in the same as the mutual one.

George Kirikos:I think that 2nd option (#5) is moot, anyhow.

George Kirikos:It had the fatal flaw I already identified.

George Kirikos:I.e. the supplemental rules were missed.

George Kirikos:You mean re-draft Option 3, the limited waiver.

Mary Wong:@George, apologies that staff inadvertently did not paste the last phase of your proposal into this document. Thanks for catching it!

George Kirikos:<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000785.html>

George Kirikos:Is the message, that poked a big hole.

Mary Wong:Paul's other suggestion starts in the middle of Page 2 of the document on screen

George Kirikos:Option #4: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-June/000769.html>

George Kirikos:"open justice"

Mary Wong:@George, can you repeat the rationale for limiting this Option to new registrations, as I missed it? Thanks

Paul Tattersfield:Thanks Mary especially your penultimate question saved me having to ask

George Kirikos:URS has no transfer option.

Petter Rindforth:UDRP is also used for a great number of traditional ccTLDs

Paul Keating:agreed

Mary Wong:Actually, both will be problematic legally, sorry ("vitiating" and "nullify")

Paul Tattersfield:Is there a way of presenting any acceptable options once worked through to the IGOs & GAC to see if they are acceptable to them before we produce our final report? – A second preliminary report perhaps?

Mary Wong:@Paul T, yes there is - the Working Group can publish a draft Final Report for public comment BEFORE submitting the report to the Council for action.

Mary Wong:In addition, it may be worth considering also engaging in a dialogue with the GAC and IGOs at that time.

Paul Tattersfield:thanks, Mary

Mary Wong:You're most welcome, Paul!

George Kirikos:Same bat time, same bat channel.

Terri Agnew:The next IGO-INGO Access to Curative Rights Protection Mechanisms Working Group call will take place on Thursday, 27 July 2017 at 16:00 UTC for 90 minutes

George Kirikos:We should also start a Risk Analysis of all the options, at some point.

Paul Tattersfield:Very interesting meeting - thanks Paul & George, very helpful to hear your proposals explained today

George Kirikos:(which we started a few weeks back)

George Kirikos:(i.e. Steve had a document that started the Risk Analysis)

Jay Chapman:Staff, my advance apology -i will be unable to attend next week's call

George Kirikos:Bye folks.

Mary Wong:THanks, Jay, we will note.

Paul Tattersfield:Bye all

Jay Chapman:thanks, all

Mary Wong:Thanks Phil and all!

Terri Agnew:@Jay,noted