

Terri Agnew:Welcome to the IGO-INGO Access to Curative Rights Protection Mechanisms Working Group call on Thursday, 27 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\\_-5FgAhB&d=DwICaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=IBftNSm05XpP08pHWOBOLjHnc\\_FF28R354O2tgyjAc&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_-5FgAhB&d=DwICaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=IBftNSm05XpP08pHWOBOLjHnc_FF28R354O2tgyjAc&e=)

George Kirikos:Hi folks.

Petter Rindforth:@George: Not surprised to see that you are already "on board"

George Kirikos:Hey Petter. I just logged in a few seconds before you did. :-)

George Kirikos:How are things in Sweden today?

Petter Rindforth:Nice and sunny

George Kirikos:Perhaps blasting out an email reminder might be wise?

Petter Rindforth:Good idea - Mary, can you send a reminder, please

George Kirikos:It looks like it already went out.

Mary Wong:Terri is way faster than I am

George Kirikos:There must be a way to automate those, to make it even easier. :-)

Mary Wong:@George, I just realized that I did not update the Options 3, 4 and 5 document to add the missing bit from your proposal for Option 4 that I inadvertently omitted the first time around. My apologies! (but I think you already noted that last week, and please feel free to do so again this week if need be.)

George Kirikos:That's alright, Mary.

Mary Wong:Thanks George!

Philip Corwin:Hello all

Osvaldo Novoa:Hello all!

George Kirikos:I saw Valerian and the City of a Thousand Planets last night. This PDP is like "ICANN and the Working Group of a Thousand Days" (and counting) :-)

Paul Tattersfield:Hello everyone

George Kirikos:Hey Paul.

George Kirikos:Hi Phil & Osvaldo too. (sorry, has stepped away and missed your entrances!)

George Kirikos:\*has = had

George Kirikos:Perhaps dispose of Option 5 quickly? I think the premise was incorrect, as I pointed out at: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000785.html> (i.e. there is still a certification by the respondent, albeit via the providers' supplemental rules)

Terri Agnew:everyone can scroll themselves

George Kirikos:Page 2 of the doc on screen.

Mary Wong:Paul Keating's new proposal (Option 5) starts on Page 2

George Kirikos:"3. Alternative Proposal" = Option 5.

George Kirikos:It's obviously wrong, though, see the email I sent. There is a waiver.

George Kirikos:Understand the fairness aspect.

George Kirikos:His proposal did have a saving grace, if the respondent sued in court immediately without agreeing to the certification. See my comments at: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000786.html>

Mary Wong:@Petter, you may need to reboot AC. The document is on the screen in AC.

Terri Agnew:@Petter, you may need to log out and back in, or try a different browser

Philip Corwin:I definitely see it on my screen

George Kirikos:It's definitely in the Supplemental Rules, Petter.

George Kirikos:Is that the Pirate Bay case?

Mary Wong: In the UK, for instance, you can ask the court to order specific performance (mentioned by Paul), but that is usually only when damages are considered inadequate as a primary remedy.

George Kirikos: That Swedish case is discussed at: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_torrentfreak.com\\_court-2Dorders-2Dpirate-2Dbay-2Ddomains-2Dforfeited-2Dstate-2D160512\\_&d=DwICaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=UMEvMm5KKdiK69VDt4tH8LsdCT997HxHECCBAfGq0yU&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_torrentfreak.com_court-2Dorders-2Dpirate-2Dbay-2Ddomains-2Dforfeited-2Dstate-2D160512_&d=DwICaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=UMEvMm5KKdiK69VDt4tH8LsdCT997HxHECCBAfGq0yU&e=)

George Kirikos: No, Paul K. was referencing the UDRP rules, see: Complainant: 3(b)(xiii)

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

Paul Tattersfield: I don't believe in most jurisdictions that the mutual jurisdiction clause would extend to a waiver of execution

Mary Wong: @Paul T (taking off my staff hat and putting back my (creaky and ancient) lawyer hat), I think that's right.

George Kirikos: 5(c)(viii) is for the respondent.

George Kirikos: Yes, I'm sure the updated UDRP will change that language. Probably just an oversight when it was implemented, to skip the correct certification language within the rules.

George Kirikos: That's why the supplemental rules are fixing it.

George Kirikos: Actually, Paul K. \*did\* cite the paragraphs, see: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000784.html>

George Kirikos: Complainants: (xiii)

George Kirikos: Respondents: (viii)

George Kirikos: See his email. :-) HE just missed the fact that the ADR providers stuff the language into their Supplemental Rules, to cover the respondent.

George Kirikos: Was Option 2 amended? The PDF was dated July 16th, though?

Philip Corwin: And my point is that if respondents are being required by Supplemental Rules to waive future claims against the UDRP provider then why not the Complainant as well? Whether such mutual waiver is relevant to our work is a separate issue.

George Kirikos: The Risk Analysis would allow a great structured approach to analyzing the Options, so they can be ranked by each participant in the PDP, in my opinion.

George Kirikos: It was already started for Options 1 & 2.

George Kirikos: GAC list is meaningless. It's a court that determines if we ever get to Option 2, i.e. if they "buy" the IGO's claimed immunity.

Paul Tattersfield: Phil +1

Mary Wong: @George, yes, that is one of the permutations, if indeed arbitration is to be recommended as a step after the court.

George Kirikos: No, not in relation to Option 2.

Paul Tattersfield: Given it's the same principle matter can an IGO even assert immunity? If they brought an action in a court they couldn't then cite immunity if the defendant challenged an initial determination.

George Kirikos: @Paul T: The IGO is defending the lawsuit (domain name owner brings the lawsuit). IGO is asserting immunity as a defense to the lawsuit.

Mary Wong: @Paul, right - the IGO will not initiate the court action as that essentially wipes out jurisdictional immunity.

George Kirikos: No messages to that list since June.

George Kirikos: <http://mm.icann.org/pipermail/discussion-igo-rc/>

George Kirikos: Here's the proposed timeline: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20170726/957d8ae1/PDPCompletionTimeline-DRAFT-0001.pdf>

George Kirikos: It contemplates finishing in December.

George Kirikos:That schedule has fewer than 10 scheduled WG meetings, so we're in the home stretch.  
Mary Wong:You can end the public comment period before 4 Nov, if appropriate, and still do a session at ICANN60 before finalizing the report.

Paul Tattersfield:Same expert?

George Kirikos:Expert on what question, though?

Mary Wong:@Petter, yes, that was our assumption - that the WG will not choose to consult another legal expert, this time on the arbitration elements or some other legal topic.

George Kirikos:I think we've thoroughly researched all the topics at this point.

Mary Wong:@George, we were thinking that the arbitration issue may merit feedback - whether as an expert opinion or just through seeking public comment.

Mary Wong:(as we are not experts in international arbitration)

George Kirikos:ICANN itself has arbitration elements within the new gTLD program for registry operators.

George Kirikos:So, it's within their knowledge base, presumably.

George Kirikos:Although, they specify a provider. If Option 2 is adopted (directly, or via a part of Option 4), it may be more broad, though, e.g. any suitable arbitration provider, not necessarily picked/certified by ICANN.

George Kirikos:Although, I think Option 1 is still the best pick, simply nullify the UDRP decision in the event an IGO successfully asserts immunity.

George Kirikos:Option 1 is easier to implement, too. :-)

George Kirikos:When you have ICANN oversight, you get situations where UDRP panelists involve themselves in reverse domain name hijackings, with ICANN sitting on their hands.

[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_domainnamewire.com\\_2016\\_05\\_20\\_udrp-2Dpanelist-2Dreverse-2Ddomain-2Dname-2Dhijacking\\_&d=DwlCaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=Oad9plAZXh1vPYAE7LqTOpuF9\\_5j5pPadOJgBrlswoo&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_domainnamewire.com_2016_05_20_udrp-2Dpanelist-2Dreverse-2Ddomain-2Dname-2Dhijacking_&d=DwlCaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=Oad9plAZXh1vPYAE7LqTOpuF9_5j5pPadOJgBrlswoo&e=)

George Kirikos:Online system?!?!?

George Kirikos:That was already the UDRP ---- this is supposed to mimic the courts, e.g. discovery, cross-examination, etc.

Philip Corwin:If online means a video meeting then perhaps. If it means just submitting papers then no.

George Kirikos:Here's a couple of Canadian arbitration providers, as listed by one of Canada's largest law firms: [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_blg.com\\_en\\_News-2DAnd-2DPublications\\_Publication-5F4034&d=DwlCaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=ZiafRCIRNh57WCKDC7mp3r9RtgZQJ4jW5JSsMrrS5SQ&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_blg.com_en_News-2DAnd-2DPublications_Publication-5F4034&d=DwlCaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=IBivpYQhwy1Dq-oPjqG8e7P3HxCKKQsqWHty3N3ySCc&s=ZiafRCIRNh57WCKDC7mp3r9RtgZQJ4jW5JSsMrrS5SQ&e=)

George Kirikos:(BLG.com is one of my law firms, for disclosure)

George Kirikos:Do we have a decision as to how long the comment period will be, and also whether we are going to have it?

George Kirikos:i.e. the 2 chairs weighed in, but we didn't ask the group or vote, etc.

Philip Corwin: We will make decisions on whether to have a comment period after we decide on elements of the final report. Premature now

George Kirikos>Last week we have 11 or 12.

George Kirikos:\*had

Mary Wong:Staff will send out the action items from this meeting, drawing WG members' and Paul K's attention to furthering discussion on the Options (and Paul K for Option 5).

George Kirikos:We can have email discussions too, when there aren't scheduled working group meetings.

George Kirikos:So, work can still get done.

Philip Corwin:Yes, we can have email exchanges throughout August

George Kirikos:Have a nice day, folks!

Philip Corwin:Bye all

Paul Tattersfield:thanks all bye