

Michelle DeSmyter:Dear All, Welcome to the IGO-INGO Curative Rights Protection PDP Working Group call on Thursday, 07 September 2017 at 16:00 UTC.

Michelle DeSmyter:Agenda Wiki page:

https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_pgghB&d=DwICaQ&c=FmY1u3PJp6wrcrw113mSVz_gfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwehFBfjrsjWv9&m=KdVCiL6R3RPBekjqHpzu81LUCp_DTWqmmgPEP5i_jcvY&s=qGZmn7AmsUJMGzgYqa06lt60La1Hby6bDTAQTys0bPs&e=

George Kirikos:Hi folks.

Michelle DeSmyter:Hi there George and Petter!!

George Kirikos:Hi Michelle.

Petter Rindforth:Hi there!

George Kirikos:Hi Petter.

Oswaldo Novoa:Hello all

Michelle DeSmyter:Hi there Oswaldo, welcome!

George Kirikos:Hi Oswaldo.

George Kirikos:Might be wise to send out a '2 minute warning' email?

Michelle DeSmyter:absolutely

George Kirikos:There's probably a way to automate that, so the reminders get send out a week before the call, a day before, and 5 minutes before. :-)

Philip Corwin:dialing in/on hold

George Kirikos>Welcome Phil and PaulT.

Paul Tattersfield:Hi George, everyone

George Kirikos:So, Jay can be added to the "audio only" in the top right pod.

George Kirikos:You can tell how they've been lobbied, by the evolution of that advice.

George Kirikos:e.g. "no additional protections" in 2012!

George Kirikos:+1 Petter. They didn't follow through with that "working with".

Mary Wong:Petter and Phil did have a meeting with the GAC leadership in Buenos Aires in June 2015, though.

Paul Tattersfield:There seems to be a change of direction after during Hyderabad 2016 after IGO Small Group input

Philip Corwin:@Mary--yes it was an early morning "breakfast meeting" -- with no breakfast, -- and NO Coffee! ;-)

Mary Wong:@Phil, yeah, I wish I'd known beforehand about the lack of facilities so I could have brought you all some coffee from downstairs!

Jay Chapman:Thanks, George, I'm still on the phone, but now arrived and have joined here on AC

Paul Tattersfield:Brian referenced a letter at Hyderabad from the UN Secretary Ben Ki-Moon to foreign ministers of the United

member States could we as a working group ask for a copy of that latter please?

George Kirikos:Great, Jay. Welcome.

Mary Wong:@Paul, I think we may have circulated that previously but we'll be happy to (re)circulate.

Paul Tattersfield:Thank you Mary that would be very helpful

George Kirikos:Not to change the 3-prongs, right.

Mary Wong:One thing the group probably should do, as we begin discussions of text for a Final Report, is to take a look at the UDRP and URS policy language just to be sure.

George Kirikos:Agrees to arbitration, only in the event they win on immunity in court.

Mary Wong:At the filing stage, the IGO will be asked to agree to arbitration (in the limited circumstance per Rec 4). It will have the option also to elect for limited jurisdiction (court to rule only on domain ownership).

Mary Wong:@George, yes - conditioned on the criteria the WG has already discussed.

George Kirikos:Under what circumstances would an IGO say "NO" to the "limited scope of court action"?

George Kirikos:i.e. it seems they would *always* say "YES", because it's a more limited waiver than the existing waiver.

Mary Wong:Staff is happy to follow up/respond to Phil's observations as well

Mary Wong:May we explain?

George Kirikos:This is basically Option #3, for that box.

George Kirikos:Diamond, even.

Paul Tattersfield:The mutual jurisdiction clause is only a waiver of jurisdictional immunity, they have not given a waiver of immunity from execution they can waive immunity from execution when ever they choose

George Kirikos:Is Phil's a new hand? Maybe Mary should speak, before we forget this point?

Paul Tattersfield:bad typo sorry

Philip Corwin:Yes, I had a quick response--but Mary goes first

Paul Tattersfield:corrected The mutual jurisdiction clause is only a waiver of jurisdictional immunity, they have not given a waiver of immunity from execution they can assert immunity from execution when ver they choose

George Kirikos:Same point as before --- it seems to me that under those circumstances, Registrant will always say "Yes" to arbitration if the IGO wins on immunity.

George Kirikos:i.e. it's codifying "option #2", without having to complicate the chart by pretending there are real choices. One choice always dominates in those boxes.

George Kirikos:It's difficult, because a lawsuit might even be

filed before making any response to the UDRP.

George Kirikos:Right, Mary --- the right hand side is Option #3 or Option #6.

Mary Wong:@George, exactly

George Kirikos:Refusal to participate = default decision

Mary Wong:@Phil, I can respond to that point you just raised

George Kirikos:Same as if there's a refusal to participate in the court case.

George Kirikos:Since these are all de novo.

Philip Corwin:Agree that the risk of an IGO participating in a final scenario arbitration is slim, but we should still address since it is not zero

Philip Corwin:Thanks for this clarification, Mary

Philip Corwin:To clarify, risk of of an IGO's refusal is slim

Mary Wong:@Petter, yes that is the idea too - since MJ is dealt with in the Rules, staff thought the same treatment can be given to the arbitration agreement

Mary Wong:Yes

Mary Wong:@George, that was shorthand to fit in the box :)

Mary Wong:@George, if the registrant goes to court, then nothing on this flow chart will apply, right?

George Kirikos:@Mary: it depends, e.g. if the IGO has agreed to quasi in rem, then that might affect things differently.

George Kirikos:*quasi in rem.

George Kirikos:Or, there's no UDRP decision that "stands".

George Kirikos:(if panel hasn't made a decision)

Mary Wong:We were avoiding specific or complex legal doctrines - the "limited scope" reference is really, in plain English, that the IGO agrees that a court action will be limited only to a decision on the ownership and disposition of the domain(s) in dispute.

George Kirikos:Right, if we can incorporate Options #3, and #6 into Option #2, *and* are able to get a full consensus, then that might be acceptable.

George Kirikos:(even elements of option #4, re: record keeping, and review after certain number of cases, etc.)

George Kirikos:I took it to a court action. :-)

Mary Wong:@George, on that last point, if it helps, the GNSO rules now require that PDP recommendations include (where practicable) notes on periodic review and suggested metrics for such.

George Kirikos:(before it was decided)

George Kirikos:So did others.

George Kirikos:@Mary: right, we just need to make sure that the data is collected (i.e. all the relevant cases, etc.), to make that review easier (e.g. see the problems in the RPM PDP, cough

cough!)

Philip Corwin:I think we can certainly discuss including in the Final report a recommendation that the results of whatever we recommend be reviewed in the future, either after the passage of a set amount of time or a set number of arbitrations (whichever comes first)

George Kirikos:i.e. data is collected automatically as part of the policy.

Paul Tattersfield:set number of arbitrations lol

George Kirikos:@PaulT: handles the scenario where there are suddenly hundreds of IGO cases, due to some loophole they identify, or bad arbitrations.

Mary Wong:Just a cautionary note that the metric(s) should be something that doesn't depend on self-reporting, but can be collected objectively e.g. from providers.

Philip Corwin:Providers will know when a UDRP decision has been stayed because a concurrent or post-decision judicial action has been filed

George Kirikos:@Mary: yes, the full cases (i.e. can't be secret/private arbitrations; would need to be able to have others view the cases, both decisions and arguments of the sides, like open justice in the USA, or the open court principle in Canada)

Paul Tattersfield:@Mary in that scenario we have failed in that we have done more damage than leaving the status quo

Philip Corwin:very hard to get registrars to comply with data requests

Paul Tattersfield:sorry @George

Mary Wong:The text piece is really just an explanation of the flow chart, with additional background from past discussions

George Kirikos:Yes, I can see it.

Oswaldo Novoa:I can see it

George Kirikos:Plus it went out by email earlier, so there's that PDF.

George Kirikos:Yes, our final report can't give out "new options" -- we have to pick something.

Mary Wong:THE most recent GAC advice is on Pages 5 (bottom) and 6

Paul Tattersfield:All that has happened is the IGO's have lobbied the GAC to support their position instead of participating in this working group

Paul Tattersfield:the change in the GAC position has evolved almost in parallel to thiw WG

Mary Wong>Note that the IGO Small Group was formed around the time of the Los Angeles Communique (Oct 2014)

George Kirikos:Having the court case only be about the fate of the domain name would substantially narrow the issues in dispute.

George Kirikos:That narrowing of the issues should result in lower costs for all parties.

George Kirikos:We've focused on the UDRP, but this would also need to be done for the URS, I suppose?

Paul Tattersfield:turns up in court so he can hand over his illicit proceeds

Mary Wong:@George, yes

Paul Tattersfield:Some of those have only a handful members some have no immunity rights

George Kirikos:There was nothing special about the GAC list, though.

Philip Corwin:The only thing "special" about the GAC list is that the GAC has adopted it and therefore would not be expected to object to its use as a basis for defining IGOs. Whether we should reference or adopt it is a separate issue.

Philip Corwin:Again, I'm for avoiding a definition if at all possible

Mary Wong:I suppose we can presume that those on the GAC list can be considered IGOs, but it's only an inclusive, not exhaustive, list?

Paul Tattersfield:Same for the Pacific Salmon IGO, same for the EU all IGO's are regional to some extent the UN probably has the most members (General Convention)

Paul Tattersfield:It also depends on the articles of each IGO
George Kirikos:+1 Paul.

George Kirikos:e.g. and how each nation treats that IGO (in Canada, that depends on various Orders in Council, I believe).

George Kirikos:(via the Federal Government)

Mary Wong:The question isn't whether a country recognizes, or is a member of, an IGO, though, is it? It's more fundamental - i.e, is the org created by treaty by govts?

Paul Tattersfield:There are also many other worthy organizations who are not IGOs but do equally good works

George Kirikos:@Mary: Right, by a court in a certain nation will not recognize the immunity of some valid IGOs, because it's not a recognized IGO in that country.

Mary Wong:Right, that goes to immunity (it may be a real IGO but the court doesn't recognize it is immune), not to its factual status as IGO.

George Kirikos:So, they might have 'immunity' against some domain name owners (in some nations), but not others.

George Kirikos:Agreed, Mary.

George Kirikos:Might need to append the word limits, in these cases.

George Kirikos:(although, there aren't limits for Appendices)

Paul Tattersfield:also where the registrar is located as well

as th e registrant

George Kirikos: Might need to amend the time limits.

George Kirikos: Because, it's a complex question for a registrant to make those decisions whether it believes it is a real IGO, or what the scope of that IGO's rights are in that country.

George Kirikos: (i.e. re: immunity)

George Kirikos: IGOs, and complainants in general, have unlimited time to prepare their complaints. Respondents (domain owners) are under the gun, with only 20 days to respond.

Philip Corwin: Yes, we can look at some modest extension of the time limits given the extra decision point for the registrant

George Kirikos: Have staff started making amendments to the draft final report where we've already come to consensus? (i.e. all the other stuff, except this narrow point)

Philip Corwin: NO--last week of October is start of ICANN 60/not November

George Kirikos: i.e. changing Article 6ter stuff, etc?

George Kirikos: (i.e. softening that recommendation, and a few other places where we agreed to make changes)

Mary Wong: Did I say November? SOrry, I meant last week of October (as Phil noted)

Mary Wong: @George, yes we have started

Paul Tattersfield: thanks bye

Philip Corwin: Yes, you said Nov

George Kirikos: Bye everyone.