

Michelle DeSmyter:Dear All, Welcome to the IGO INGO Curative Rights Protection Mechanisms Working Group call on Thursday, 16 November 2017 at 17:00 UTC.

Michelle DeSmyter:Agenda wiki page:  
[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_nQRyB&d=DwICaQ&c=FmY1u3PJp6wrcrw1l3mSVzgfkbpSS6sJms7xcl4I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWG1BLwwwFbfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=-RC5Pv692G5cD5Z6XW140-UyjwJRZUG7XRNgPYOwtw&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_nQRyB&d=DwICaQ&c=FmY1u3PJp6wrcrw1l3mSVzgfkbpSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwFbfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=-RC5Pv692G5cD5Z6XW140-UyjwJRZUG7XRNgPYOwtw&e=)

George Kirikos:Hi folks.

Michelle DeSmyter:Hi there George

George Kirikos:Hi Michelle. brb

Michelle DeSmyter:sounds good

George Kirikos:I have returned.

Michelle DeSmyter:welcome back ;)

George Kirikos:Thanks. Is the US Thanksgiving holiday going to impact next week's call?

George Kirikos:Perhaps skip next week?

Osvaldo Novoa:Hello all

George Kirikos:Hi Osvaldo.

Mason Cole:Is no one speaking, or is my audio not working?

George Kirikos:Wokring now.

Mason Cole:Disregard : )

George Kirikos:\*working

Philip Corwin:There will be no call next week

Mary Wong:Next call will be 30 November

George Kirikos:The link to Phil's SOI is broken on the IGO member page: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_pages\\_viewpage.action-3FpageId-3D48347895&d=DwICaQ&c=FmY1u3PJp6wrcrw1l3mSVzgfkbpSS6sJms7xcl4I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWG1BLwwwFbfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=XpRT541khDNptPUYgNn5Q6xX8G5PkzX32pUt59sQduo&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_pages_viewpage.action-3FpageId-3D48347895&d=DwICaQ&c=FmY1u3PJp6wrcrw1l3mSVzgfkbpSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwFbfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=XpRT541khDNptPUYgNn5Q6xX8G5PkzX32pUt59sQduo&e=)

George Kirikos:(it's not broken on the RPM members list page, though)

Michelle DeSmyter>Welcome Paul

Paul Tattersfield:Sorry I'm late

Paul Tattersfield:Thnaks Michelle

George Kirikos:2 other SOIs on that page are missing. So, those members should be removed if they don't add one, since an SOI is a "price" to being a member.

Mary Wong:Goran (ICANN CEO) and at least two Board members (Becky Burr and Sarah Deutsch) were at the open community session for quite a substantial part of the discussion

Steve Chan:It is unsynced

Mary Wong:The Board members' and Goran's presence at the session may be particularly helpful given the GAC advice to the Board

Mary Wong:The USPTO concern seemed to be that even the modified recommendation still gives the 6ter procedure too much weight.

George Kirikos:WIPO's answer was wrong.

George Kirikos:<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-November/000895.html>

Paul Tattersfield:@Mary I was surprised at the USPTO's comments that was why I asked about the 89 series listings. I don't really think that registration/listing is really relevant it's more to do with evidencing

George Kirikos:Our recommendations wrt Article 6ter don't change anything.

George Kirikos:They could already cite Article 6ter, if they want, as "evidence". Doesn't mean the panel needs to accept it.

George Kirikos:evidence vs proof, seems like a simple concept that some couldn't grasp.

Mary Wong:@Paul T, yes - and John Rodriguez clarified that te 89 series does not indicate TM rights.

Philip Corwin:With all respect to the PTO, I don't think we can ignore an international agreement that provides protective rights in trademark systems throughout most nations of the world. All we are doing is clarifying that WIPO notification can be considered as evidence of registered TM rights.

Mary Wong:@George K, I believe that is not necessarily a legal distinction so it could be interpreted as an issue of semantics (use of words)..

George Kirikos:Nominet is entirely different, though. They don't want court appeals, see:

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_domainnamewire.com\\_2012\\_03\\_09\\_unlike-2Dudrp-2Dnominet-2Ddoesnt-2Dwant-2Dyour-2Dduk-2Ddisputes-2Dto-2Dgo-2Dto-2Dcourt\\_&d=DwICaQ&c=FmY1u3PJP6wrcrw1l3mSVzgfkbPSS6sJms7xc14I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmydpdCQuaSww&s=swHNwvM08baIAY\\_DhKmjgI3-j5LUDcJ-UvgkHcZ4nRc&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_domainnamewire.com_2012_03_09_unlike-2Dudrp-2Dnominet-2Ddoesnt-2Dwant-2Dyour-2Dduk-2Ddisputes-2Dto-2Dgo-2Dto-2Dcourt_&d=DwICaQ&c=FmY1u3PJP6wrcrw1l3mSVzgfkbPSS6sJms7xc14I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmydpdCQuaSww&s=swHNwvM08baIAY_DhKmjgI3-j5LUDcJ-UvgkHcZ4nRc&e=)

George Kirikos:<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-November/000901.html>

Paul Tattersfield:Mary most people would misunderstand his comments as they wouldn't realise that normal registrations are not really relevant here its the use of the underlying goods and services that give the rights which is exactly the same as with 6ter or as in the US 89 series listings as registration merely

evidences the rights

Mary Wong:@Paul T, understood - but the basic concern (as I understand it) is that 6ter notification does not imply any substantive rights - it is only a recognition by States that IGO emblems should have special protection as against third party registrations.

Mary Wong:@GEorge, didn't the WG spend quite a bit of time deveoping Option C, including consideration of what arbitration might look like?

Paul Tattersfield:George is right

Paul Tattersfield:hehe

George Kirikos:@Mary: not really, and Option #6 didn't get incorporated into it.

George Kirikos:Even though it was claimed it was incorporated, by the preface to the options documents.

George Kirikos:On what basis was Option #6 removed, other than the Chairs misleadingly claiming it was in Option C?

Mary Wong:@George, while Optin 6 was not incorporated wholesale, the basic idea that the court could be asked to determine the question of ownership (i.e. treat a domain as property, as is done in only several jurisdictions to our knowledge) was based on a premise behind Option 6, wasn't it?

George Kirikos:@Mary: it wasn't incorporated at all.

Paul Tattersfield:It's all very theoretical anyway a b or c will all only occur if the registrant doesn't have a good counsel - What matters is the IGo iniated the UDRP and can not expect to entitled to imunity in any follow on proceedings

Philip Corwin:just disconnected my audio. right back

Philip Corwin:back on audio

Philip Corwin:I have a few comments re GAC

George Kirikos:@Mary:

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_display\\_gnsoicrmpdp\\_WEBINAR-2B2017-2D10-2D12-2BIGO-2DINGO-2BAccess-2Bto-2BCurative-2BRights-2BProtection-2BMechanisms-3Fpreview-3D\\_71599851\\_71602970\\_Options-2520Proposal-2520for-2520WG-2520Discussion-2520-2D-2520updated-252012-2520Oct-25202017.pdf&d=DwICaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xc14I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fdja0tcmypdCQuaSwv&s=X13H3EM5OX9kMBp4BNNIpM7No5QY9ae5DYhNczpiguA&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_gnsoicrmpdp_WEBINAR-2B2017-2D10-2D12-2BIGO-2DINGO-2BAccess-2Bto-2BCurative-2BRights-2BProtection-2BMechanisms-3Fpreview-3D_71599851_71602970_Options-2520Proposal-2520for-2520WG-2520Discussion-2520-2D-2520updated-252012-2520Oct-25202017.pdf&d=DwICaQ&c=FmY1u3PJp6wrcrw113mSVzgfkbPSS6sJms7xc14I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fdja0tcmypdCQuaSwv&s=X13H3EM5OX9kMBp4BNNIpM7No5QY9ae5DYhNczpiguA&e=) Nowhere does "in rem" vs. "in personam" appear in Option C.

George Kirikos:Also, first paragraph of that document falsely claims "essential elements have been adapted and incorporated". Where?

Paul Tattersfield:@Mary sorry for the delay my machine is

behaving quite naughtily this thread dealt with the issues  
<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-July/000779.html>

Paul Tattersfield: UNHCR has an 89 series class listing at the USPTO and it bars the registration of other TMs in all the international classes

George Kirikos:@PaulT: it doesn't "bar" anything.

George Kirikos: It's still subject to the limitations of Article 6ter, i.e. if it's not going to cause confusion, other TMs can be registered.

Paul Tattersfield: Are you sure George I believe it does in the USPTO

Mary Wong:@George, again staff can't speak for the co-chairs, but we recall that an essential difficulty with recommending "in rem" and "in personam" jurisdiction is that it privileges a few jurisdictions over many others. There is jurisdiction in rem and a right in rem - ad a further difficulty that most courts outside the US and Canada have not recognized that domain names are property. Hence, the staff recollection is that the essential idea was favored of having limited court jurisdiction to decide on ownership, rather than engage in this distinction.

George Kirikos:@Mary: check the date --- that document removed Option 6 before those discussions.

George Kirikos: It was never discussed or voted on re: Option #6, since discussions were ongoing and then a meeting got cancelled.

George Kirikos: i.e. the surprise "survey" took the place of a meeting that should have happened, as these options were still being discussed.

Philip Corwin:@George -- as I stated orally a few minutes ago, please provide the additional language you would propose to add to the arbitration option and the WG will consider it

George Kirikos: It's not an "arbitration option".

George Kirikos: It's an instruction to the Registrar to lock the domain name if the case is brought "in rem", instead of "in personam"

George Kirikos: Go look at 4(k) of the UDRP: --- just talks about "competent jurisdiction"

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_policy-2D2012-2D02-2D25-2Den&d=DwICaQ&c=FmY1u3PJP6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWGlBLwwwehFBfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=NaRMddxe9p\\_cF\\_X7W1erHDjJCEzTB\\_Fg9kGvdzXjopo&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_policy-2D2012-2D02-2D25-2Den&d=DwICaQ&c=FmY1u3PJP6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWGlBLwwwehFBfjrsjwv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSww&s=NaRMddxe9p_cF_X7W1erHDjJCEzTB_Fg9kGvdzXjopo&e=) for "the dispute". Doesn't say "how" it can be brought.

Philip Corwin:Whatever George, you have an invitation to submit language for WG consideration

George Kirikos:But, then it compels it to be "in personam", i.e. "against the complainant", because it didn't contemplate that a domain name owner might want to bring it in rem.

Mary Wong:The Nominet "appeal" process essentially requires a panel appointed from amongst an Expert Review Group.

Mary Wong:Para 20 describes the process.

Paul Tattersfield:Nominet also has a mediation stage before the determination stage - I think we should recommend that should be provided free by the UDRP providers for any IGO names

Mary Wong:With 20.7 specifying the Expert Panel.

Mary Wong:@Paul T, yes it does

George Kirikos:This is not equivalent to a court process. 1000 words, no new evidence.

George Kirikos:No discovery, no cross examinations.

George Kirikos:It's not de novo.

George Kirikos:Federal Court of Canada court rules --- 30 page submissions. In provincial courts, no such limits I'm aware of (and US cases can be hundreds of pages).

George Kirikos:First, it's wrong to say "Option A" did not receive "majority consensus".

George Kirikos:There's been no consensus call.

George Kirikos:It's funny all the disclaimers that were attached before the "informal survey".

George Kirikos:But, when the Chairs got their way, they now give it a lot of weight.

Paul Tattersfield:that's right Phil see Emirates case

George Kirikos:No merit to the Nominet approach.

Paul

Tattersfield:[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.edwincoe.com\\_blogs\\_main\\_court-2Dconfirms-2Dprinciples-2Dapplied-2Ddomain-2Dname-2Dcases\\_&d=DwICaQ&c=FmY1u3PJP6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8\\_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe\\_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSw&s=ppv\\_JdVjYx2pFg6RkKKa9LML1mtT09sNnDqYLNHW6YI&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.edwincoe.com_blogs_main_court-2Dconfirms-2Dprinciples-2Dapplied-2Ddomain-2Dname-2Dcases_&d=DwICaQ&c=FmY1u3PJP6wrcrwl13mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSF04VShFqESGe_5iHWG1BLwwwehFBfjrsjWv9&m=KhcDyyRo-cAk7kj82B72brXv1fDja0tcmypdCQuaSw&s=ppv_JdVjYx2pFg6RkKKa9LML1mtT09sNnDqYLNHW6YI&e=)

Mary Wong:@Phil, I believe there are community members who have worked with Nominet or who have been Nominet panelists - e.g. David Taylor (who is on the CCT Review Team). Staff can reach out to him if the WG deems it appropriate.

George Kirikos:Right, Paul. That's what I was bringing up on yesterday's RPM call, too, with relation to the UDRP/URS.

Philip Corwin:This WG has no Charter authority to recommend an appeals process for UDRP. That can be considered in Phase 2 of

the RPM WG efforts

George Kirikos:ICANN should not be creating rules that create new rights.

Paul Tattersfield:I mentioned it there too I should have posted that article really with hindsight

George Kirikos:And if that includes the UDRP/URS, then the problem needs to be solved directly (i.e. Option A). Option C violates those important principles.

Mason Cole:Have to sign off for another call. So long folks.

George Kirikos:You can see how complex Option C is --- it's creating problem after problem in attempting to solve the problem the UDRP creates.

Philip Corwin:We have reached the one hour mark. Probably should wrap up soon for today

George Kirikos:Calls are 90 minutes, aren't they?

Mary Wong:Staff will circle back with Phil and Petter to confirm next steps and agenda for the next call - apologies but Steve and I need to drop for other calls as well.

Philip Corwin:@Mary--I am fine with reaching out to David if he wants to provide input

Mary Wong:@Phil, will do

Mary Wong:OK thanks Petter. We will send a draft to Phil and Petter as co-chairs early next week (minus text on this recommendation), and plan to circulate it to the WG before the 30th, following the co-chairs' review.

Mary Wong:And we will contact David Taylor to see if he can provide useful insight on the Nominet process.

Mary Wong:Should we schedule 90 minutes for the 30 Nov meeting?

Philip Corwin:If you celebrate Thanksgiving, have a happy one

Paul Tattersfield:I have another matter I would like the working group to consider what's the best way to raise it?

Mary Wong:ok thanks Petter

Philip Corwin:yes, 90 minutes on 11/30

Paul Tattersfield:Its too complex to type in here

Mary Wong:@Paul T, can you send a note to the mailing list?

Paul Tattersfield:Will do Mary

Mary Wong:Thanks!

Philip Corwin:@Paul--raise on the list

George Kirikos:Why not talk orally, Paul?

Paul Tattersfield:thanks

George Kirikos:i.e. instead of typing.

George Kirikos:Bye for now.