

Transcription ICANN Dublin
GNSO session Saturday 17 October 2015

IGO-INGO Access to Curative Rights Protection Mechanisms PDP - update

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

On page: <http://gns0.icann.org/en/group-activities/calendar#oct>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page

Man: All right good morning everyone. Welcome to the GNSO weekend sessions. Welcome to Dublin. Nice to see everyone here. It looks like we've got a good facility and hopefully you're all settled in to your various hotels and ready for a productive weekend.

(Glen) has sent around the agenda for the weekend sessions and all of the links that you'll need. So if you look in your mail - your email app - I mean mine has been filtered into GNSO box and you should see a couple of very convenient links within that mail from (Glen) that's come around this morning, I think, and that will enable you to pull up the agenda.

There's also a paper copy on the desk in front of you. So we should be in good shape. We've got a pretty full day, but it's not so bad that we - if we work systematically through it we may even be able to finish a little early. So it's not too daunting and, of course, that's followed this evening by the informal dinner that we've got organized.

Thanks very much to Volker for all of the work you did together with the staff in pulling this agenda together and setting up the plans for this evening

So it's just after 10 past 9. We were supposed to start at 9. I think we kick off with some information from (Peter) and Phil Corwin on the work of the IGO-

INGO access to curative rights protection mechanisms, PDP and upstate from the working group there. So, Phil, is it you that's going to be delivering that?

Phil Corwin: I don't see anybody else that would be delivering it. (Peter), did you want to come sit at the table and join us for this? There's actually a seat next to me if you want to come by and I guess you've got slides, (Mary)? I haven't seen these slides yet so I'll be very excited to see them. I'm sure they're excellent as all of (Mary)'s work is. So I am co-chair of the working group on CRP - that's not a lifesaving procedure. That's Curative Right's Protection for international intergovernmental organizations - IGOs. I guess - INGOs (unintelligible) those are non-governmental, but we decided early on that they didn't deserve any special treatment so we're not dealing with them.

So let me - here we have slides here. Okay, I think you all know we currently have a UDRP and a URS. We have a URS. We have a URS that's not a consensus policy, but GDD staff treats it as one.

Man: Wow.

Phil Corwin: That was an editorial comment.

(Peter): Can I just - can I just (add to that) just to get (unintelligible) formally corrected. We actually - we started it in searching for a great number of dispute resolutions in the past and it turns out that the INGOs function very well. They're reducing (their) system systems and if they - actually, in fact, have won all the cases except for one. So we decided pretty early that there was no need for a specific system for those. And we also had representatives that - in the working group that have (unintelligible) a lot of cases on behalf of INGOs and they accepted that conclusion.

Phil Corwin: Yes, thank you for that intervention (Peter). So what's happened is our working group, frankly, since Buenos Aires we haven't done much of anything because we've been waiting - the remaining, you know, the decision we

made is that non-governmental organizations didn't need anything besides UDRP and URS because they can trademark their names and bring a dispute like everyone else. There's no sovereign immunity issued to investigate.

So far we haven't - we've come to the tentative conclusion that there's no need to create a completely new procedure for IGOs unless there is a sovereign immunity issue and we've been the process of working with staff to identify a legal expert who, within the timeframe, we have and with the funds allocated by ICANN for hiring of legal expertise can provide us with - what we're looking for is advice on the generally accepted current day scope of sovereign immunity for IGOs. We have located a professor at George Washington University and Law School- (Mary), what's his name again? Is it (Swain)?

Man: (Swain).

Woman: Yes.

Phil Corwin: Professor (Swain) who has very good expertise in this. Worked with the state department, teaching international law and is able to do this at - the contracting process is going on right now and once we expect to have his report within 30 days of the contract being completed. So I think by late November we will have that input from the professor. I'd be - it's located in Washington and I plan to meet with him at least once to kind of discuss things and give him a better feel for our process and the existing rights protection mechanism so he understands the process we're looking at. The other thing that's - so back to the slides.

Yes, the (IGO) small group, which has not really participated in our working group, though they've been welcome to, but they have chosen not to. They've been involved on their own working through the GAC talking with members of the board, the NGPC, about various IGO issues that remain on the table from the new TLD program. Including whether or not their names and acronyms should be listed in the trademark.

Clearing house - we had a conference call last week with Chris Disspain, (Thomas Schneider), (Peter) was on - I think you were on (Jonathan). And the GAC and the IGO small group have reached some tentative agreement in principle on a new - that there should be a new curative rights process for IGOs and I can't tell you what our working group added (unintelligible) because we don't know what the result of our legal input will be on whether there's a sovereign immunity question that requires that and basically we're told that there's an agreement in principle we'll get something soon in writing, but it's just going to be on broad principles and then it's going to be turned over to our working group and council to figure out what to do with that.

So we're basically in a transitional phase where we're waiting the - to finish the contracting with the legal expert to get that report to see what the NGPC has come up with the IGOs and the GAC and then to try and (unintelligible) them together in as amicable way as possible. You know, I've cautioned this council before that there may not be agreement between our working group and that NGPC group if we determine that there's not sufficient sovereign immunity issue to justify completing a completely new (unintelligible) process for what would be a very small number of cases.

The only instance in which this would arise is if an IGO brought an action under the existing curative rights process or a new one and the domain registrant lost and chose to appeal. That's the only time where the access to national courts would be an issue. I've also expressed within this group and on the call last week that no matter what ICANN says in a policy about the registrants right to access of court, I take the example of within the US a domain registrant has an action brought against them and chooses to either appeal the result or to intervene and try to go directly to court under the Cyber Squatting Act. It's questionable whether federal judge would deny them their rights under US law and access to court based on a policy adopted by a non-profit corporation in California.

So we'll just be working all of that out, but we've been somewhat stymied since Buenos Aires and now we're optimistic that we can forge ahead toward the need of November once we get the legal feedback and move forward toward the conclusion of our working group and - do you have anything to add to that (Peter)?

(Peter): Well I would just say that we pretty quick, you know, working group decided that there was no need for a specific dispute resolution system for IDOs. We rather wanted to see more of a reference to the (unintelligible) on the Paris convention stating that organizations that had protected acronyms - so names there could be treated as trademark protection and thereby used the (unintelligible) and the URS.

And, frankly, we haven't so far changed that decision within the working group, but from the call well, last Monday it seems that we may have to at least reconsider and discuss it further within the working group if we need to actually create a specific dispute resolution system. And that's set - there will be maybe one or two cases each second year, but it may be necessary to have it.

Man: Yes and as (Peter) mentioned under the Paris convention IGOs already have a very easy way to gain protection and national trademark routines. They simply provide notice to (unintelligible) of their names and acronyms and then every nation that's a signature to the Paris convention or a member of the World Trade Organization is not totally obliged to do it, but they basically protect their name and their trademark system unless they object to that for some reason.

So that's the existing system we're trying to plug into and be consistent with. And I'm optimistic - our group was making great progress until we came up to this one last issue of sovereign immunity and we felt we couldn't make up what the current legal status - what the current consensus view was. We needed to go an expert. I'm optimistic that when we meet again in Marrakesh next March that we'll either have a final report or be closing in on one that will

resume our rapid progress once we have that input and I think we'd be happy to take any questions now if anyone has any.

Man: So when you - that final report should integrate both the input from this NGPC sort of GAC group plus that of the legal experts. Right?

Man: We'll certainly try. We'll certainly try. We don't know yet what the broad principles are that they've agreed to. We haven't seen anything in writing yet and we certainly don't have the legal input yet on whether there's a sovereign immunity issue that would justify creating an entirely new process just for IGOs to bring requests for protection when they believe that their rights are being trespassed on. Also, as described on the call last week, the agreement that's been reached by the board with the (GAC) and the IGOs is rather narrow. It would only cover cases in which it's clear - it's kind of like a URS stand - a very high standard where the name or acronym is pretty much identical and the registrant is actually pretending to be - is basically running a scam as described - as pretending to be the IGO and that, of course, the scope of the UDRP. And, in particular, broader than that would cover other cases.

So we're going to have to wrestle with all of those questions once we see what they've arrived at. But we will try to make everything as harmonious as possible, but if what the board group and the IGOs have agreed to is contrary to the legal input we've received then we'll have to deal with that or bring it to council and let council wrestle with how to resolve that.

Man: Any other comments or questions for Phil or (Peter) or for - any around the work and the working group? Okay, thank you. Up to date. All right, so that's the first session that we needed to deal with this morning. So we can - can I just check, would you like to stop the recording between each session? Is that the idea?