

Attendance:

Crystal Ondo
George Kirikos
Jay Chapman
Osvaldo Novoa
Paul Tattersfield
Petter Rindforth
Philip Corwin
Susan Kawaguchi
Zak Muscovitch

Apologies:
Reg Levy

Staff:
Mary Wong
Dennis Chang
Berry Cobb
Michelle DeSmyter

AC chat:

Michelle DeSmyter:Dear All, Welcome to the IGO-INGO Access to Curative Rights Protection Mechanisms meeting on Thursday, 05 July 2018 at 16:00 UTC.

Michelle DeSmyter:Agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_UoVHBQ&d=DwIFaQ&c=FmY1u3Pjp6wrcrwill3mSVzgfkbPSS6sJms7xcl415cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwhehFBfjrsjWv9&m=00gDAR0wtFAcmvqj39_fyfmQPx_BzIW4lwVBYO2TkyQ&s=FYE-ZRLMYW7Rz0t-L0sRQU5sWmzlhCoucKsAP4ZWaz8&e=

George Kirikos:Hi folks.

George Kirikos:Even better in blue.

Michelle DeSmyter:Hi there George!!

George Kirikos:Part 1: <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-July/001345.html> Part 2: <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-July/001349.html> Part 3: <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-July/001350.html> [my comments on the draft PDF, using the Clean PDF as a base document]

George Kirikos: Latest draft is at: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_gnsoicrpmpdp_2018-2D07-2D05-2BIGO-2DINGO-2BAccess-2Bto-2BCurative-2BRights-2BProtection-2BMechanisms-2BWorking-2BGroup&d=DwIFaQ&c=FmY1u3PIp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwehFBfjrsjWv9&m=00gDAR0wtFAcmvqj39_fyfmQPx_BzlW4lwVBYO2TkyQ&s=x6LIWtcuqCFUthQqMRg2SKNSiiNslJEpI_767JGt1X4&e=

Mary Wong: This is the clean version.

Paul Tattersfield: Sorry I'm late

Mary Wong: We also have the redlined version as well as George's and Paul T's emails ready if needed.

Philip Corwin: I would prefer the redline so we can focus on changes since last version

Philip Corwin: What page are we discussing?

Mary Wong: Page 5 on the clean PDF (as on screen) I think, Phil

Jay Chapman: fine by me on 3

Zak Muscovitch: Seems like a good suggestion to me.

Jay Chapman: rec 3

Mary Wong: The community-based IRT works on implementation of each policy recommendation anyway, so the Guidance will pass through them

Jay Chapman: re George's suggested change to just "ICANN" at beginning of rec 3

Zak Muscovitch: It looks good to me, Mary

Mary Wong: 4(k) refers to "you", meaning the registrant: "We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure."

Mary Wong: Presumably the registrar is the mechanism by which notifications are made

Mary Wong: "We" = ICANN

Mary Wong: Oh, sorry

Mary Wong:But we are fine with changing to registrar

Mary Wong:Yes

Mary Wong:Correct (sorry)

Mary Wong:Registrar

Philip Corwin:It is the registrar. ICANN has no direct involvement in UDRPs.

Mary Wong:Yes we will make the change

Mary Wong:Is everyone fine with the new bolded paragraph right before 1.3?

Mary Wong:It places specific obligations on the IRT

George Kirikos:That's fine with me.

George Kirikos:I have no new comments until page 10. :-)

Zak Muscovitch:Fine with me too

Oswaldo Novoa:Hello all, sorry I'm late.

Paul Tattersfield:Agree with Phil

Jay Chapman:i think we'd all have the same reservation as Phil. Yes, Petter

Mary Wong:Hopefully the redline (including comments for context) will be helpful as you all review the latest draft.

Jay Chapman:The redlie will be a huge help - thanks, Mary

Jay Chapman:redline

Mary Wong:Hi Jay, both clean and redlined versions were posted on the wiki space, for your reference and review: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_UoVHBQ&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=8_WhWIPqsLT6TmF1Zmyci866vcPSFO4VShFqESGe_5iHWGIBLwwwwehFBfjrsjWv9&m=00gDAR0wtFACmvqj39_fyfmQPx_BzIW4lwVBYO2TkyQ&s=FYE-ZRLMYW7Rz0t-L0sRQU5sWmzlhCoucKsAP4ZWaz8&e=

Zak Muscovitch:Thats a good point, George.

Mary Wong:We can modify for clarity

Zak Muscovitch:Something like this? "Furthermore,as noted in Recommendation #4,the subsidizing of INGOs to utilize DRPs is beyond the authority of the WG to obligate any party (including ICANN) to subsidize the rights protection of ano....

George Kirikos:I didn't have specific language either, just wanted to make sure we don't claim something that's incorrect.

George Kirikos:(this was point #8 of my comments, from the Part 1 email)

George Kirikos:My next comments are on pages 13-14.

Mary Wong:Or we could just drop that first phrase, before "it has no authority" :)

Mary Wong:This text (page 12) was just a move from elsewhere, no new substance

George Kirikos:+1 Mary

Mary Wong:Yes, staff will go through the final document and proof read as best we can before submission

Mary Wong:@George, do you think the changed rec will mean there will be more complaints?

Mary Wong:By saying "Initially" it seems to imply we now no longer believe there will not be more complaints, no?

Mary Wong:Shall we change "reliance" to "seeking to rely"?

Paul Tattersfield:We could also with some text to support (b)

Philip Corwin:I have no objections to the rationales George is suggesting but would like to see a redline circled that includes them and any other changes agreed to on this call

Mary Wong:@Paul, we have that in the report - I can check where

George Kirikos:Mary is right, it's already there somewhere.

Mary Wong:@George, isn't that already in the last sentence of the actual rec?

Petter Rindforth:Option 3, proposed by WG members as a way to make sure that both parties views would be considered in a final legal decision, independent of an IGO's claim of jurisdictional immunity.

George Kirikos:Intertemporal inconsistency. :-)

Mary Wong:I think Paul T suggested deleting this last sentence.

Paul Tattersfield:I did Mary !

Paul Tattersfield:It needs to go

George Kirikos:The newer phrasing doesn't have that issue.

Philip Corwin:ok

Mary Wong:The 91 pages include the current annexes (w/o the minority statements or Swaine's report) :)

Paul Tattersfield:I still have concerns with George's rewording on option #1 - it needs work

Mary Wong:I believe Paul T had a suggestion for the rationale as well.

George Kirikos:It was agreed that ICANN is not the place to create new legal rights, but instead should reflect underlying legal rights reflected in national laws. The UDRP and URS were designed to complement, but not replace or interfere with, existing legal rights of all stakeholders. To the extent that the current UDRP and URS inadvertently interfere with or prejudices the rights of parties to have a case decided on the merits in the national courts, it was felt that putting both parties back in the same position they would be absent the UDRP/URS was an appropriate solution."

George Kirikos:(point #19) <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-July/001349.html>

George Kirikos:*agreed becomes "concluded"

Mary Wong:@George, can we just change "inadvertently interferes with or prejudices" to "affects"?

Zak Muscovitch:George, isn't the ability to bring a UDRP a new legal right?

Mary Wong:It's an additional avenue of recourse to enforce existing rights, I suppose.

Philip Corwin:It's not a right. It's a non-judicial mechanism to enforce trademark rights.

Zak Muscovitch:Maybe the first sentence can be omitted, George?

Paul Tattersfield:it needs work

Philip Corwin:Again, there is a difference between rights and available mechanisms for enforcement of such rights.

Philip Corwin:available

Zak Muscovitch:@Phil, I see what you mean, but the notion of "bad faith" was new and not part of normal trademark law....And trademark law required "use" but the UDRP did not

Mary Wong:We can just add a sentence confirming/clarifying that the UDRP and URS were therefore designed to assist with enforcing existing legal rights, not create new ones.

Zak Muscovitch:@Phil, agreed

Philip Corwin:Good suggestion, Mary

Zak Muscovitch:+1, Phil and Mary

Philip Corwin:I'm unclear what George is suggesting

Philip Corwin:Prof. Swaine was tasked to discuss what courts might do on the immunity waiver question, not to express his view of the proper result

Mary Wong:Well, it's not a defense in the substantive sense - it is a claim to an entitlement that would, if successful, result in a court not having jurisdiction.

Paul Tattersfield:George is right + The precise nature of the judicial proceeding is not relevant, what we need to concentrate on is the difference between a victory on the merits as opposed to a jurisdictional dismissal.

George Kirikos:Page 26 is next.

Mary Wong:Noting that we will change references to an "appeal" (from the Initial Report)

Mary Wong:We can just add a reference to "substantive" changes.

Paul Tattersfield:two typo's in (2)

Mary Wong:Just saw those Paul - thank you

George Kirikos:We can copy language from earlier in the document.

Philip Corwin:It's outdated language and need deletion or substantial revision

George Kirikos:(as per my comment #22)

George Kirikos:It's somewhat repetitive.

George Kirikos:page 27

Mary Wong:OK we will delete, since the rest of the document does make clear what the WG is recommending and why

Mary Wong:@George, while that may be correct it may not be something the WG should state as a fact or conclusion.

Mary Wong:It may be sufficient just to mention the rarity, esp as URS does not preclude a UDRP

George Kirikos:page 44 next.

Paul Tattersfield:Mary +1

George Kirikos:It looks like we'll get through it all in the next 10 minutes! :-)

Mary Wong:@GEorge, staff has noted your various comments about typos and updating references to ICANN meetings etc.

Philip Corwin:We need to reserve a few minutes at the end of the call to discuss the deadline for minority statements--assuming we can file the report on the 9th

Jay Chapman:should we spend the final 6 minutes to discuss next steps / extentions of time?

George Kirikos:--- start of new paragraph 2 on page 51 -----Concerns were raised regarding the accuracy, transparency andinclusiveness of the Summary Report. After discussions on the mailinglist, it became evident that more members of the PDP were willing toengage further on the remaining issues than originally was recorded,and that it might be feasible to reach consensus on all 5recommendations. The Working Group held meetings on 10 & 25 May 2018to further revise the language of the proposed recommendations. Afterthe 25 May 2018 meeting, a two week process was started whereby PDPmembers were encouraged to share their views on the public mailinglist with regards to all 5 recommendations (including the 6 optionsfor Recommendation 5). On June 9, 2018, after reviewing the emails ofthe prior 2 weeks, the remaining Working Group chair (can keep thefootnote referencing's Phil's resignation), set the initialdesignations of consensus levels, consistent with the requirements ofSection 3.6 of Working Group Guidelines for a Consens

Philip Corwin:Yes Jay

Mary Wong:No need - put my hand down in the interest of time

George Kirikos:When can staff give us an updated draft?

George Kirikos:Maybe tomorrow?

George Kirikos:Susan's hand is up.

George Kirikos:Maybe she's got news that Council moved their own call back a week?

George Kirikos:(that would be the best solution, then we can have 1 more call next week, and be done)

George Kirikos:Is there even a draft Motion to accept our report??!!??

Mary Wong:Yes, tomorrow

Mary Wong:At the latest

Mary Wong:Staff is presuming that Susan will send in the report along with the motion on 9 July (as is customary for liaisons)

George Kirikos:23:59 UTC

George Kirikos:Do folks want to have a call like 8 am Eastern on Monday?

Mary Wong:Phil has asked for 13 July

Susan Kawaguchi:I am happy to send the report at 23:59 pdt

George Kirikos:It needs to be UTC time, by the rules.

Susan Kawaguchi:if pdt works for council

Susan Kawaguchi:then 23:59 utc

Mary Wong:Yes, clean plus redlined against the 2 July version

George Kirikos:<https://mm.icann.org/pipermail/council/2018-July/021568.html>

George Kirikos:[council] Reminder: Document and Motion deadline Monday, 9 July 2018 at 23:59 UTC for the GNSO Council Meeting 19 July 2018 at 12:00 UTC

Susan Kawaguchi:I will get council to agree to accepting the minority reports after the July 9th deadline

George Kirikos:If the rules are flexible, why not a few more days, then?

Susan Kawaguchi:as long as we can file the WG report on the July 9th deadline

Susan Kawaguchi:rules for wG report are not flexible

Philip Corwin:Thank you Susan on leeway on Minority Statements -- July 12 or 13 please

Susan Kawaguchi:we have a responsibility to complete this work

Mary Wong:@George, the Council is the manager of all PDPs.

Paul Tattersfield:I only read part of it

Mary Wong:We can update typos and minor errors but we cannot alter recommendations, consensus or substantive points

Mary Wong:@George, on the last call staff had already mentioned we would get the report to the group on 2 July, and we did

Susan Kawaguchi:The consensus designations were completed several weeks ago.

George Kirikos:@Susan: yes, but not the draft report.

Susan Kawaguchi:we cannot review and change those or recommendations

George Kirikos:All progress stopped on June 21.

Paul Tattersfield:yes but its delay and defer & then arbitrary deadlines that concerns me

Mary Wong:Also, the initial draft report was circulated on 11 May, and only one or two people came back with comments on that

George Kirikos:@Mary: the May 11 document had big sections missing.

Jay Chapman:thanks, all

Zak Muscovitch:Thank you, everyone.

Susan Kawaguchi:Thanks all good work

Philip Corwin:Susan,when will we have the MS deadline???

Paul Tattersfield:George is right !

Susan Kawaguchi:@ Phil I will discuss with Heather and get back to you.

George Kirikos:I made 34 suggestions by email.

Philip Corwin:Thanks/just looking for 3-4 days past the 9th

George Kirikos:@Susan: try to get them to move the GNSO Council call back 1 week.

Paul Tattersfield:thanks all bye

George Kirikos:Then we can have a call next week, and have a deadline 1 week later.

George Kirikos:That would be a fair solution.