

## **CONTRIBUTION FROM THE DIRECTOR GENERAL ON TORs 7, 8, 9**

### **OVERVIEW OF ISSUES FOR CONSIDERATION AT THE FIFTH MEETING OF THE AP-41 WORKING GROUP (SEPTEMBER 9<sup>TH</sup>, 2025)**

The fifth meeting of AP-41 Working Group will address the third grouping of the Terms of Reference (TOR) established at AP-41, ToRs 7, 8 and 9, which are primarily concerned with specific challenges that may arise in circumstances in which actual suppression of Common Heritage filings appears likely to occur; potential measures that would then be required in order to avoid loss of those filings; and the request submitted by Parties in Region D, originally at AP-40 and subsequently at AP-41, to assess the feasibility of and/or circumstances in which designation of additional Notifying Administrations may be desired or appropriate.

#### **TORs 7, 8, 9:**

Coordinator: Region D - Rwanda - Mr. Georges Kwizera

Vice-Coordinator: Region E - India - Ms. M Revathi

**TOR 7: MECHANISMS OF TRANSFERRING THE NON-EXPLOITED COMMON HERITAGE TO ANOTHER COMPANY THAT HAS UNDERTAKEN TO COMPLY WITH PSA OBLIGATIONS, TAKING INTO ACCOUNT THE ITSO AGREEMENT**

#### **1. Scope of TOR 7**

ToR 7 addresses recommendations on mechanisms of transferring the non-exploited Common Heritage to another company that has undertaken to comply with PSA obligations, taking into account the ITSO Agreement. As formulated, this ToR largely replicates the subject matter previously addressed in ToR 6 and for that reason can be consolidated with the prior consideration of ToR 6.

#### **2. Background relevant for TOR 7**

ToR 7, as in the case of ToR 6, is intended to address circumstances in which the failure or inability of the Company to utilize Common Heritage resources would ultimately result in the suppression of the underlying filings, and the measures that the Notifying Administration could take to avoid that outcome by licensing or authorizing another satellite operator to utilize those filings, subject also to the requirement that the selected operator will have a properly executed PSA with ITSO regarding its use of those filings. This would then require the Notifying Administration to establish a national procedure to transfer, permanently or temporarily, the resources to be exploited by other Company (national or foreign) working under the rules of the Notifying Administration jurisdiction and clearly supporting the minimum objectives of such new Company to provide global connectivity.

### **3. Main issues to be addressed under TOR 7**

Same as already identified for ToR 6.

### **4. Potential Recommendations under TOR 7**

Same as already identified for ToR 6.

## **TOR 8: MECHANISMS TO FILL GAPS THAT COULD LEAD TO A REPLACEMENT OF SUPPRESSED COMMON HERITAGE FILING BY NEW FILINGS FROM OTHER ADMINISTRATIONS OTHER THAN THE NOTIFYING ADMINISTRATIONS OF THE COMMON HERITAGE**

### **1. Scope of TOR 8**

ToR 8 is intended to address the situation in which a Notifying Administration is unable or unsuccessful in licensing or authorizing another satellite operator to utilize the Common Heritage resources which the Company is otherwise unable or unwilling to utilize, as a result of which those Common Heritage resources would be subject to suppression before the ITU, and provide recommendations on mechanisms that could allow for replacement of suppressed Common Heritage filings by new filings from Administrations other than the Notifying Administration.

### **2. Background relevant for TOR 8**

ToR 8 represents what may be the most challenging of the ToRs established at AP-41 for consideration by the AP-41 Working Group, in that it contemplates an arrangement that is outside the direct scope of Article XII(c)(ii) of the ITSO Agreement for preservation of Common Heritage resources, but nonetheless may prove invaluable in specific circumstances in which a potential loss of Common Heritage resources cannot be prevented through the direct invocation of the Article XII(c)(ii) mechanism. Specifically this is intended to address the situation in which Common Heritage frequency assignments and associated orbital locations about to be suppressed, or already suppressed, under applicable ITU procedures, but there is nonetheless an opportunity by which those resources can continue to support the Core Principles as enumerated in Article III through actions involving a Notifying Administration other than one of the two original Notifying Administrations to which Article XII otherwise applies. And while, as previously noted, this type of arrangement would fall outside the direct scope of Article XII(c)(ii), there is nothing in the ITSO Agreement that would preclude utilization of such an approach should the relevant Parties, specifically the involved Notifying Administration other than the U.S. or the U.K., be willing to allow the ITU filings that it would have been made to be treated as if they were part of the Common Heritage and willing to require whatever satellite operator is licensed to utilize those filings to commit to support the Core Principles and potentially even enter into a separate Public Services Agreement with ITSO for that purpose.

Thus, the purpose of ToR 8 is to specifically address the question of the extent to which anticipated suppression, or suppression, of Common Heritage filings before the ITU would adversely affect ITSO's ability to ensure that the Core Principles, including specifically, the objective of global connectivity and coverage, continue to be met and, whether, in such circumstances, it would be possible to offset this impact by having an Administration, other than the Notifying Administration, file for the potentially suppressed, or suppressed, frequency assignments. Specifically, the issue would be what measures would be appropriate to be undertaken when potentially suppressed, or suppressed, Common Heritage filings occur that would allow or encourage another Administration to file for Common Heritage resources and be prepared to make them available to further ensure the attainment of the Core Principles. This case would also apply to a new Notifying Administration which has already filed for a satellite network with the ITU and such existing file may be offered by the new Administration to become part of the Common Heritage.

### **3. Main issues to be addressed under TOR 8**

The main issues to be addressed under ToR 8 would include the following:

1. A determination of the circumstances in which it would be appropriate for Administrations other than the current ITSO Notifying Administrations to submit filings related to soon to be suppressed or suppressed, Common Heritage filings and what safeguards, if any, would be necessary to ensure that such new filings would not have an adverse impact on existing Common Heritage filings at any adjacent locations. Depending on the circumstances present, this could involve a situation in which the original Notifying Administration seeks agreement with an entirely new Administration, pursuant to which the new Administration would license or authorize the operation of these resources, or a situation in which an entirely new Administration independently submits filings to the ITU, based upon which it would be able to license or authorize the operation of these resources.
2. In the first case, which could arise with the original Notifying Administration declaring no national feasibility to transfer such resources to any other satellite operator, the new Notifying Administration should seek agreement from the original Notifying Administration to, permanently or temporarily, allow the new Administration to exploit such resources, potentially under the ultimate responsibility of the original Notifying Administration, with the Common Heritage being operationally exploited by another satellite operator, subject to the licensing or authorization procedures utilized by the new Notifying Administration. This new Administration should also ensure that the selected satellite operator is committed to meeting the objective of global connectivity and the other Core Principles. The new satellite operator would most likely need to sign a PSA with ITSO, with terms to be developed, reflecting the coordinated roles of the new and original Notifying Administrations. This procedure would not necessarily require a formal identification of new independent Notifying Administration to take unique responsibility over the new satellite operator without any control or intervention from the Notifying Administration. The Notifying Administration would continue being the overall supervisor

under the agreement reached between the two administrations. However, the new Notifying Administration will be sovereign to act in front of the ITU.

3. In the second case, another Administration acting independently of the original Administration but in coordination with ITSO, would submit filings that would allow it to license or authorize a satellite operator other than Intelsat to utilize filings replicating what had previously been Common Heritage filings at one or more particular orbital locations and agreeing with ITSO that its licensing or authorization would be conditioned on the commitment of the licensed or authorized satellite operator to operate its satellite at that location in a manner consistent with and furthering the Core Principles. As under the first alternative above, this other Administration should also ensure that the selected satellite operator is committed to meeting the objective of global connectivity. The new satellite operator would again most likely need to sign a PSA with ITSO, with appropriate terms to be developed.

#### **4. Potential Recommendations under TOR 8**

Building upon the recommendations under ToR-6 and ToR-7, ToR-8 should additionally recommend:

1. Upon request from a new Notifying Administration, confirming ITSO's and the original Notifying Administration's desirability for allowing likely suppressed Common Heritage filings to be operated by a satellite operator other than the Company under the jurisdiction of the new Notifying Administration and determining whether it would be necessary or appropriate for the new satellite operator to sign a PSA with ITSO.
2. Interested ITSO Parties should be encouraged to consider submitting new filings to ITU, or to identify any existing filings that it may have already submitted, regarding Common Heritage resources for which potential suppression is anticipated as a means of ensuring the preservation of Common Heritage resources that would otherwise be lost if suppression were to occur.
3. Actions should be taken in front of ITU to support continued recognition of the ITSO Common Heritage resources under the auspices of a new Notifying Administration when appropriate, substituting the original Common Heritage filings managed by the existing Notifying Administrations, but allowing continuity of the priority of usage of the Common Heritage filings under the new jurisdiction in similar regulatory situation as the Common Heritage filings were previously recognized under the original Notifying Administration's jurisdiction.
4. In the event of a potential agreement between the original Notifying Administration and a new Notifying Administration with respect to transfer of or joint administration of Common Heritage filings from the original Notifying Administration to the new Notifying Administration, the desirability of seeking endorsement of such an arrangement at the ITU level, to be recognized as a valid regulatory step.

**TOR 9: FURTHER CONSIDER AND MAKE RECOMMENDATIONS ON THE PROPOSAL THAT WAS SUBMITTED BY REGION D TO AP-40 TO HAVE ONE NOTIFYING ADMINISTRATION PER REGION**

## **1. Scope of TOR 9**

Provide recommendations to further consider and make recommendations on the proposal that was submitted by Region D to AP-40 to have one Notifying Administration per region and to address other considerations raised by Region D at AP-41 that AP-41 did not have the opportunity to fully consider.

## **2. Background relevant for TOR 9**

The issue of identifying potential new Notifying Administrations had to some extent been previously considered within the two AP-40 Working Groups, but without formal resolution. While efforts could continue to assess the merits and potential liabilities associated with designating additional Notifying Administrations at this time, it may also be possible for the AP-41 Working Group to look towards identifying new Notifying Administrations from the viewpoint of serving as back-up Notifying Administrations, being prepared to assume the full responsibilities of a Notifying Administration in the event that a current Notifying Administration is unable or unwilling to continue to serve in that role or in the event of ITSO's termination at some future time.

Given the possibility that, at a future point in time, either of the current Notifying Administrations may decide not to continue in their role of Notifying Administration, in such a case, having already identified a suitable substitute Notifying Administration would avoid a period of uncertainty until a new Notifying Administration can be identified and appointed. Consequently, in order to speed up the work of identifying new Notifying Administrations, such identification should be assessed bearing in mind the scenario involving a future withdrawal from any of the existing Notifying Administrations, and the need of ITSO to be prepared to face such scenario should it happen.

At AP-41 consideration was also given to a number of other recommendations submitted by the Parties from Region D, which were not specifically incorporated in any of the other ToRs established for consideration by AP-41 WG, but which AP-41 left open to the AP-41 Working Group to address to the extent that the AP-41 WG deemed necessary. Given the nature and source of those recommendations, it would make the most sense for those recommendations to be considered in connection with ToR 9. However, given the broad scope of those recommendations, and recognizing that many but not all did track the recommendations separately put forward by the two Working Groups that reported to AP-41, the Region D Parties that submitted the document to AP-41 should in the first instance indicate which of those recommendations might warrant further consideration at this time.

### **3. Main issues to be addressed under TOR 9**

The main issues to be addressed include the following:

1. Whether ITSO should establish at this time a mechanism for identification of ITSO Parties that would have an interest in serving as a Notifying Administration, should a subsequent opportunity present itself, including the requirement that such Administrations provide information demonstrating their capability to do so, and by which the Assembly of Parties could evaluate such submissions for the purpose of identifying which such Administrations that would have the requisite capabilities to serve as an ITSO Notifying Administration in the future.
2. Determine with respect to the management of the Common Heritage in the event that the ITSO agreement is terminated, whether the Common Heritage resources should be proportionally distributed in some manner among the five ITSO Regions.

### **4. Potential Recommendations under TOR 9**

The following recommendations are identified:

1. ITSO should establish a process for identification of interested Administrations to act as Notifying Administrations in some, or each of the five, ITSO Regions.
2. Interested Administrations should submit proposals to ITSO on the resources available to their Administrations and the way the Administrations would commit to performing all the activities that would be required of an ITSO Notifying Administration in order to allow the Assembly of Parties to review such submissions and make determinations as to the suitability of those Administrations to serve as ITSO Notifying Administrations should an opportunity to do so arise in the future.
3. Regarding the allocation of CH resources in the event that the ITSO agreement is terminated, such scenario should be subject of further consideration on a case-by-case basis when approaching the time for such scenario. Note should be taken that some orbital positions and associated assignment may be required to continue playing a critical role of guaranteeing global connectivity while other orbital positions and associated assignments may not justify such consideration.