ICANN Transcription

EPDP Specific Curative Rights Protections IGOs

Tuesday, 02 November 2021 at 15:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the EPDP Specific Curative Rights Protections IGOs call taking place on Tuesday, 2 November 2021.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. And if you're only on the telephone, could you please let yourself be known now? I didn't think I saw anybody. All right. We do have apologies today from Osvaldo Novoa.

All members and alternates will be promoted to panelists. When using chat, please change the selection from host and panelist to everyone. Attending will be able to view chat only. Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name and add in parentheses

alternate after their name, which means they are automatically pushed to the end of the participant list.

To rename in Zoom, hover over your name and click Rename. Alternates are not allowed to engage in the chat apart from private chats or use any of the other Zoom Room functionalities such as raising hands or agreeing and disagreeing. As a reminder, the alternate assignment must be formalized by way of a Google assignment form. The link is available in all meeting invites.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing no one. If you do need assistance updating your Statements of Interest, please e-mail the GNSO secretariat. All documentation and information can be found on the wiki space. Please remember to state your name before speaking. Recordings will be posted on the public wiki space shortly after the end of the call. And as a reminder, those who take part in the ICANN multistakeholder process are to comply with the Expected Standards of Behavior. Thank you. Over to our chair, Chris Disspain. Please begin.

CHRIS DISSPAIN: Thank you, Julie. Good morning, good evening, good afternoon, everybody. Thank you for joining us. Let me start by saying, Justine, thank you for posting your change of role into the chat. Congratulations. And you are mad, but well done anyway on your appointment as the vice chair of EPDP IDNs and the ALAC liaison to GNSO Council. A fun gig, if ever there was one.

We have a small but beautifully formed group of people with us today to start the process of going through the public comment. So welcome to those of you who have obviously been able to make it. I've got a couple of things that I want to say. But before I do that, I just want to deal with the agenda. I've discussed this with Berry and the others and I. We're not going to deal with Recommendation 3 today. We're going to deal with 1, 2, and if we have time, 6. The reason being that 3 and 4, which is effectively 4 and 5. So 3, 4, and 5 are obviously the meaty areas, the ones that we need to consider at the most length. There are significantly long swathes of text to read in the public comment. And so I would prefer us to deal with 1, 2, and 6 today, if we can. Obviously, those are interdependent and a lot of the comments on 6, given I don't agree with 4 or whatever, but nonetheless, I think we can make a bit of an effort to nail those ones down today if we can, and then move on to 3 and 4 in our subsequent calls.

But before we start, there are a couple of things that I want to say. I'm speaking in my personal capacity as chair of the EPDP. I want to start by calling out comment in the general comments, which is the last section of Berry's fantastic document that contains some sort of non-specific to recommendation comments. I specifically want to refer to the Registrars Stakeholder Group's comments, which appear on page 28 of Berry's document. The second point made in the Registrars' comments notes that the EPDP does not appear to contain any representatives from the Registrars Stakeholder Group and goes on to talk about a couple of other stakeholder groups. I want to put on the record because I think it's very important that the Registrars were asked if they would like to participate in what was then a working group and became a PDP.

And indeed, after I was asked if I would chair and agree to do so, I personally approached the Registrar Stakeholder Group constituency, and asked them specifically if they would be prepared to put representatives on to the working group, and the response was that they were not. So I want to say and I wanted to be in the record that I have said I think that that comment is perhaps, at best, a bit rich and, at worse, is positively disingenuous. I will be writing to the Registrar Stakeholder Group to make that point.

The second point I want to make is that I think that public comments are incredibly important and a very important part of ICANN's multistakeholder model and process, and they all need to be treated with respect. Comments from individuals and from corporations can sometimes stray into conspiracy theory, attacks on the staff ad hominem, unpleasant and self-serving rhetoric. It's not always nice or collegial, but that is a part of the rich tapestry of ICANN's multistakeholder model. However, I personally don't expect such comments to come from a Supporting Organization, an Advisory Committee or a Stakeholder Group. And for that reason, again, I'm going to make a specific reference to a comment made by the Registrar Stakeholder Group. It's the comment that is headed—paragraph starts fourth. It says fourth, the Registrar Stakeholder Group notes that several members of the EPDP have a direct financial interest in adopting these recommendations, and then goes on to make some further comments.

These are unfounded and unwarranted attack on what I believe are the principal volunteers working hard in this EPDP to find

solutions. It's unbecoming of a stakeholder group to make these sorts of comments, and I'm not prepared to let them slip through without comment. So my comments are hopefully in the record. Again, it is my intention to write to the Registrar Stakeholder Group and point out to them that this is not a sort of standard of public comment that I expect to receive from a SO/AC or stakeholder group.

And finally, just to reiterate the point and to come back to the comments about not participating, the Registrar Stakeholder Group could have been in this working group or EPDP if they could have been bothered. And I want to make clear that if they had, their presence and input would have been valued and welcomed. Apologies for going off on what the lawyers may recognize as a legal term as a frolic of my own, but I thought it was important to read those for me to put those comments into the record. And as I said, I will contact the Registrar Stakeholder Group myself in due course and make those comments directly to them.

With that, let us move on to the crux of the meeting. Let's start with Berry doing a project update so that we can get this colorful chart of the screen and replace it with very boring text. Sorry. Before I do, Brian, yes, please go ahead.

BRIAN BECKHAM: Hi, Chris. Hi, everyone. Can you hear me?

CHRIS DISSPAIN: Yeah.

BRIAN BECKHAM: Good. Thank you. Apologies I joined a few minutes late. I was just curious. And thanks for the observations that you made earlier. I was just curious—and I think probably Berry would walk us through this but I thought maybe I would just ask my question, if helpful to help Berry walks us through the tool for the review. And thank you for doing that. There were some comments which sort of made more general statements, and then others which actually focused in more on the specific options that we had laid out and were seeking particular feedback on. There were a number of other places I noticed, for example, claims made about costs of arbitration or things of that nature. I just wondered if there was an opportunity, because the way I see review of Recommendation 1, 2, 6, etc., on the on the agenda, if there would be an opportunity to address those specific comments. I'm just thinking out loud. If, for example, those comments which I believe may have been from either the Registrar Stakeholder Group or one of the individual registrars, I don't recall, if it would be it all useful or possible to invite particular individuals or groups on that would have made comments along those lines for clarification or to kind of address those? Just to give a concrete example when there's a claim made about time and cost of arbitration. I recall one of the domain industry blogs recently outlining how a court case involving a domain name head had run up bills around a half a million dollars. And so I just wonder if there's an opportunity to kind of address some of the specific comments which may paint things in a light that doesn't have the full picture. In case those inform some of the comments that flow and the positions that have been taken in the individual comments submitted. Thanks.

CHRIS DISSPAIN: Thanks, Brian. I thought about that and the answer may be yes. I don't think we can make a decision now. I'd rather we review the comments and then discuss whether or not we think it's necessary. I would say that whilst I can see advantages to doing so, and indeed I'm not against it, I can also see that there may be challenges in as much as picking and choosing who you ask to come and to talk and drawing distinctions may or may not be about a valid or valuable exercise. But that said, I thank you for the suggestion. It's certainly something that I think we should think about and it had popped into my head in two aspects. One was in respect to the comments made by the Registrar Stakeholder Group, and secondly, just generally where people have made comments where there's been a clear effort to understand, as opposed to just posting rhetoric, a clear effort to understand but a failure to do so. But that said, let's come back to that as a possibility once we get a chance to get stuck into to the comments and we know where we stand with those. Thank you very much indeed. Berry, over to you. Apologies for the brief sidetrack.

BERRY COBB: Thank you, Chris. No worries. All valuable discussion. Just to tack on to what you said and to Brian's question about inviting individual commenters to the group probably would maybe be a last resort option. But certainly doesn't prevent this group from communicating via e-mail to a specific commenter about getting additional clarity to any particular aspect of their comment and those kinds of things. So it's not prevented but I think Chris makes a very good point about reviewing all of the comments and then in

entirety. And if there are still some open questions, then the group can have a conversation about what next steps might be possible to gain extra clarity. Also, Brian, to your question, yeah, part of the intro to review of public comments, we'll run through what the process or procedure is and how we respond and document to those comments.

So, to start off with, I thought that we owed ourselves some wet blanket discussion here from your project manager. I just wanted to make sure that we're all on the same page about where we're at and where we're going. First and foremost, from a pure project plan perspective, we're about 78% complete. Don't let that high number fool you. We still have a fair amount of work ahead of us. That includes reviewing through the public comments. That will include, of course, additional deliberations on the recommendations as a few of those had options and weren't full sell recommendations as well. We need to prepare the final report. There's a redline or multiple redline updates of our initial report. We still need to get through a consensus call. And then of course, then we'll be in a position to submit the final report to the GNSO Council.

This plan finish date of May of next year is don't let that fool you either. As part of wrapping up this overall project that includes the Council's consideration of the report and any consideration or adoption of recommendations, should they do that, as well as some closeout tasks to pass any final report and consensus recommendations over to the Board, setting up any Board public comments and those kinds of things. But our key date, for our purposes here, is submission of the final report to the GNSO

Council, which right now is scheduled for December 20 of next month, really. So we don't have a lot of time between now and then. The faster, the quicker that we can review through the comments and continue on with more subsequent deliberations, the sooner we can attain that.

So what I do want to point out here is to complement the summary page, this page two of the project package. I did send this out to the group and the main reason why we're reviewing this today is that we'll be forwarding this over to the GNSO Council as part of our regular cadence and PDP 3.0 Guidelines. But one of the things that I want to draw to your attention is in terms of our continued deliberations of the issues, as well as our review of public comments, I'm indicating a yellow condition here or kind of a mini at-risk condition. We were one week late delivering the initial report for public comment. So that's one week we don't have now. I think if everybody did review through the public comments, there's a wide diversity or range of support or lack of support that will probably add to the substance of our issues being deliberated.

So at the end of the day, though, we're still targeting the end of December, kind of a nice Christmas present to the GNSO Council. As a last resort option, we do have the project change request as a relief valve, should we need it. But we may also consider needing to double up on meetings or extending duration or the use of small teams or doing some other task in parallel to still try to meet to that committed to date. Before I move on to the next part of our agenda, any questions about the project package in general? All right, so let's move over into the fun.

As Chris noted, the public comments is a very important component to the multistakeholder model. It's probably the most boring part and tedious part of a PDP. But it is the most essential part and, most importantly, it is the ownership of this EPDP or any working group that reviews comments that they're all carefully considered, that we meticulously attempt to document how this group considers them, as well as trying to create a chain of custody of how a comment affected or didn't affect the recommendations as we approach our final report.

What I pasted into the chat window is the wiki page that has the Public Comment Review Tools or PCRTs in short. What this ultimately means is this is our version history as we review through each of the recommendations in the comments. So I'll just spend about five minutes here, hopefully a little less.

The first row is just kind of the raw data that we exported out of the new Public Comment Tool that was released as part of the ITI project. Within this spreadsheet—which I should have already had ready and I don't. But I do want to highlight a few things here for you. I know this will be a little bit of an eye chart for you to see on the shared screen here. But each row indicates a submission that was submitted. This particular version lacks the date timestamp but it is sorted. It does contain a date but I had to manually add that in. But a date at which it was submitted, I've added on a meta tag based on the submitter, whether they were an individual, an organization, which is kind of a nebulous term. But in essence, an organization could be either a company, an LLC, or perhaps an IGO or some other organized not-for-profit which is distinct from what the other label is of a community group. So we had 14

individual responses, 13 organizations, and 6 community groups. Essentially, if a submitter had tagged it as they were affiliated, that was my indicator that they were either a community group or an organization. So some of these could be construed as an individual but they have an associated company that they're representing. I didn't feel it was my place to try to make a judgment call, so if there was a formally recognized entity, I labeled them as an organization.

Some respondents chose just to use the template form of the summary of the submission, a summary of attachment and general comments. And you'll find those extracted here into the worksheet where a group submitted an attachment. Typically, it often replicated what they included in their summary. So I did not put those into our PCRTs. I only used their attachment for us to review through. Where a submission didn't include an attachment then, of course, that was considered the substance of their comment, and those did get imported into the PCRTs. Of course, several of the attachment submissions were quite lengthy. So in terms of readability or at least the raw data here, it only contains a link to their submission and not the actual submission itself.

Okay. To move on, in terms of the wiki page here, I can zoom in for you. Essentially, I started from the first submission to the last submission. A lot of our commenters were kind to delineate what part of their comment was associated with which recommendation. So it made it a lot easier for staff to basically target and group those comments based on our recommendations. So we have each PCRT for each recommendation.

As we move through these, for example, today we're going to be talking about Rec 1 and Rec 2, you'll note that there's a date stamp on these. And as we traverse each PCRT, I'm date stamping it to the day that we're reviewing it and providing responses or acknowledgments to those particular comments. The old version will be moved over here and the most recent version, I'll note. Getting an Internet connection unstable. Can you hear me okay?

CHRIS DISSPAIN: You're forcing your way through the unstableness. You're a bit choppy but you're doing okay.

BERRY COBB: Okay. Thank you. I'll note Recommendation 5. The PCRT here is an empty shell. Literally, all comments in respect to UDRP and URS, they were combined together. So we kind of got a lucky break there, so to speak. I didn't see any specific call outs to URS but the comments will be wrapped together under Recommendation 4. And where a commenter called out referring back to UDRP, I kind of use the quote over into the right hand column, just in terms of chain of custody. So any consideration of URS will occur under Recommendation 4.

Then the last two items here, as Chris noted, there's a lot of comments that weren't specific to any one of the recommendations, and so we created a catch-all of other comments. Even though they aren't associated to a particular recommendation, the group is still responsible for considering

them. There's rationale for why a particular commenter agreed or disagreed with the recommendations as a package, as well as other commentary that we need to make sure that we cover through.

Then the last thing I'll say about this page is we did receive two late comments with the new Public Comment platform at 23:59 of the day of the close. It will no longer accept submissions. Of course, we have avenues to collect late comments. These comments will not be posted on to the Public Forum page itself. But they are included here on our own wiki page for us to consider at the chair's approval. And they will also be appended to the Staff Summary Report that we're working on now that will also be posted on the ICANN Org page. Any questions about this particular page before we dive into details?

CHRIS DISSPAIN: Not a question, Berry, but if we could flag this. I believe this is the first public comment that's used the new platform. I may be wrong but maybe not the first. It's one of the first.

BERRY COBB: The first for the GNSO Policy team, I believe there was one on main .com—

CHRIS DISSPAIN: Fine. If, Mary and Steven, you could make a note that I actually think that the system, it's a bug if late comments can't be, having been accepted, be logged as late comments onto the main page. I

we live with it and it's fine, we'll still be commenting on the comments, etc. But I just wanted to just put that flag in the feedback to the builders of the system. That, actually, if you're going to allow for the possibility of late comments and I decided that I thought it was appropriate to do so, then given the circumstances in which those comments arrived, then I think the system itself should probably allow for those to be uploaded. Marked as late but nonetheless uploaded. That's just some feedback for the guys that built it. Thanks.

BERRY COBB: Thank you, Chris. We'll pass that along to the appropriate team. Okay.

CHRIS DISSPAIN: Do you have any anything else?

BERRY COBB: So that's it for the summary review. I was getting ready to move into Recommendation 1 and get into an overview of the specifics of how the PCRTs are set up.

CHRIS DISSPAIN: Go for it.

BERRY COBB: Okay. So from the wiki page, again, by Recommendation 1, what we're attempting to do here is to import the specific comment that

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was submitted. We have a contributor row here and it is literally a copy-paste from the commenter. Staff is not in a position to make an attempt to summarize the comment. It would be too dangerous to take a summary out of context. So literally, it's a full-blown quote from each particular submitter's submission that we're pasting into here. That is in column two. The top of the PCRT is just a quick copy of the initial report recommendation for easy reference.

The last column is the most important part and this is what the group is responsible for doing. If you were to see the template here, there's essentially four general tags that is either support for the recommendation, concern where the submitter maybe supports the recommendation but has some concern about its current wording or something along those lines. There's a red label for divergence, which essentially is an indicator that there's zero support for the recommendation. Then there's a fourth tag, which is a new idea. There's no direct science behind these, they're kind of thumb in the wind indicators. They're, again, just a signal about what the commenter might have done. They are not meant to replace or make a factual statement that the submission is indeed support or against for a new idea.

What is ultimately the issue or the task ahead of us is that as we go through each one of these comments, staff will try to create a summary response of how the EPDP considered the comment. And we'll also document any particular action taken. This one's a little bit more complicated, especially in the early forms of reviewing through the comments. But the idea here is, as I mentioned earlier, to create this chain of custody back to whether

a particular comment had any specific result or change to one of the draft recommendations. Then ultimately, here is whether we completed it or not. And that's just a staff use thing to make sure that we're covering through each one of these.

CHRIS DISSPAIN: Berry, there's a question in the chat from Justine. It would be useful to know where/how staff derived the support concern, diversions, etc., tags within the comment column, especially where more than two tags have been identified for one comment. So in other words, what's the criteria that you use? Obviously, I support this recommendation. It doesn't require an explanation of the criteria. But some others might be a little bit more subtle.

BERRY COBB: As I noted earlier, there's no exact science to this, it's really just kind of a thumb in the wind indicator. I wouldn't be held to precision on any of these. But if I use both, it was kind of being interpreted that there could be support for a particular recommendation, but there's a concern that maybe the current recommendation doesn't go as far as it should. I think one of those examples is at the bottom from the IPC, I believe, where it's used here as an example where there appears to be support for the recommendation or specifically the text of the definition. But the commenter is also proposing the use of edited language that was tagged as a new idea. A different one maybe as the BC here is they seem to support the comment but they're also suggesting here that maybe there's an idea that this recommendation or the bulk of the recommendations of this work would be reviewed in

the Phase 2 RPM Working Group. Again, these are general indicators. I really don't want you to focus on these color code items. It's really more important to focus on the substance of the comment and then we review through those.

The final thing I'll say before we start at the top here, especially in preparation—Justine, would it be possible for staff to highlight colored text which you assigned a particular tag? I think that that would put us in too awkward of a position to be precise about these. Again, these are general indicators. If they cause too much confusion, then I'd rather delete them than for staff to be trying to make a judgment call to that level of precision. I see your hand Mary. I'll come to you in a second.

The final thing I'll say, especially in preparation for next week's call, is that it will be helpful for everyone on the EPDP here to review through these comments and read them in detail in preparation for us when we start top to bottom in reviewing these comments. The short ones, they're easy to get a quick takeaway about what the substance of that comment was. But as Justine noted, there are a few that are very long comments and it won't be a good use of our time for staff to read through them in detail. I'll try to make an attempt of a summary statement about what we think that the comment is about just to tee up the discussion. But ultimately, it's about the group responding acceptance or non-acceptance of the particular comment, offering suggestions or ideas about how the comment may change or improve the draft recommendations that we have. Mary, please go ahead.

MARY WONG: Thanks, Berry. I think you covered it. Thank you, Justine, for the questions and comments. I think it is important to underscore what Berry just said that, really, the determination, the categorization is for the EPDP team as the community-based group. What staff has done is produce a tool that's meant to guide and help that discussion. As Berry said, this is a first pass. As we go through the comments and as staff goes back through the comments as you discuss them, it may be that some of these categorizations and texts can change, either because we're looking at a particular comment as a group or through a re-review of perhaps a comment that that wasn't so clear at the first pass. So it's not set in stone, it is a first pass, it is a guide. And hopefully, you can take it in that light because the decision is for the group. Thank you.

CHRIS DISSPAIN: Berry, it's Chris. Thanks, Mary. A thought occurs to me, Berry, which might be hopeful. I'm fine with everything you've satisfied, I'm fine with everything you've done, and I'm fine with the way that we're going to proceed. However, I note that there are a number of places and this is a good recommendation to start. If you scroll down to the very last comment, which is the IPC where there is a new idea. I wonder whether it would be possible for you to extract the new ideas just into a simple document that just goes here are the new ideas in relation to Recommendation 4, Recommendation 1, blah, blah, blah. Because it strikes me that if you look, for example, at this one as an example, one way of dealing with this is still going to be to ask the small group who actually did the definition of what an IGO was for this EPDP to go away and to

consider this suggested change of text and to come back and report.

It occurs to me that there may be other new ideas that we could use that small group go away and work on its stuff whilst we are hoeing our way through the rest of the document. I wonder if we could perhaps get a note in the next day or so of those new ideas in reference to the recommendation so that we can consider whether there is side work that could be done in order to perhaps save some time and effort.

BERRY COBB: In particular, the EPDP on RDDS used what they called discussion drafts that meant to distill down or isolate some of the key aspects of comments that could be considered in parallel to review of the comments. So for this particular one, whether it's an actual small team that gets together or not is one aspect of it, but there's nothing that would mean or prevent the group from—staff can prepare an isolated draft of Recommendation 1, enable redline or track changes and you can put in the suggested edits and distribute it to the group to consider those or, if need be, that small—

CHRIS DISSPAIN: That may be the next step. But I think my first step is simply if we could just get a note of what the new ideas are across all those recommendations. There aren't actually that many of them, there are maybe half a dozen, I think, if I remember correctly. I know that one of them comes from George Kirikos is quite a long one.

But if we could get just as a separate document the new ideas, I think that will be very, very useful. I mean, I can easily do it myself if I have to. But I'd prefer it if you could just extract from the document those things that you have classed as new ideas for us to have a look at and see if we can go away do some work on those separately.

BERRY COBB: We'll do.

CHRIS DISSPAIN: Thank you, that's very helpful. Then as you quite rightly say, with that list, and using the first one as an example, it might very well be that I suggest to the group—and my point is we don't have to wait for meetings to do this. With that list, I can then do an e-mail that goes out to the group that says, "I would like to suggest that Susan and Paul and whoever else was on that group, Brian, could consider this text and come back to us and tell us what they think." It's as simple as that. That may save us a bit of time. Thank you and I apologize for interrupting. Carry on.

BERRY COBB: No problem. All right, so let's get into it. Again, fortunately, I think mostly there was the support for the Recommendation 1 the definition of an IGO complainant. Again, I'm not going to read through these word by word, I'm just going to pull out the key aspect of this. Of course, WIPO here show that they support the progress within their submission. I couldn't find any additional

hints at suggested wording changes. The Internet Commerce Association here, they seem to be in general agreement about—

CHRIS DISSPAIN: Berry, you're very choppy.

BERRY COBB: Am I back again?

CHRIS DISSPAIN: You seem to be trying to be. Try and see what happens.

BERRY COBB: All right. For the Internet Commerce Association, they seem to be in general agreement with—I'm going to cut my video. I know you've seen enough of me. Hopefully that'll be somewhat more stable.

Internet Commerce Association seemed to be in general agreement. They specifically called out about an IGO demonstrating its rights in a mark. The group has had some considerable conversation about unregistered rights and those kinds of aspects.

The RySG, they seem to be in support of this particular recommendation that the definition is targeted.

Digimedia supports Recommendation 1 but only to the extent that the IGOs are properly defined and quantified. They point back to

the previous work of the IGO. So this is an example of they seem to support the Recommendation 1, but there's a hanger here that I think that there's still a desire that there's a definitive number of IGOs that would be classified within this definition. But the concern label is applied because they seem to recognize that this is a departure from the prior working group and how their recommendation seemed to be steered more towards the 6ter, which also comes up here.

I'm going to stop on this one. Are there any questions or comments as it relates to this particular submission as we currently have drafted for Recommendation 1 versus what we've talked about previously or the prior working group?

CHRIS DISSPAIN: What input are you seeking from the group? Obviously, it's completely pointless if put your hand up and go, "Well, it's great to hear that WIPO thinks the definition is great." But equally, are you interested—you want people to say why they don't agree with what Digimedia had said, that they do agree? What is the purpose of us making comments? Where do you want that to lead to?

BERRY COBB: That's a good question and clarification. After the call, for these that are obvious supports for the current recommendation, essentially, the EPDP response here is, "Thank you for the comment." Just general language that shows that the group thinks that there's support for the current recommendation text. The action taken is none because the comment itself doesn't say to

change anything on the current text of it, and then I'm going to mark it completed. There's really nothing for us to do with a comment where there's agreement without any specific direction. But when we start to get into these comments where there is an indication or clarification needed, this is, for sure, where I think we need to take a stop or a pause and start the dialogue of this particular comment. This may not be the perfect example because it's pretty short, but there is recognition that there is concern from this particular comment. I think, ultimately, to try to use layman's terms here, they're concerned that this definition will be a free for all and that there is no specific or defined quantity of IGOs that would have access to this such as the 192 that are on the current GAC list. It's not necessarily what I'm looking for but what can the onus is on this group, to respond to the comments, what is a response that would be adequate to be done here?

CHRIS DISSPAIN: Understood. Brian, I'll get to you in a second. Would it be useful, for example—I mean, you guys would have to dig back and look at the text. But my recollection is that we came to our understanding built around the premise that there was always anticipated that the IGOs, for whose names are actually not temporarily on the list but are permanently on the list pursuant to policy, that there would be a mechanism for adding or presumably removing names from that list. And we felt that it would be helpful for us to hone a definition that enable there to be some clarity around how that might happen and how you might add or remove someone. And that it would be clear, Berry, from looking at the text or the transcript. Is that sort of thing you're talking about?

BERRY COBB: Precisely. Again, this is bad on the fly typing, but I seem to recall that there were discussions amongst the group and general agreement here that it would be more difficult to try to maintain a closed list. And there was even questions whether that would be within ICANN's mandate or scope to try to maintain some list or as opposed to coming up with a definition that could work in isolation that would maintain and enable the front door as we were alluding to in our earlier deliberations.

CHRIS DISSPAIN: Thanks, Berry. Brian?

BRIAN BECKHAM: Thanks, Chris. Thanks, Berry. I wanted to just ask a question, and I think this is actually maybe an easy one because Jay Chapman is on the call who I believe is with Digimedia. I don't know that we had agreed on the creation of a list for standing purposes to file a UDRP case but that was for a separate purpose. Maybe I'm a little fuzzy on that. I guess what I wanted to ask here is, why not ask Jay? Or it can be a question for all of us. When I read this, it feels like a qualified support, a support with a caveat or some hesitation. I would wonder, is there something that's not in the definition that we've proposed that would help give some assurances or that maybe the comment or things is missing? Because I will say that Susan and Paul and I worked awfully hard on coming up with something. And of course, that was then discussed amongst this group who agreed to put it into the report.

I guess my question is, is there something missing that could be added that would get this across the line or maybe it's a lukewarm support and just for the good sake of consensus building and keeping us moving? Thanks.

CHRIS DISSPAIN: Thanks, Brian. I'll happily take comments or input from anybody else on the call. I'm not going to call anybody out specifically. But if anybody wants to comment, they're obviously welcome to do so. Thank you, Jay. Go ahead.

JAY CHAPMAN: Thanks, Chris. I appreciate the question. I think where we're kind of coming from is—I mean, I appreciate there was time taken to try and come up with things, but at the same time, I think we are not experts on IGO matters or how things are defined or curtailed or limited or quantified or anything like that. I think we were actually just doing that in hopes that there would be other comments that we would see or rather participation that would maybe provide some enlightenment on those sorts of things. That's kind of what's behind the comment at least with regard to the first sentence. It's that we just want to make sure that this is an open book for opportunities for who knows who to suddenly be qualified or defined as an IGO. Understanding what's trying to be accomplished but also not quite ready to put our foot on the accelerator for this as we just see how this continues to develop. Thanks.

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CHRIS DISSPAIN: Jay, thank you. I appreciate that comment. Speaking personally, I think one would be hard pressed to … Absent saying there should be no definition or absent saying the GAC or some other body should nominate, I think one would be hard pressed to come up with a definition that is any better or any less likely to be abused, for want of a better word, than the one that Brian, Paul, and Susan worked on. I think it is it is limiting. It is clear that it's going to be pretty hard to gain. Frankly, one should be perhaps asking the question as to why an organization will go to the trouble of doing so. But I guess I am holding myself out to be constantly amazed at the lengths that some people are prepared to go to. But leaving that aside, my personal view is it does a pretty good job of defining what we have. That's not in any way intended to denigrate the comment that you've made.

Unless there's anyone else, let's go back to Berry who wants to move on to the next bit. Berry, are you comfortable that you've got a response that explains why you can put into that response for number four?

BERRY COBB: What I'm going to have to do, unless I get a clear suggested text from the group, is to basically go through the transcript and try to come up with a summary of the response here. As I noted, once we've done that, I'll be posting the updated version back out onto the wiki. And if there are concerns with what staff is put here in the summary, then you can bring those up on the e-mail list.

CHRIS DISSPAIN: I think that's fine. I frankly can see no point in us trying to wordsmith something on a call. I would far rather trust you guys to listen and look at the notes. I've already said what I said. I can't remember the words that I used. They've already floated outside of my head. But if there are of any use, then there'll be there and you can build on those. I just don't see there's anything to be gained, unless it's simple by us trying to wordsmith something on a call like this. Would you agree with that?

BERRY COBB: I'm definitely horrible at it. So if you didn't agree with that, then we would need to find somebody better that's good at typing on the fly. To me, there's no other alternative.

CHRIS DISSPAIN: Super. Well, let's move then.

BERRY COBB: One other thing that I want to say about this is our review of the comments does not also prevent this group with coming up with a different idea. I'm only suggesting this as an example. But the dialogue that we just had with Brian and Jay is a perfect example of stirring the pot, so to speak, when we get to future review of these comments. But as a hypothetical, it wouldn't prevent some other group member of coming up with, "Well, what if we did this? Would that make the recommendation more solid?" Again, a not a definitive example but what if, as part of Recommendation 1, the group decided to ... Supposing that the recommendation was adopted and implemented, could the recommendation be

reviewed one year after it was running to ensure or meet the concern that it's not a free for all? Again, I'm not pretty trying to presuppose something, but that's the interaction that we're going to be looking for from the group to try to make or improve or enhance the current draft recommendation that's put before us.

CHRIS DISSPAIN: All right, thank you. Brian?

BRIAN BECKHAM: I'm sorry, Chris. I'm just a little fuzzy on the notes here about maintenance of a list. I know that—

BERRY COBB: Brian, forget that I put it here. It was my idea of trying to type on the fly. We're going to do this after the call and go through the call notes and put a draft response here.

CHRIS DISSPAIN: Is that okay, Brian? We're winding the clock back as if that didn't happen.

BRIAN BECKHAM: Yeah, no problem.

CHRIS DISSPAIN: That's part of the problem of drafting on the fly, as you precisely just illustrated. Thank you for that. Berry, go.

BERRY COBB: All right. Now moving on. This is from the Leap of Faith Financial Services, George Kirikos. This is the example of one of the longer comments. Again, I don't think it's a good use of time for me to read off every sentence here. But moving down through the substance of the comment is about midway, where I believe is what the group should focus on.

CHRIS DISSPAIN: What page do you want?

BERRY COBB: Page four. Specifically, George is calling out here that—similar to Digimedia's is that this recommendation goes further beyond than what the prior group did, which was connected back to Article 6ter. I believe, again, if we dug through our archives, this group came up with rationale as to why that didn't seem fit for purpose using my own language there. But in particular, the concern here is George's dissecting the recommendation or the definition text and basically the identifier which forms the basis for the complaint is used by the IGO complainant to conduct public activities in accordance with its stated mission. That's a quote. So he's diving further that that will go well beyond even the name of the organization and could literally be anything, for example, the name of a newsletter, an event, and why is this a problem? It's a problem because many terms can never be trademarked. He calls out an example.

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CHRIS DISSPAIN: Hang on. Stop, stop, stop. Otherwise, we'll go on forever. But that's not the reason why that's in there. That's not in there in respect to protection. The protection is limited to their acronym. So that's a misunderstanding of the recommendation, if he's suggesting that they would be able to protect—just to take your example, Berry—the name of a newsletter. That's not what it says, is it?

BERRY COBB: I'm not here to defend his comment.

CHRIS DISSPAIN: Well, why not?

BERRY COBB: No. But what you just said, Chris, is what we need to hear from multiple people in the working group. I'm going to say what I was going to say earlier. So way back in the day of GNSO policy development, there was a time where the working group itself, the volunteers, actually wrote down responses and those kinds of things. Again, this is not a staff function. We've evolved since then and staff is here to help facilitate the review of this, and we're happy to try to summarize the responses here. But again, the onus is on the EPDP itself to provide what the accurate response should be and help explore and come up with actions.

CHRIS DISSPAIN: Okay. So before I go to Justine and Yrjo, let me say that I can see that if you look at Recommendation 1 as a stand-alone, you could interpret it, you could interpret (ii) as saying it may show rights in a mark by demonstrating we identify which forms the basis of the complaint is used by the complainant to conduct activities, etc. The caveat that that is limited to only to their acronym would clarify that and make it clearer. It was never intended to be anything else other than the clear acronym, whatever the acronym is, it's not we're talking about that language. For a minute, let's just talk about WHO or OECD and that the (ii) was to deal with how that was used, not to expand what a claim could be made over. So I believe that that clarification in our comments, Berry, would in fact deal with the point that's being raised. But let's go to Justine and then Yrjo. Justine, go ahead.

JUSTINE CHEW: Thank you, Chris. I completely agree with you. I think that's a misunderstanding on the part of George. But it's possibly stemming from our use of the term identifier. So your suggestion is to properly defining what we mean by identify would solve the problem.

The second point I wanted to make was—I'm sorry to belabor this but this is an example where if staff could highlight within the comment the bits that are so controversial so that we can actually focus on that, that would be helpful for me at least. But, Chris, if you don't want that to happen, then it's fine. Thank you.

CHRIS DISSPAIN: Justine, I understand completely why you're asking that, and I can only tell you what I would do if that happened. Straightforwardly, I would simply concentrate on the bit that's been colored in. And that is I think a step too far because I think we need to read the whole thing and discuss and bring up ourselves points which we believe to be important barriers, nearly our guide, not our boundary setter. So I appreciate the point and I applaud your attempts to make our job easier. I really do. But sadly, I believe, unfortunately, that that's not going to work. There are some very long comments and there are reasons why I wanted to deal with— I mean, apart from the fact that it's the first recommendation, the reason I wanted to do with some first is because it actually provides a useful example of how we're going to need to do this grinding, though it may well be. Yrjo, go ahead.

YRJO LANSIPURO: Thank you, Chris. Yeah, just to repeat what actually you and Justine already have said, let's make it clear that we talk about acronyms so that this will not enable people to have these misunderstandings. Thank you.

CHRIS DISSPAIN: Thank you very much. Unless anybody disagrees, then I think the way forward is to have Berry, Mary, and Steve grasp the transcript of what I said and have that in as our comment, at least for us to look at. Not set in stone by any means, but at least as a starting point for us to deal with this particular comment from George. Brian, go ahead.

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BRIAN BECKHAM: Hi, everyone. I appreciate the attempt to use the word acronym, of course, because identifier was really meant to be kind of a stand in for trademark, and that was kind of a central dilemma we were wrestling with. I'm just wondering if acronym fully captures—and I'll have to consult and maybe come back over e-mail or on another call. But for example, there could be a program of an IGO which would use an acronym. So I'm not suggesting that we would need to necessarily stick only to the term identifier but just that acronym might have some ripple effect that that we need to think through.

CHRIS DISSPAIN: Brian, that's fine. And please do come back. But to be clear, if we need to, we'll go back and just deal with what is currently on the list and leave it up to the GAC to work out how that list can be changed. But the concept that an IGO would be able to protect the name of a program or the identifier of a program is way outside of what this group is supposed to be considering. We are considering how to deal with claims made in respect to those what are currently temporarily reserved bunch of acronyms. We have attempted in this recommendation to find a way of enabling that list of acronyms to be, to some extent, dynamic in the sense that a new IGO could be added. But what we have not been doing is attempting to find a way of giving a list of IGOs that are already on that list ways of reserving or rather protecting things other than the acronym of their name. At least that's my understanding. And if I'm wrong about that, then I'd be happy to be corrected. Mary, go ahead.

MARY WONG: Thanks, Chris. We have taken note of the suggestions made so far. And it seems to me that the crux of the matter here is, as you've all been saying, the intent of this EPDP team in formulating that definition and the explanatory texts that you recommended be added to the UDRP and URS rules. It is in the report and perhaps we can highlight this more clearly in the final report should we proceed this recommendation that the intent is so that the IGO complainant as defined can demonstrate rights that are functionally equivalent to unregistered trademark. So that is meant to be the limitation, and perhaps we do need to highlight that more clearly, more up front when we come to the final recommendation.

CHRIS DISSPAIN: Functionally equivalent to a trademark in the acronym that it uses to designate itself is really the point I think. But yes, agreed. As we know, we're not going to get any text today with respect to that, but hopefully, at least as a starting point to discuss this further, the team has got enough information to put something together. Berry, do you want to carry on?

BERRY COBB: Yes. Maybe to build on to the discussion—and I think I recall when this definition was being put together with the small team, we had a few calls on that. Myself and Paul—I think he's already dropped so I don't get to hear his—

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CHRIS DISSPAIN:	Yeah. He had to go. He had to go early, unfortunately.

BERRY COBB:	I think in terms of what was being discussed in the small team was tangible examples. If I'm understanding George's comment correctly, he would be concerned that a domain of WIPO events dot something would be allowed through the front door of the UDRP. I think we want to refrain—I'm sorry, I used WIPO there, but I wanted to try to set the context. But would it be helpful if in terms of a footnote to this definition that more context is provided with a tangible example of what we're talking about? So can we create a hypothetical IGO, the NBCA, the National Berry Cobb Association, that has the acronym, those four letters, but how it would be used to identify—I think Alexandra puts a good point— the definition is limited to the identifiers but the demonstration of use is in conjunction with that identifier.

CHRIS DISSPAIN:	It's not just in conjunction with, it is about that identifier.

BERRY COBB:	Right. But my point here is NBCA is the short acronym. But I think to George's point that he's trying to make here is, could nbcaevents.tld also classify or National Berry Cobb Association events? I think that's the point he's trying to get to here.

CHRIS DISSPAIN:	Okay. Mary and then Brian.

MARY WONG: Chris, my point wasn't specific to the substance of this argument. It was to respond to Justine. So maybe you want to go to Brian and come back to me?

CHRIS DISSPAIN: Sure. Not a problem. Brian, go ahead.

BRIAN BECKHAM: Sure. Thanks. I just wanted to answer on a practical level. First, just an observation even in these comments. Just above the part we've been looking at the comment is made that pragmatically UDRP and URS cases are rarely decided by the first part of the test. The heart of the domain dispute is usually the second and third parts, especially the third part regarding bad faith, which is, of course, completely accurate. And so the reason I mentioned that is that, yes, of course, Berry, your example of—I don't recall the exact letters you used, something, something events dot whatever. Of course, that's precisely the type of a case that is regularly the subject of UDRP cases every day. The mark is present in the domain name. It doesn't have to be only limited to the trademark. Otherwise, things like fakeapplecomputers.com, or what have you, would be off limits. Absolutely, that's covered under the standing jurisprudence. Thanks.

CHRIS DISSPAIN: Thank you, Brian, for that. Thank you for that useful clarification. I think that's absolutely right. No, I'm not saying that you shouldn't

be able to bring a claim for—you can only bring a claim for the specific reference to the acronym. What I'm saying is, it's the acronym that is the thing that is going to a better word protected, and what's not protected is something else that you invent. If WIPO has a program called Alternative Dispute Resolution Seminars, ADRS, whatever that acronym is, is not part of this. That's a different issue entirely. This is about you protecting your acronym. That's what this is about. Mary, did you want to make your point now?

MARY WONG: I can. It was to Justine's question in the chat about what the working group is expected to do in terms of responding to comments. I don't want to answer the specific topic that she's raised, that is a decision for the working group. So if, for example, there's a bunch of comments that the working group feels you want to address specifically in your final report, then that's something we can discuss. But on the general question of what it means for a working group to respond to comments, and knowing that we do have members of this group that may not have participated in previous ICANN working groups, I just want to say that you do not have to respond in writing to every single comment. You do not have to draft those things. It may be clear by fine. You needed to say it, Chris, but obviously—

CHRIS DISSPAIN: Absolutely. No, you absolutely did need to say, Mary. Thank you.

MARY WONG:

Because the requirement under the GNSO's rules is basically, of course, as you know that you analyze the comments, you evaluate and consider them. You may agree, you may disagree, you provide rationale. That is the requirement. And I just wanted to make sure that everybody got that.

CHRIS DISSPAIN:

Thank you, Mary. Most of you were here at the beginning when I called out the Registrar Stakeholder Group for comments which I considered to be becoming for a stakeholder group to be making. But I also said that it's common practice, unfortunately. It's just a fact of life for individual and corporate commenters to sometimes say things that could be conspiracy theory or ad hominem or all sorts of things. It's ultimately going to be a matter for the EPDP group to decide. But my strong view is that it is inappropriate to respond to individual thrusts and parries of rhetoric and such as the one that is mentioned by Justine about being a captured working group. However, I would also strongly recommend to this group that what we do in our response to the comments is to say that, is to say that we do not intend to respond to comments that are, in essence, rhetorical and self-serving, and we'll only respond to substantive comments in respect to the recommendations. But we can make that decision when the time comes. That's certainly my point for now.

Jay, I just want to say, I can see your point in the chat. And I just want to say in case there's any doubt, George has put a huge amount of effort and work into making these comments. I'm immensely grateful to him for doing so. I don't necessarily agree with everything that he said. And I disagree with a number of

things that he said which are substantive to the recommendations. But I wanted to be clear that the fact that some of the comments made by individuals may be wrapped up in things that are perhaps not about the substantive recommendation should not in any way detract from anything that they have said that is constructive and useful. That'll certainly be the way that we deal with all of the comments made by everybody.

Berry, we have ten minutes. I want three or four minutes at the end to say a few things. So back to you for the next bit.

BERRY COBB: Thank you, Chris. I think I'll be brief on the rest of these. I do want to say to Jay and Justine's comments as well that they put in the chat, I would urge folks, our members on this group, to raise your hand be vocal about particular comments, especially as they were late to responding to these particular comments. As noted, staff will be going through the transcripts to try to help formulate a draft response here. It's going to be more difficult to extract these from the chat transcript and it's more formal record being on the call transcript. So if possible, please, if you want to call out anything in particular about what a commenter said, it's best to do it verbally. Thank you,

CHRIS DISSPAIN: Jay, go ahead.

JAY CHAPMAN: Well, then I'll just take Berry's advice. And I appreciate the thought there, Berry. I just would want to vocalize for the record then. George makes the specific comment about constructive notice and how does the definition that's being created provide some sort of opportunity for anyone to know who has these—let's just call them rights, marks, whatever—I think that's a great point and something needs to be considered because it seems very fuzzy at this point to me.

CHRIS DISSPAIN: Thank you for raising it verbally. Again, I can just respond immediately with what I think, which is that I had anticipated that the definition would lead to the removal of the list. I had anticipated that in the same way that there is a list of IGOs for whom on whose behalf their full name is reserved in the DNS, that there would still be a list of acronyms to which these rules in respect to the UDRP would apply and that that list would be maintained pursuant to the definition. Does that answer your question?

JAY CHAPMAN: Thanks, Chris. Maybe.

CHRIS DISSPAIN: Oh, come on.

JAY CHAPMAN: I don't know. I appreciate the suggestion, though. Thanks.

CHRIS DISSPAIN: Yeah, no problem. Thank you. Given that Jay's raised that point, Berry, and that's a good point, it may be worth addressing that and attempting to address it in perhaps in the way that I just said and see whether that—when we see the text meets the approval of the group. Mary, go ahead.

MARY WONG: Thanks, Chris. Just quickly, because I know you want to say something else. And to your point about a list—and that list of IGOs is created by the Governmental Advisory Committee—at some point, when this work is completed, what is currently reserved as acronyms on the list should hopefully come off. But to the point about constructive notice, certainly there might be practical ways of highlighting which IGOs might be on the Governmental Advisory Committee's list should that list continue.

CHRIS DISSPAIN: No, but that list will continue, Mary.

MARY WONG: Yes.

CHRIS DISSPAIN: That list will continue as a list of those names that are reserved and there is absolutely no reason why you could not include on that list the agreed acronyms that are the subject of this. Because

to be clear, the definition of the IGO doesn't deal with what the acronym is. The definition deals with what the IGO is.

MARY WONG: Yes. So without taking up much time, I just wanted to clarify as you did that there is a list. What goes on it is for the GAC to determine much of that is beyond the scope of our group, but that there are practical ways where folks can see which are the organizations on that list.

CHRIS DISSPAIN: Exactly. It may be that we could. Perhaps we can take a note of this for further discussion. We've got five minutes left. Maybe we could suggest that given that the list of IGOs is going to be maintained in order to allow for their names to be reserved, that the attendant acronyms should also be maintained on that list in order for there to be clarity for registrants generally as to what acronyms may be troubling or troublesome or difficult. It may be that we could include that as a suggestion. Last call. We're out of time. Brian, go ahead.

BRIAN BECKHAM: That's fine. We can come to this later.

CHRIS DISSPAIN: No, no. You've got time now. I just want to close. So you go ahead. Please do say what you need.

BRIAN BECKHAM:	Thanks. I was thinking, of course, the idea of constructive notice, I mean, the same is true for any common law mark and there may be national offices that wouldn't have as robust searchable online functionality as others. I'm just wondering, is the idea—it seems that there's some kind of a shift to a feeling that there's a requirement to be on a list to file one of these cases. By the way, as Alex is reminding us in the chat, this has limitations linguistically. So I fully appreciate that the list can be useful for different stakeholders, but I wasn't sure that we should steer towards this being a requirement. So I just wanted to clarify that a little bit.
CHRIS DISSPAIN:	We need to think about that because here's the concern. I mean, again, I acknowledge completely that this is just in my head. So I completely understand if this is off-piste for anyone else. But the way that I held it was, you're on the IGO list, that IGO list is the list that gives you the protection of your name in the DNS. The right to bring a UDRP claim in respect to acronym flows from you being on that list. How you get on that list is we have suggested by the use of the definition that enables you to be on that list. The alternative—I'm not saying this is wrong, just so that we're clear—would be that you could bring a claim to protect your acronym as an IGO when your full name wasn't protected or wasn't reserved or on the list. And if that's what's intended, that's fine. Sorry, when I say it's fine. If that's what's intended, then so be it. But that is significantly a significant step, and it's step which this working group needs to be prepared to take. Because there is a difference in the circumstances about what an IGO is. I had thought that the

definition that we were putting together was one that was to be provided was to be helpful to maintaining the list, and that you wouldn't be added to that list and therefore your name wouldn't be protected unless you met that definition. Perhaps that's food for thought. I just want to acknowledge Alexandra's point about languages. I do acknowledge that and that's something we're going to need to deal with. Go ahead, Berry.

BERRY COBB: Two seconds. To be able to close this one out for our first pass, we just have three comments remaining. We kind of already touched on them. The BC is in support of our recommendation but they are suggesting about how this may be passed to the Phase 2 working group for review. Secondarily, the ALAC is in support. And then finally, the IPC comment, as we noted earlier, staff will extract the "new ideas" and try to take this work offline. I just wanted to get that on the record so that we can say we got through Recommendation 1, at least for today, on the first pass. Thank you.

CHRIS DISSPAIN: Okay. So if I understand it correctly, we're going to get from you some text in the right-hand boxes of where we've got to, your take on where we've got to. Hopefully, we're going to get a separate document that just extracts the new ideas so that I can look at those and see if we can do some work on the side on those.

And thirdly, we are heading now into a really heavy drudge set of work in looking at these recommendations, the ones we've looked

at already and the ones to come. It is critically important that this team does actually read them, is actually coming to calls, prepared to make suggestions and comments, or to defend the position of the recommendations, if you wish to defend them, or to pick up on the comments that are made in the public comments and defend those or push them further or do whatever. So it is reliant on us all to read everything, to take it in, and to come armed with dealing with all of that stuff. So as Berry said at the beginning, this is the toughest part of all and hopefully we'll be able to get through it in reasonably quick time.

I want to say thank you to everybody for being on this call. I know that for many of us call, but for many last week was a busy ICANN week or busy last week of what now appears to be the ICANN fortnight. But thank you all and we will be back again, back next Monday at whatever time it is, 03:00 UTC. And in the meantime, I hope everyone has a great week. Thanks very much.

BERRY COBB: Thanks all.

MARY WONG: Thanks, Chris.

CHRIS DISSPAIN: Thank you.

[END OF TRANSCRIPTION]