ICANN Transcription

EPDP Specific Curative Rights Protections IGOs

Monday, 22 November 2021 at 15:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the EPDP Specific Curative Rights Protections for IGOs taking place on the 22nd of November 2021 at 15:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now? Hearing no one, we have no listed apologies for today's meeting.

All members and alternates will be promoted to panelists. When using chat, please change the selection from Host and Panelists to Everyone. Attendees will be able to view chat only.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and at the end in parenthesis the word "Alternate" which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename.

Alternates are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionalities such as raising hands, agreeing, or disagreeing.

As a reminder, the Alternate Assignment Form must be formalized by the way of the Google link. The link is available in all meeting invites towards the bottom.

Statements of Interest must be kept up to date. Does anyone have any updates to share at this time? Seeing or hearing no one. If you do need assistance with that, 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. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

With this, I'll turn it back over to our chair, Chris Disspain. Please begin.

CHRIS DISSPAIN: Thank you, Terri. And welcome, everybody. Good morning, afternoon, evening, night, whatever. Welcome to the call.

We have a busy schedule for today. I want to start with Berry going through where we're at. And we'll talk about the need to extend our time which, clearly, there is. We're going to have a look at the wording on Recommendation 2. We're going to have a look at Recommendation 6 which was put out with a couple of options in it. We need to finalize that. And then we're going to move on to Recommendation 3 and the LEAP Proposal for which there has been some comment on the chat.

And Brian, just give you a heads up that when we get to that, I'd really appreciate it, since you were the one who provided substantive comment, if you would just briefly, in words, go through your comment. I know that many people have agreed with you, but it would be useful if you just go through it for the record on the recording. So, heads up for that when we get there.

Berry, over to you.

BERRY COBB: Thank you, Chris. As Chris hinted at, we're going to be looking to extend our milestone delivery dates. I don't think it's any big surprise that our original desire was to deliver a final report by the 21st of December, but we still have a substantial amount of work ahead of us. We still have to complete review of the public comments, which is a primary reason we got substantial comments from a wide variety of stakeholder groups and constituencies and the broader community.

Post review of the comments, we would still need, basically, for staff to put together the next version of the report on our way to

delivering a final report. So once that's put together, we need to allow time for edits to that report.

Thirdly, once we get to where we think that the report is stable enough, then we have the process of going through consensus call on each of the recommendations. And that usually takes a couple of weeks to do it properly and allow for back and forth if there are objections or concerns to some of the consensus designations. Then and only then would we be in a position to submit the final report to the GNSO Council.

I don't have a target date yet. I need to adjust the project plan and see where that will put us. But in the meantime, we will be preparing a Project Change Request to send to the GNSO Council. The basic rationale is partly, as I mentioned, that we received substantial comments that we need to review. And I think, in general, there's still a fair amount of divergence across our recommendations that we're going to need to work through.

The council's motion and documents deadline is the 6th of December. The Council meeting is on the 16th. While we are asking for more time, I don't foresee any resistance about requesting more time. So I considered this more informational and just kind of as a courtesy to inform the Council that this extra time is warranted.

Perhaps for part of next week's call, we'll provide an overview of what the proposed timeline would be. Just a thumb in the wind kind of guess, it would be at least through the end of February, maybe even closer into ICANN73. We have staff forecasting ahead what our call schedule would look like, and it already looks

like we would encounter a few holidays where ICANN offices are closed. So we're going to need to navigate around those.

Near-term our schedule, we will have a meeting next Monday on November 29th. The call for December 6th will be canceled. You'll see some calendar invites shortly, but before the call got started Chris alluded to the fact that the Internet Governance Forum will be going on in Poland and that may clash for a few of our members. So we'll meet on the 13th and the 20th of December. And then we'll close out the calendar year.

And then moving ahead and looking ahead into January. It was determined that the 3rd of January was too soon from the end-of-year holiday, so we would look to reconvene on the 10th of January.

And as I noted, we'll update you with some proposed milestone or target dates to get us to a revised delivery date for our final report. And of course, I'm going to go through the Project Change Request with the GNSO Council. We'll keep you informed of what goes on from that perspective.

Any questions or comments about the upcoming meetings or schedule change? Hearing and seeing none.

So with that, Chris, I'll just go ahead and continue through the agenda unless you have any other comments to tack onto that.

CHRIS DISSPAIN: You get going.

BERRY COBB: Perfect. great. All right. So the next part of our agenda. First, a status update on the small team for Recommendation 1. We did meet again last Friday on the 19th. We still have one pending action item which is for Brian to reach out to some UN colleagues about the use of the term specifically under Item [(i)b]. Some of the suggested change to the definition of what an intergovernmental organization is, standing around the use of the term, within the UN, "permanent observer status."

In some cases, they're all capitalized which signifies a more formal designation. And in other places, that specific phrase is not capitalized. So we're still working on that aspect, but we believe that we've covered the other inputs that were provided from the IPC and other groups with respect to this recommendation.

Because the later part of the week is a US/ICANN office holiday, I don't believe we'll be meeting this week. We do hope to resolve this last issue over the list, but if we don't it is quite possible that we may need to reconvene sometime the week of the 29th. But we're getting close and making progress. Okay.

So now we're going to move on to Recommendation 2. You'll recall a series of e-mails that were sent by staff last week. First was Recommendation 2 and the proposal. Just as a quick summary, in effect, the group is agreeing that we're terminating the text of Recommendation 2. And the proposal is that we're going to add specific text to the opening portion of the recommendations to still provide instruction to the GNSO Council what we think about it.

I believe there was one response that supported the language, and we didn't hear any other objections. So staff will park this in an update for the next version of our final report. This is not the final-final, but the leadership team does consider this stable as just a general instruction and not a specific recommendation itself.

So moving on, then we'll get into Recommendation 6. There was also an e-mail distributed last week about the proposed draft text for Recommendation 6. There were a couple of options in brackets that were presented here, and Mary also provided some sidebar comments about where they came from and what we're supposed to do.

I believe that there was only one response as it related to the bracketed text from Brian, but essentially there are two pieces that need to be resolved here. The first is "… the IGO Complainant shall elect either the law of the relevant registrar's principal office [or the place where the respondent is habitually a resident]"—or the secondary bracketed part—[or the domain name holder's address as shown for the registration of the disputed domain name in the relevant registrar's WHOIS database at the time the complaint was submitted to the UDRP or URS provider]."

So these edits were staff's attempt, based off of the group's previous deliberations around this …

And I believe our goal right here now is to get to some general agreement about what parts of this bracketed text we need to keep or remove so that we can consider this text stable at this point and get it into the report.

Chris, I'll turn it back to you for any commentary you may have.

CHRIS DISSPAIN: Not really, Berry, other than it seems to me that, although it's wordy and might seem overkill, the second bracketed text, "domain name holder's address as shown for the registration …" is probably the safest option. And I think that was the text and is straight out of the UDRP. I'm assuming that it is. Then that seems to me to be a sensible way forward.

Does anybody have any other comments? If not, we'll just deal with it on that basis.

Okay? So that's what we're doing. To take out the first bracket and leave the second bracket in. I think … Yes, Mary has confirmed that it's from the UDRP. So that's cool.

And then, Berry, presumably we just also need to discuss the second bracket. Right?

BERRY COBB: Yes, I believe so.

CHRIS DISSPAIN: So, "Where neither law provides for a suitable cause of action or meaningful defenses, the arbitral tribunal …"

I think, if I remember correctly, although I haven't got it in front of me at the moment, I think there was a comment on that from Brian. My immediate comment on it was that, whilst I understand

the reason for it, I don't understand what meaningful … I mean, who's going to decide that?

I had the same question in respect to "suitable cause of action." I guess the answer to both of those—and I'm happy with this if this is the agreed answer—is that if I want to claim to the arbitrator that the jurisdiction that is chosen or the jurisdiction that we're headed towards has no cause of action, I can do that and the arbitrator can agree or disagree with me, and their decision is binding.

And/or if I was the other party, I could claim that the jurisdiction to which we are headed has no meaningful defenses. And again, the arbitrator can rule on that.

Mary, go ahead.

MARY WONG: Thanks, Chris. I know that Paul is not on the call, but just to explain the comment that the staff had in the side. Our understanding was that when this concept was suggested—I believe it was from the IGOs before the preliminary report—the problem it was supposed to solve was, assuming that either of the two laws that we just spoke about actually just make it impossible to arrive at a decision simply because neither of the two laws allow for any kind of cause of action based on that domain, then obviously, we need to go to a third law. And the arbitrator should decide that.

It's not about evaluating the adequacies, if you like, of the law or whether how strong the cause of action is or how strong the defenses are. It merely is to allow the action to proceed. And the

action can only proceed if that particular law does recognize a cause of action for that domain.

CHRIS DISSPAIN: Jeff. I can't hear you, Jeff.

JEFF NEUMAN: Oh, sorry. I didn't hear you call on me.

CHRIS DISSPAIN: Now I can hear you. Sorry, my apologies. Sorry. Yes, Jeff. Go ahead.

JEFF NEUMAN: Okay. I don't understand the term "meaningful defenses." I mean, if there's a cause of action—

CHRIS DISSPAIN: Then there's locally a defense.

JEFF NEUMAN: Yeah. Then there's a defense. I don't know any cause of action that doesn't also have defenses associated with it. And I think it just provides too much wiggle room. The defenses are, in this case, usually—unless we reverse and go with the LEAP Proposal—it would be the respondent who becomes the new plaintiff and it is the IGO that becomes the new defendant. But I'm

not sure what jurisdiction … Or I've never heard of a cause of action not being associated with some sort of defense. Thanks.

CHRIS DISSPAIN: Yeah. I have to say that, speaking as a lawyer, I agree. I'm personally comfortable that we all know what we're talking about in respect to cause of action. We've been given some examples and, Jeff, I think you, yourself have come up with a couple of them. Australia being one, in certain circumstances, and so on.

And it seems to me that the addition of the bracketed "or meaningful defenses" doesn't achieve anything it just serves to confuse the issue. But that's just me speaking personally with my lawyer's hat on.

So I'm going to suggest we take those words out. And I think … Yep, okay. Let's do that. Take those out. And let's put that forward, again Berry, with no brackets in the next set of stuff that goes out to everybody for consideration. Okay?

BERRY COBB: Will do.

CHRIS DISSPAIN: Good. Moving on to the next item on the agenda, please.

BERRY COBB: Thank you, Chris. So the next part of the agenda is, as part of a review of the Public Comment Review Tool for Recommendation

3 about the Mutual Jurisdiction clause in UDRP, we came to agreement that it might be better to start out with the new idea that was proposed by the Leap of Faith titled “Notice of Objection.” Staff sent out an extract of that section of the comments for the group to review.

I believe there were three or four, maybe five, responses that initially were against this particular idea. But nonetheless, I think it's worthy of talking through this proposed solution and getting on the record what the group thinks about it and how it may or may not impact our draft recommendation. I’m definitely not going to read through the pages here.

CHRIS DISSPAIN: Thank goodness for that.

BERRY COBB: But perhaps I’d invite Brian since he was the first—

CHRIS DISSPAIN: Yeah. Just before you do, Berry. Sorry to interrupt.

BERRY COBB: Go ahead.

CHRIS DISSPAIN: Just before you do, I would like Brian to speak to it. But before we do that, just for my understanding, I just want to make sure that I

understand correctly and then hopefully contribute to other people's understandings. Although we're calling this a new idea, my understanding is not actually a “new idea.” That it was, in fact, put forward in the previous policy development process and was not accepted by …

Not that I’m suggesting for one moment that that means that we shouldn't be looking at it sensibly and properly. I just want to make sure that I am correct that it was put forward in the last time around so that everybody understands that it's not a brand spanking new idea.

Mary, you’d know better than many. Is that Right?

MARY WONG: That's correct, Chris. As the commentator notes, it was fairly late in that PDP, but it certainly was brought up and discussed.

CHRIS DISSPAIN: Okay, cool. Jeff, I know your hand is up. I’ll get to you in a second. But I want Brian first of all, since he was the one who actually put the e-mail in the thread that said that it didn't seem to work and he is the one to whom a number of people have reacted and agreed.

Brian, would you be happy just to briefly explain to us what’s the situation as far as you're concerned? And then we'll go to Jeff.

Brian.

BRIAN BECKHAM: Yeah, sure. Hi, everyone. It's largely what I said in my e-mail, which was that although it's worth considering—it's an interesting idea insofar as it seems to, at first glance, eliminate on, let's say, the front end this mutual jurisdiction problem we've been wrestling with—it seems ultimately that the vehicle for the appeal would then reintroduce that dilemma of the jurisdiction. So the small part that addresses one aspect of our question that's in front of us sort of leaves aside that question for down the road. So ultimately, it just didn't seem to work.

Certainly, if there's something that was missed or ways to tweak it, then I'd be happy to consider that. But we did discuss amongst the IGOs this proposal, and we didn't see that ultimately it would work. But I can assure you that we did give it thorough consideration.

CHRIS DISSPAIN: Thank you, Brian. Jeff, go ahead.

JEFF NEUMAN: Thanks. I just have a couple of questions. Okay, so Alexandra's here, too. Good. In a normal trademark infringement action, so if I were to set up a new brand protection company and I called it WIPOs-R-Us. If I were to do that, what would WIPO, or any IGO, what would they have to do in order to stop me from using that?

CHRIS DISSPAIN: I'm not sure. Who are you asking the question of?

JEFF NEUMAN: To the IGOs. And the reason I'm asking is because this is a little bit different of a situation. It's not waiving immunity in advance in anticipation of an action. It's waiving immunity …

Or I don't even know if it's waiving immunity. I haven't even checked to see whether being a plaintiff in a case waives immunity. Assuming it does, this would only be in a case where the IGO chooses to avail itself of the court to enforce. So it changes the roles a little bit. And so to me it's more akin to what would happen in a regular trademark infringement case if an IGO wanted to go after someone for using a particular mark. And maybe "trademark" is the wrong word. Maybe it's "unfair competition" or whatever it would be.

CHRIS DISSPAIN: Jeff, sorry. Just help me out here. Are you saying that you're reading of it means, if I'm the IGO, that I can choose to say, "I will submit to a jurisdiction" or say, "I want to go to arbitration"? Is that what you're saying?

JEFF NEUMAN: No, no. In other words, what this proposal does, which is interesting, is that … It does a couple things. Number one, it provides a rehearing in a court system. But two is that it changes the role of an IGO from that of being a defendant in a rehearing to that of a plaintiff in a rehearing. Which is interesting in the sense that that's what would happen in a normal, unfair competition, trademark-type claim outside of the Internet world. And it would be

for the IGO to make a decision at that point in time, is this worth going to a court to enforce my rights in this limited situation?

So that—

CHRIS DISSPAIN: So the bottom line is that they still … And I'm not saying that's a bad thing. I just want to be clear. The bottom line is that in order for them to pursue it, they still have to submit to the jurisdiction. So the choice is not to pursue it without submitting to the jurisdiction. The choice is that if you want to pursue it, you've got to submit to the jurisdiction. Is that correct?

JEFF NEUMAN: As a plaintiff, correct. But it's not forcing the IGO by initiating the initial complaint to waive all jurisdiction. That's why I think it's interesting. And then I'm not saying one way or the other whether I support it or not.

CHRIS DISSPAIN: No, no.

JEFF NEUMAN: It brings up a bunch of issues. And I didn't know … When I read Brian's e-mail, I didn't think the goal of this group was to have IGOs avoid courts completely. It was just avoiding the waiver of mutual jurisdiction where it doesn't want to waive that jurisdiction. I don't know how it became that the goal of the IGO is to avoid courts completely.

So anyway, [inaudible].

CHRIS DISSPAIN: The IGOs can't avoid it. As you've quite rightly pointed out, outside of the UDRP, there is no other alternative unless you have an arrangement in place. There is no alternative for an IGO but to pursue the matter in a court unless there's an alternative, of which I'm not aware.

But let's go to—

JEFF NEUMAN: Right, just that. Which makes the proposal a little bit intriguing because it's more like real life. So anyway, that's my question. Thanks.

CHRIS DISSPAIN: Yeah. Except that it … Again, I'm not arguing one way or the other except that it pushes it back. But the whole point about the UDRP and the process is that the flow from the UDRP is supposed to be an alternative dispute resolution process as opposed to just like real life. But, nonetheless.

JEFF NEUMAN: Sorry. To respond, it does. Just like regular trademark owners, you can still use UDRP. It's not saying the UDRP can't be used.

CHRIS DISSPAIN: No, I know.

JEFF NEUMAN: We're talking only about the rehearing here.

CHRIS DISSPAIN: Yeah, understood.

JEFF NEUMAN: Like everyone else.

CHRIS DISSPAIN: Understood completely.

JEFF NEUMAN: Okay, thank.

CHRIS DISSPAIN: Super. Thanks, Jeff. Yrjö, go ahead.

YRJÖ LÄNSIPURO: Thank you, Chris. Yeah, I gave a plus one to Brian in this e-mail exchange.

CHRIS DISSPAIN: Yes, you did.

YRJÖ LÄNSIPURO: Just because to my mind, also, this so called new idea just postpones the dilemma. And that doesn't change anything. Thank you.

CHRIS DISSPAIN: Thanks very much for that. Alexandra and then Jay.

ALEXANDRA EXCOFFIER: Is it me? Yeah.

CHRIS DISSPAIN: It is you, Alex. Go ahead.

ALEXANDRA EXCOFFIER: I see Yrjö's hand is still up.

CHRIS DISSPAIN: No, that's okay.

ALEXANDRA EXCOFFIER: Okay.

CHRIS DISSPAIN: You go ahead.

ALEXANDRA EXCOFFIER: So Jeff may be correct in the sense that if, let's say, the IGO lost. But we're not dealing with that here, and we're not dealing with the outside world. We're dealing with the UDRP. And if the IGO wins, what do we do with the rehearing?

This proposal puts everything back to court, basically, as we ended up following the last PDP. And then the question comes up, what happens if the IGO does not waive its immunities? And this is why we're here in the first place.

So it doesn't resolve the question which is in front of us—what happens if the Losing Registrant takes the "appeal" to court and the IGO does not waive the immunities? It does not provide a solution for that situation. It just pushes the issue back to the original question.

CHRIS DISSPAIN: Yep, understood. Thank you for that. Did you have anything else for now or is that the only point to wanted to make [inaudible]?

ALEXANDRA EXCOFFIER: That's the main point of why I don't consider this a valid proposal. It might be interesting to look at. And we did look at it. But ultimately, it does not resolve the very main point that we're here to resolve.

CHRIS DISSPAIN: Okay. Thank you. Jay, you were next. Do you want to go now?

JAY CHAPMAN: Hi, Chris. Can you hear me?

CHRIS DISSPAIN: Hey, Jay. Yes, I can. Go ahead.

JAY CHAPMAN: Okay, thanks. Sorry. I'm actually in transit right now, so I hope I don't lose contact.

CHRIS DISSPAIN: You sound fine.

JAY CHAPMAN: Thank you. I'm completely confused by the responses so far. And like Jeff … And he worded it more adequately than I would have, which is, originally, this idea was that we don't want to submit to mutual jurisdiction. And now it's morphed into something more which, apparently, sounds like, "We're not going to court" or "we can't go to court." And I'm just confused by all that because as I've …

I know we're not in the mutual jurisdiction question itself just yet, but I mean right now to say divergence is … I mean, yeah, that's … Obviously there's a divergence in opinion there as to what should happen within the community.

Then we've got a situation here where we have a proposal that basically eliminates the mutual jurisdiction consideration. It doesn't force anybody to do anything. As we've heard time and time

again, the IGOs choose to go to court all the time. And I think the proposal makes a good point that the only time—and again, we need to remember the context of this entire discussion. The only time this is ever going past the UDRP stage is when you've got a registrant who believes 1) they've done everything right, and 2) they want to protect their property from being taken from them.

So we're talking about a very, very small percentage of situations where this is going to happen. At least if we look at just the history of the UDRP. It happens, and it happens enough to be able to want to protect registrants' rights. But it doesn't happen a lot. So this is only going to be in the rarest of situations.

And as Jeff, I think, has also pointed out, there's not going to be any avoidance of court. At some point you're going to have to go to court. But as the proposal—

CHRIS DISSPAIN: But why?

JAY CHAPMAN: Well, because, one, the GNSO said they don't want to take away that right from registrants. Right, Chris?

CHRIS DISSPAIN: Well, sorry. Forgive me that I … Unless I've misunderstood, just stick with me for a second.

JAY CHAPMAN: Sure.

CHRIS DISSPAIN: And I'm not saying you agree with this, but what the current set of draft recommendations do is they say that the dispute will be ultimately decided in arbitration. Do they not? That's what they [consistently] say.

JAY CHAPMAN: Maybe I'm—

CHRIS DISSPAIN: I mean, I know that we've got to talk about the possibility that a registrant can go to court first and then the arbitration … Sorry, and then the IGO can say, "We don't waive our immunity," and the court can say, "Then we won't hear it." And then it goes …

I know that we've got to discuss whether that is a step in the process or not. But irrespective of whether that is a step in the process or not, if it ends up with a court not hearing it, it ends up being decided in arbitration. Or are we not on [inaudible] that?

JAY CHAPMAN: No, that's right.

CHRIS DISSPAIN: That is right. Okay.

JAY CHAPMAN: But it could be decided by the courts, too. Right? I mean they could decide on the merits. Right? Could they not?

CHRIS DISSPAIN: Now we are losing you. We had you loud and clear, and now you're a bit foggy. Try again.

JAY CHAPMAN: Sorry. Can you hear me better?

CHRIS DISSPAIN: That's a little better now.

JAY CHAPMAN: Okay.

CHRIS DISSPAIN: I acknowledge that if your step—it's a step that I know you believe should be there—was in place, then the WIPO panel would find for the IGO. You as the registrant would say, "I'm off to court." You'd go to court and the IGO would say, "We don't waive our immunity." Yes, you are correct that it is possible that a court could proceed.

But if they didn't, the whole of this process—assuming that step is in there—is predicated on the next step within the arbitration. So in the final analysis, it would be arbitration. What you just said was that it would be finally decided in court. Which is not true.

JAY CHAPMAN: Well, actually I'm saying, Chris, that it could be either. It could be finally decided in court or it could be finally decided … If the court doesn't hear it, the way we've got the recommendations set up, it could be decided in arbitration. But it could be decided in court as well.

So I'm not sure why we're concerned with immunity issues because, as the proposal points out, there is no waiver of immunities.

CHRIS DISSPAIN: There is a waiver of immunity. Sorry. No, you're right. What there is, is a removal of the obligation to agree to mutual jurisdiction. And I just want to stress here that I'm mere pushing [to test you]. My understanding is that the proposal …

If you go back to the beginning of this process and you say, "I'm an IGO. In order for me to bring a claim, I need to submit to mutual jurisdiction. Otherwise, I can't bring a claim. Okay, then. I won't bring a claim" or "Okay, then. I will submit to mutual jurisdiction."

Now I think everyone acknowledges that the IGOs do have a choice. They can say, "I will waive my immunities." But they do have that choice. So that's the beginning of the process right now.

What's the difference between that and the process that this proposal is? It's just at a later stage. The IGO still has to say—do they not—"I lost at the panel and now if I want to take it any

further, I need to waive my immunity" or "I won at the panel and the registrar wants to take it further"?

I don't understand what the difference is, but I'm very happy to be told. Do you want to think about that? [inaudible].

JAY CHAPMAN: Yeah. I appreciate the … I understand, I guess, the two points that you're making there. I guess this kind of goes back to the original question that Jeff asked, which was what happens in a normal circumstance if there's a … And maybe there is no normal circumstance. But I mean if …

CHRIS DISSPAIN: You mean there's no domain names involved. It's just a [inaudible].

JAY CHAPMAN: Yeah. If Jeff just creates a company called WIPO-R-Us, what happens in that circumstance?

CHRIS DISSPAIN: Yep, okay. Let's leave that hanging for a minute because we're going to go to Brian. And then we're going to come to Jeff. And then, if necessary, we'll come back to you again.

Brian, go ahead.

BRIAN BECKHAM: Thanks, Chris. First of all, Jeff, the domain name's available. So if you if you want to register it, that [inaudible].

CHRIS DISSPAIN: I'm surprised [inaudible] registered it immediately, Brian.

BRIAN BECKHAM: Both the plural and the singular. But in terms of the question that Jeff's put in the chat, I think at the end of the day, the ultimate result is the same. And that's the point I was trying to make over the e-mail, which is that either there's this question at the front end or the tail end. So it may be accurate to say there's a difference at which point this question comes up. But ultimately, the same question confronts us.

And I just wanted to address another comment that came up. And I'm sorry to have to say this, but we've heard on a number of occasions comments to the effect of, "IGO's go to court all the time" which is not true. And I would respectfully suggest that we put this behind us.

This working group has on it several representatives of IGOs who work in the legal office context who deal with this issue on a regular basis. And they have informed us that statements to this effect simply aren't true. We've gone over in some detail that, as a regular course of conducting business, then contracts which involve IGOs—and this even goes to things like software; Microsoft Word and the like—there are special provisions. I think there was even a recent update to Google's terms and conditions to account for IGO privileges and immunities.

ICANN's contracts allow for this. The registry agreement. And even in our public comments. I know we've sort of focused in op the recommendation numbers as opposed to going kind of line by line through the comments.

But I do think it's only fair to point out that even web properties managed by working group members here who are advocating against this position have, in their own contracts, provisions which would curtail a party's ability to go to court and go to a jury trial and invoke arbitration clauses.

So it's a little bit difficult, I have to say, to reconcile advocating against using arbitration and against using certain courts/vehicles when those are options that are actually employed in commercial contracts by people who are advocating against those positions in this working group.

So I think, with respect, it's time to cease with these arguments about IGOs going to court all the time. I can say, for certain in my case, I've been contacted a number of times over the years by IGOs who have found that there are infringements online. Usually, these are some sort of donation scams or it's kind of a mockup of their website and it's not entirely clear what purpose that's being put to. But when there's basically a dummy copycat site, that obviously presents a rich opportunity for different types of abuse.

And in each occasion that I'm personally aware of—and I'm not going to mention the organizations involved—but I can say that once they were aware of the potential pitfalls of filing a UDRP, they opted not to do that. So this is an area where there are real

harms happening in domain system and, unfortunately, the current UDRP has not allowed IGOs to use that.

And I would also just point out. I know that one of the comments—I don't recall if it was Namecheap or the Registrar Stakeholder Group—but one of the two had pointed out that, “Here's a list of 30 or so IGOs that had had used the UDRP.” And in fact, and about half of decided cases were for an organization which is not an IGO, which can clearly be seen on that organization's website.

So we’ve gone down this path a number of times, that a couple of IGOs may have used this in the past. But we are being told very clearly by the legal counsels of IGOs that that's not a representative position for all IGOs. And this is a real problem that we’re really hoping that this group can deliver a solution on. Thanks.

CHRIS DISSPAIN: Thanks, Brian. That’s helpful. Two things. So I take your point completely. I do think that part of the context of “IGOs go to court all the time” has been outside of the UDRP. In other words, not as in, “IGOs go to court all the time domain name cases.” But that IGOs go to court …

And I don't know whether your comment applies to that as well. I just wanted to make the point because I know that it was said at least by one of the participants in the context of being outside of the UDRP.

And secondly, just to give you the opportunity, if you choose to do so, to address the point that, I think it was Jeff made, about how

you deal with trademark disputes outside of domain names. But not obliging you to do so in any way. Just giving you the opportunity if you want to.

BRIAN BECKHAM: Yeah. Thanks, Chris. I don't want to go into too much detail. I can say, for WIPO's part, you can go on our website and there's a list of scams for various registration and renewal scams around our different services. And we try to educate the public about those. There are also different ways that …

Sometimes there might be a request via letter to a web host or a registrar. But certainly, the court option hasn't—at least as far as I've been aware—been on the table. I don't think it's necessary or even appropriate to go into all the different ways that WIPO or other organizations have tried to enforce that, but suffice it to say that attempts certainly are made. But ultimately, the fact remains that this does remain an issue, and that's why we're here in this working group hoping that we can't unlock this. Because this, for all the different sort of levers that can be pulled formally and informally, this is a known way of addressing abuse that's been used for 20 years.

And it seems like it's a little bit of an Occam's razor. This seems to be the most straightforward path, so we're hoping that we can find a way through here.

CHRIS DISSPAIN: I understand.

BRIAN BECKHAM: Thanks.

CHRIS DISSPAIN: Thanks, Brian. That's helpful. Thank you very much. Jeff, you're up next.

JEFF NEUMAN: Yeah, thank. I appreciate what Brian's saying. I don't think it's fair, though, to make an analogy between contracts between two parties and a wrongful act committed by an affiliated or unrelated or non-party. Right?

So in the one case where contracts … Yes, all the time there are contracts between parties where they will require arbitration. And that's fine because those two parties have decided to do business with each other and there are special rules for end user terms of conditions as to when arbitration is acceptable and when it's not. And more and more, at least in the United States, forced mandatory arbitration has been found not to be acceptable for tortious or wrongful acts.

And so what we're talking about here in this case is infringement, which is a wrongful act by a non-party to an agreement. So I don't think it's fair to make the analogy of … You know, many of those that argued against arbitration have arbitration clauses. I think they're apples and oranges, and we probably should not continue down that path.

The interesting thing, or one of the interesting things, about this proposal is that if the IGOs are worried that every single registrant that loses is just going to file this notice of objection, that can be tailored have it require a down payment on a fee that's fairly substantial. So you eliminate a whole set of frivolous types of notices of objections.

And then ultimately, if it's a loser-pays model where they would both agree—and the registrant would agree that it's a loser-pays model in advance—that, again, would impose yet a number of more disincentives for a registrant abusing this process.

So at the end of the day, kind of as Jay was saying, it's going to be so rare that someone files one of these and requires the IGO to make a choice of going and serving as a plaintiff in this action. I do think it should not be dismissed so quickly out right.

But if we do dismiss it, then I do think there are some interesting things here about the switching of roles. There are some other items from this proposal that I think, even if we stick with arbitration, we really should consider putting into that kind of arbitration.

And then, finally, we do have to deal with a substantial amount of comments from a number of community members that did not favor arbitration. And so even though we as a group we're okay with putting it out for comment, I think we really do need to consider the fact that the community does not seem in consensus alignment of arbitration at this point. That can change, of course, but at this point from the initial comments, I really think we need to think about [it].

CHRIS DISSPAIN: Well, I have to say Jeff, I don't want to get into interpreting the comments at this stage. But I don't think you can make that statement fairly at this point. I think there are a number of individual people who say that they … I mean, it comes to the discussion we need to have about how we deal with comments and how much weight we put into the comments.

Which brings me to another point that I wanted to make in respect to what you've just said, which is—I know you weren't saying this, but I just wanted to make it abundantly clear because this call is recorded and on the record—to say that there is no question of dismissing this particular suggestion quickly.

The reason why we're having this discussion, the reason why we started this discussion last week and we asked everybody to go away and read it very carefully to consider it and to come back and have the discussion today was precisely because we do not … Because this is a real, live suggestion. It's not just, "I don't agree and therefore you can all go away."

It's a real, live suggestion. And even though it has in fact been suggested before, it doesn't change the fact that we need to give it the weight of what it's worth as a really useful suggestion. So I don't want there to be any question that we're seeking to dismiss it. Some members of this group might be, but I'm certainly not.

I do have a question for you though, Jeff. I understand completely what you've said. Where I think there's a slight level of confusion, and it may well be a confusion on my part, all the things you've

talked about—the protections, about fees, and all of that stuff—is all relevant to stop gameplay. But it's not relevant to the principle of whether or not IGOs should have the right in you UDRP—not outside of UDRP, in UDRP; or URS, but let's just call it UDRP for the sake of this discussion—should have the right, in UDRP, to a dispute resolution mechanism that does not require them to elect to go to court.

If this group believes that they shouldn't have that right, then frankly we don't really need to do anything. We could. We could mess around at the edges and we could make it easier for them or less likely that they would have to make that choice. But at the end of the day that, it seems to me, is the key point.

And if we say that we think that they should have an opportunity to use the UDRP process without having to choose to submit to a jurisdiction, it's worth us continuing to discuss it and to discuss what alternatives there are. But what I don't understand is why simply pushing the decision down the road creates a distinction against—I think you said it in the chat, and this is what I'm asking you to explain—between being forced to do something, as you said at the beginning, and choosing to do so where they would at the end. Surely the two things are the same.

Do you want to just address that before we go to Mary and then Brian?

JEFF NEUMAN: Yeah. I don't think they're the same. I don't see them as quite being the same thing. I see that the IGOs do not have to elect to a

jurisdiction at the time they filed the complaint with the UDRP. Right? It's only in a limited circumstance where they win and a registrant appeals for rehearing or whatever you want to call it. Which, again, is a very small …

The amount of cases where a registrant appeals or has a rehearing is so small compared to the amount of UDRPs that are actually decided. Right? So you've now cut it down. And now what you're really talking about is an IGO electing to avail itself of a court in the limited circumstance that a registrant loses, puts down a substantial fee or whatever it is to file a notice of objection, and then goes forward.

And then IGO has to really think about it and say, "Okay, well look. This person's pretty serious. Yes, they lost the UDRP, but they're putting down a bunch of money. And it's a loser-pays model. So if we really want to pursue this, we're going to have to elect to go to court just as we would in a trademark infringement."

But requiring it at this point cuts down on so much of the percentage of cases that I don't consider it a forced moving the decision from the beginning to the end. So I do see this differently.

CHRIS DISSPAIN: So I accept what you say. I'm going to go to Mary, and then I'm going to ask Brian to … Brian's hand has gone down, but hopefully Brian's hand will go back up again.

I accept what you say, but the only point I would make is that it doesn't matter … I don't think the number of cases is a relevance to the question of whether it's … Just because it's a small number

of cases doesn't change it from choice to force or force to choice. It's still the case that in order to proceed further, the IGO needs to …

And I'm not saying it's wrong. Just that it is. The IGO needs to agree to be bound by jurisdiction. Which, in IGO language as I understand it, means that they waive their immunities.

Mary and then Brian, assuming Brian wants to speak. Mary, go ahead.

MARY WONG: Thanks, Chris. I think your earlier comments covered some of what staff was going to say, so I'll just say that …

To remind everyone of the problem that our group was intended to solve. If you go back to the GNSO Council's instructions, that the solution that we come up with, if we come up with one—and I say "we" meaning the working group, obviously, or the PDP Team in this case—is to have a solution that accounts for the possibility of jurisdictional immunity a well as the right and ability of the registrant to go to court. Which we've acknowledged is a difficult balance and may or may not be possible.

But one of the consequences of this suggestion which, as we've noted, has been made in slightly different contexts in other PDPs is that it is an alternative to the arbitration route. In other words, while it is a solution that solves the question—I use the word "solve" widely—of requiring a mutual jurisdiction requirement, it may not solve, down the road—I think as Brian and others have said—the question of immunity in a court situation.

So while staff does not have an opinion on any proposal, we just wanted to make it clear that it is for this group to look at what you're being asked to do in light of the Council's instructions and in this situation, as well as other proposals, whether those meet those requirements and, as such, are appropriate solutions. And in this case, this would be an alternative to the arbitration route.

CHRIS DISSPAIN: Thanks, Mary. Brian, did you want to speak or have you changed your mind?

BRIAN BECKHAM: Yes, sir. Thanks, Chris. I was going to raise some concerns about the loser-pays model, but I think maybe it's not necessary to go into that in too much detail now. But I guess just kind of picking up on—thanks, Mary—what was just said.

Ultimately, this proposed solution would force the IGO to waive its immunities to address infringement that it's seeing online. And I think, in that respect, it just misses the objective that's before us.

CHRIS DISSPAIN: Okay. Jay, go ahead.

JAY CHAPMAN: Thanks, Chris. I just want to say that I appreciate the discussion here, and I think it's … I appreciate Brian's point. Jeff's, as well. I think it's something we maybe need to think about a little bit further.

I'm not on the side of this particular proposal. I just thought it was worthy discuss at this point. So I'll just consider what's been said so far. I just wanted to kind of put that out there to make sure people weren't thinking that we were just totally sold on this just yet. Still thinking about it. Thanks.

CHRIS DISSPAIN: Thank, you Jay. And I appreciate your flexibility. Well, I appreciate everyone's flexibility. But you're rowing pretty much in a single lane here, and your willingness to engage and to ask questions is noted and appreciated.

We're clearly not going to reach a conclusion on this today, and I acknowledge that. I do want to ask the assembled group if there is anyone else in the group, leaving Jeff and Jay aside at the moment, who wants to ask any questions about this proposal or talk in favor of this proposal, specifically. I don't need anyone to talk against it at the moment, but I am interested to see if there's anybody who wants to talk in favor of it or anybody who has any specific questions that they would like to ask in respect to it. I don't want there to be any discussion that's un-had, shall we say.

Well, okay, Jeff. Go ahead.

JEFF NEUMAN: Thanks. Again, I want to repeat sort of what Jay said in the sense that I'm not sold on this proposal either. But I do want to carry over some elements of this, including the switching of the roles—the plaintiff and the defendant. Even if we talk about arbitration, I still—

CHRIS DISSPAIN: Explained to me how that works in arbitration. Sorry to interrupt you, Jeff, but [inaudible] have a dialogue [inaudible] get somewhere.

How does that work in arbitration? Surely, both parties go into arbitration on … There is no defendant/plaintiff per se in arbitration. Is there?

JEFF NEUMAN: Well, just to make it clear that the IGO has to prove its case on a rehearing as if it was started over. In other words, it's not to take into account … It's not the registrant's duty to defend itself. Right? Or defend … Sorry, I'm not saying this right. Gee.

CHRIS DISSPAIN: I know what you man. Haven't we dealt with that by saying it's de novo— it's starting again?

JEFF NEUMAN: Well, generally, when you have someone bringing a complaint even at arbitration, it's the burden of the plaintiff, even in an arbitration, to prove its case. We need to make it clear that it needs to continue to be that the IGOs still need to have the burden of proving its case as if it were a plaintiff even though, in the arbitration, technically it's a defendant.

CHRIS DISSPAIN: Respectfully, that wouldn't be the case in court. Would it?

JEFF NEUMAN: In court—

CHRIS DISSPAIN: Because it will be the registrant that went to court. Right?

JEFF NEUMAN: If a registrant went to court … It depends on the jurisdiction, actually. Like some jurisdictions like the U.S. would treat the … It would be like a declaratory judgment action, so it would treat the registrant as a typical plaintiff having to prove that it's not infringing. But there are other courts elsewhere that switch it up.

But we're not talking about going to court at this point. Right? We're talking about going to arbitration. And I just want—

CHRIS DISSPAIN: I get that. I was asking you if you're drawing a distinction. What I was asking you was whether you're seeking to make the way that the hearing in arbitration would be dealt with different from the way in which the court hearing would be dealt with. And reason I asked the question is because we agreed at the very beginning, and I acknowledge that we've probably got some work to do to make sure that this is actually the case. That this would be as close to a full court hearing as is possible in arbitration.

In other words, were only seeking to deal with the jurisdictional problem. We were not seeking to suddenly go, “Oh, well, you can't call witnesses and you can't have people, and so on and so forth.” That's all I’m asking.

JEFF NEUMAN: Yeah, and that makes sense.

CHRIS DISSPAIN: [But am I] missing something?

JEFF NEUMAN: I’m thinking about it. It’s a good question. And I’m looking at Mary’s question. It’s saying would the plaintiff in the arbitration context be …

Yeah, the plaintiff in this arbitration, technically, would be the registrants. Correct.

CHRIS DISSPAIN: Well, assuming the registrant lost. I mean, there’s nothing to stop a IGO deciding to go to arbitration if they lose. Presumably.

JEFF NEUMAN: Presumably. Right.

CHRIS DISSPAIN: [inaudible] the losing party.

JEFF NEUMAN: All right, thanks.

CHRIS DISSPAIN: Brian. Let's go to Brian and then come back to you if we need to, Jeff. Brian, go ahead.

BRIAN BECKHAM: Yeah, thanks. Hi again, everyone. I'm just sort of mulling this over in my head, but I'm just wondering if there would be any room to explore. Because in picking up on this question of the initial complainant or plaintiff, and then the roles of appellee and appellant, I wonder if there would be any utility in exploring if, in each instance …

Because there are there are two possibilities under—maybe I shouldn't say the current proposal—but two options on the arbitration side of things were either the Losing Registrant or the Losing IGO could then appeal to arbitration.

I'm just wondering if there would be any interest in exploring a situation whereby, in all circumstances—kind of picking up on this sort of shifting-of-roles proposal—skipping the court aspect, of course, if the IGO would be required to advance its case under arbitration, whether it was successful or not in the initial UDRP case. So if they won, then the registrant could file a request for a Notice of Appeal.

Obviously, it would be important to build safeguards around that because I'm reminded during … To kind of take us a little bit of a glance back into somewhat distant history, during the build-up of the New gTLD Program we had proposed, as an alternative to the UDRP, a URS—we called it an Expedited Suspension Mechanism, but it had a lot of features that the URS has—which was meant to be sort of an option that was tacked on to the front of the UDRP. And based on some case analysis and response rates, we propose that if there was a default, then the name would be suspended in favor of the complaining brand owner.

And during—I don't recall if it was Prague or there abouts—one of the sessions, Phil Corwin who was at the time representing the ICA, made a statement to the effect of, "Well, if we adopt the WIPO proposal for a default-based model, then I'll just advise all of my clients to automatically pull the trigger and invoke the right of appeal in every instance to sort of shoot a hole in that proposal."

So obviously, it would be very important to build some safeguards around that. I'm not sure … The idea of loser-pays is one that's been discussed in a number of contexts over the years. There's some pretty significant questions about who actually holds the registrants' toes to the fire on that; if it should be the registrar, the registry, ICANN, some other option, maybe. But it's certainly not the easiest question to answer because I'm not sure any of those entities would want to be on the hook for enforcing those. I know a couple of ccTLDs actually do utilize this loser-pays model.

But just thinking if there was a way to build some safeguards around that, if this would have the IGO advancing the arbitration

claim instead of the registrant, if that might be worth exploring. And I want to be very clear. I'm just sort of brainstorming here with the group, and I've not consulted with IGOs on this. I'm just sort of trying to do my best to contribute to figuring something out here for us.

CHRIS DISSPAIN: Thank you, Brian. Before I go to Jay, I completely understand what you said up to the point where it felt to me like you went off on a tangent. So you're going to need to help me out here.

So I get the bit about the possibility of whether it's worth talking about being the IGO who effectively has to [sort of answer] their case in arbitration. Whether they lost or they won, it doesn't matter. They go into the arbitration and have to [inaudible] to the arbitrator their case for winning the domain name. And the registrant [inaudible] to keep it. I understand that.

I got lost when you started talking about safeguards and other things that Phil Corwin had talked about. Were they a separate point or were they inexorably tied to the point that you just made at the beginning?

BRIAN BECKHAM: Yeah. So, sorry if I was confusing a few things there. I meant it to be tied together. And the idea was that if, in this proposal, there was some notion of some sort of a safeguard whereby parties wouldn't be simply invoking the right to force an IGO to appeal in court, in this current proposal, without any potential repercussions if they lost. And that would basically have the effect only of putting

the IGO to extra time and expense, and not to mention having to waive its immunities to go into court.

So the idea was … And sorry, I understand that I confused things a little bit when I was talking about loser-pays. But the idea was basically that if there was some sort of a bond or somehow to avoid a situation where someone could merely force an IGO to take the arbitration appeal route without any repercussions if that was found to be a frivolous request to have that arbitrated in the appeals phase. I hope that makes a little more [sense].

CHRIS DISSPAIN: Thank you. Let's go to Jay now.

JAY CHAPMAN: Okay. Thanks, Chris. We seem to be reverting to things that were discussed way back at the beginning of the group that were, I thought, summarily and quickly dismissed. Our mandate here has been to figure out the specific situation, that Recommendation 5, that was not accepted. That's the circumstance that we're charged with taking care of.

To suddenly rebirth this concept, or maybe it's even brand-new, that the IGO gets to appeal if it loses to arbitration. That wasn't something that was putt in the recommendations. It wasn't putting the comments. There were no comments on that. So I'm a little bit surprised that this is being raised at this point. That's not what we're talking about. This is all about a situation where the registrant has lost. So that's what we're dealing with here.

CHRIS DISSPAIN: Just to be clear, Jay. I'm not saying that's wrong. I just want to make sure that we're clear. Your understanding of the discussions that we've been having, over however long it is that we've been having this discussion, is that what we are talking about is a remedy that is a one way remedy—or [right], as opposed to a remedy—available only to the registrant in the event that the registrant loses.

But if the IGO loses, then what?

JAY CHAPMAN: Yeah. If the IGO loses, then again we're in the situation where we would be as if the UDRP didn't exist. And that is, they are welcome to go to court to bring their action. Sure. So it's not one way. They have options.

CHRIS DISSPAIN: No, no, no. I'm sorry if I … I didn't mean it that way. I didn't mean it to mean that they have no other alternatives. I'm just saying. I'm just asking a question.

Okay. So that's your understanding of what we were talking about. And I have to say that, certainly, all of our language has been couched in those terms.

Alexandra.

ALEXANDRA EXCOFFIER: Yes, thank you. I tend to agree with Jay. And that was the point, that we're not dealing in this [inaudible] [colleagues from killing me, but] we're not dealing here with what happens if the IGO loses. We haven't dealt with any recommendations on that.

What would happen if [it loses]? Yes, potentially we would waive immunities and go to court if we find that it's extremely important. Or we can propose arbitration to the registrant. It would require consent, in any case, of both parties to go to arbitration, and that we built that in already.

But the question is, what happens if the IGO wins, the registrant wants to appeal, and the registrar decides that they will not consent to arbitration (they will go to court)? What will happen is that the IGO has absolutely no reason at that point to waive immunities. And that's where we are, in the beginning.

[That puts us back] to the beginning of what we … The GNSO has asked us to figure out what happens in that case.

CHRIS DISSPAIN: Yep.

ALEXANDRA EXCOFFIER: And this proposal, this new idea doesn't solve that issue because it basically says, in that case, the IGO basically will have to waive its immunities if they want to pursue. Whereas, the IGO has won the UDRP. That's what I tried to say. And in that situation, I guess I'm agreeing with what Jay has said.

CHRIS DISSPAIN: It sounds like it to me. And thank you for that, Alexandra. I've got some things I wanted to say, but Jay, is your hand still up because you wanted to say something else? No. Okay.

So I agree. And if I contributed to the confusion earlier on, I apologize for that. But I think the statement that Jay has made and the statement that Alexandra's just made is, in fact, correct. I don't think that actually takes away from Brian's question as to whether or not it would be helpful or worth considering making it a requirement that if the arbitration button is pushed, the way that it's dealt with is the way that it would have been dealt with in the UDRP which is that the IGO would be advancing its case and the registrant would be, in essence, defending. I know that's not the right word.

I don't know whether that's worth pursuing or not, but it's something that we can consider. I would have thought that, one way or another … I would expect that if the arbitration was triggered by the registrant—which is what we're saying is the case—then the normal course of events would be the registrant that put forward the case and then it would be answered by the IGO.

I don't know if it's worth considering switching that around and if that's of any benefit to the registrant or not. But it's an interesting question, Brian. And thank you for raising it.

I'm conscious that we have only got 10 minutes left. So acknowledging that … Again, not making any judgment here, but

Jay and Jeff are the two people who have, on this call at any rate, raised questions/spoken against, to some extent, this suggestion. Although I know both of them are not saying that they don't think it's great idea. But at the moment, they're raising the questions.

So in an effort to try to close this down as soon as possible, one way or another, could I ask that Jeff and Jay separately provide us with—on the list in the next few days—anything that they believe that we should take into account that would have us looking favorably on this recommendation?

And Jeff, if there are matters arising from this recommendation that you think should be … Or Jay for that matter, or anyone. If there are matters arising from this suggestion that you think should be taken forward, notwithstanding that the suggestion itself ends up not being taken forward, if you could list what those are and we could understand what the principal or basis of those being taken forward would be and why, that would be immensely helpful.

I want us to briefly revisit this at the beginning of our next call. I do not want our whole call to be about it. I want us to move on and deal with the balance of the comments in respect to Recommendation 3. I can't see any point in starting that now.

Berry, can you?

BERRY COBB: Negative.

CHRIS DISSPAIN: So on that basis, then let's wrap the call with a clear understanding of the following. We are going to need to extend our time. I don't think that should come as a surprise to anybody. Berry's going to work on what those dates will be.

We do have a call next week on the 29th. We do not have a call on the 6th because there are some of us who will not be available. We will meet on the 13th and the 20th. And then we will disappear for Christmas—or whatever holiday you choose to celebrate at this time of the year, if indeed you celebrate any—and reconvene on the 10th of January.

Next week we will briefly touch on the LEAP Proposal again and see if we can bring that to a conclusion. And we will then move on to look at the other comments on Recommendation 3.

Does anyone have any last-minute burners that they want to bring up before we close the call? Seeing none. Thank you all very much, indeed, and see you next week. Thanks, everybody. You can close the call down now.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. I will disconnect the recordings and drop all lines. Have a lovely rest of your day.

[END OF TRANSCRIPTION]